

Brijrajsingh and ors. Vs. Bitto Devi (Smt.) and anr.

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Court : Madhya Pradesh

Decided On : Sep-24-1991

Reported in : 1994(0)MPLJ192

Judge : R.C. Lahoti and ;K.M. Pandey, JJ.

Acts : Code of Civil Procedure (CPC) - Sections 99 - Order 1, Rule 3B - Order 6, Rule 4A; Madhya Pradesh Code of Civil Procedure (CPC) (Amendment) Act, 1984

Appeal No. : Second Appeal No. 114 of 1990

Appellant : Brijrajsingh and ors.

Respondent : Bitto Devi (Smt.) and anr.

Judgement :

ORDER

R.C. Lahoti, J.

1. Judges must be beware of hard constructions and strained inferences; for there is no worse torture than torture of laws - said Francis Bacon. Should the law be so interpreted and implemented as to let the litigation go into a circuitous and torturous path of journey or should it be so interpreted as to cut-short litigation keeping in view the purpose and object behind its enactment, is the question staring at the Court hearing this reference.

2. The Code of Civil Procedure (M. P. Amendment) Act, 1984 (Act No. 29 of 1984) introduced Rule 3-B, in Order 1, and Rule 4-A, in Order 6, in the body of the Code of Civil Procedure, 1908, as applied to the State of Madhya Pradesh. Of late, it has come to the notice of this Court that the provision is being utilised by the appellate Courts as a tool for earning easy disposal of appeals by making orders of remand unmindful of the fact that a convenient resort to that provision has the result of setting at naught the concluded decrees of competent Courts, well merited otherwise, and thereby throwing down the litigants to retread the arduous path of tiresome litigation.

3. The facts in brief : The plaintiff/respondent No. 1 instituted a suit for declaration of title and partition relating to an agricultural holding. The suit was instituted on 20-10-1976 and came to be decided on 28-8-1980. The suit was decreed on 2 - 9-1980. The defendants preferred an appeal before the lower appellate Court which was heard on merits and dismissed by the lower appellate Court vide its judgment and decree dated 17-4-1990. In between, on 14-8-1984, had come into force the Amending Act of 1984. The provisions of Order 1, Rule 3-B, and Order 6, Rule 4-A, Civil Procedure Code were not complied with by the defendant as appellant before the lower appellate Court nor did that Court advert its attention at securing compliance therewith. The losers in litigation, i.e. the defendants, have come up to this Court now seriously complaining of jurisdictional incompetence in the lower appellate Court for failure of compliance thereat with the provisions contained in Order 1, Rule 3-B, and Order 6, Rule 4-A, suggesting that the decree passed in appeal was vitiated and forcefully pressing for a remand so as to secure a rehearing of the appeal at the hands of the lower appellate Court after compliance with the said provisions of law. This Court admitted the appeal for hearing parties on the following question

'Whether the judgment and decree of the Court below are vitiated for non-compliance with the provisions contained in Order 1, Rule 3-B and Order 6, Rule 4-A, Civil Procedure Code.'

4. It is clear that if the contention raised on behalf of the appellant canvassing mandatory character of the two provisions and jurisdictional incompetence in the

Court below in hearing and disposing of the appeal without securing compliance with the two provisions were to be accepted the appeal has to be simply allowed with consequent order of remand setting aside the impugned decree and directing a rehearing of the appeal at the hands of the lower appellate Court. Forceful reliance was placed on Mohanlal v. Ramlal, 1989-II MPWN 22; Shakoor Khan v. Yogi Dulichand, 1989 MPLJ134, and three unreported decisions of this Court in Shankarlal v. Shankarlal, S.A. No. 113/88, decided on 22-3-1990; Smt. Dhanakju v. Smt. Sukhrani, S.A. No. 30/1989, decided on 16-10-1990 and Alfoo Khan v. Lateef Khan, M.A. No. 90/88, decided on 20-2-1991.

5. The effort of the defendant/appellants at securing the remand was seriously opposed by plaintiff /respondent submitting that though the lower appellate Court should have secured compliance with the provisions contained in Order 1, Rule 3-B, and Order 6, Rule 4-A, Civil Procedure Code yet the primary responsibility of impleading the State as party-respondent in the appeal before the lower appellate Court laid with the appellant thereat who having failed in discharging own-obligation, cannot now be heard to complain of non-compliance with the provisions to their own advantage securing thereby reversal of well merited decree in favour of the plaintiff/respondent.

6. Order 1, Rule 3-B and Order 6, Rule 4-A, Civil Procedure Code brought on the statute book by M. P. Act No. 29 of 1984 read as under :-

'3-B. Conditions for entertainment of suits. -(1) No suit or proceeding for -

(a) declaration of title or any right over any agricultural land, with or without any other relief; or

(b) specific performance of any contract for transfer of any agricultural land with or without any other relief,

shall be entertained by any Court, unless the plaintiff or applicant, as the case may be, knowing or having reason to believe that a return under Section 9 of the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (No. 20 of 1960) in relation to land aforesaid has been or is required to be filed by him or by any other

person before competent authority appointed under that Act, has impleaded the State of Madhya Pradesh as one of the defendants or non-applicants, as the case may be, to such suit or proceeding.

(2) No Court shall proceed with pending suit or proceed referred to in sub-rule (1) unless, as soon as may be, the State Government is so impleaded as a defendant or non-applicant.

Explanation. -The expression 'suit or proceeding' used in this sub-rule shall include appeal, reference or revision, but shall not include any proceeding for or connected with execution of any decree or final order passed in such suit or proceed.'

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