

Laxminarayan Vs. Ramjidas and ors.

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Court : Madhya Pradesh

Decided On : Aug-17-2001

Reported in : 2001(4)MPHT250

Judge : S.P. Srivastava, J.

Acts : Madhya Pradesh High Court Act - Sections I; ;Madhya Pradesh High Court Order; Madhya Pradesh High Court Rules - Rule 11

Appeal No. : Letters Patent Appeal No. 257/97

Appellant : Laxminarayan

Respondent : Ramjidas and ors.

Advocate for Def. : R.C. Shukla, Adv.

Advocate for Pet/Ap. : H.D. Gupta, Adv.

Disposition : Reference returned unanswered

Judgement :

ORDER

S.P. Srivastava, J.

1. Heard the counsel for the parties.

2. Laxmi Narayan had filed a miscellaneous appeal registered as M.A. No. 197/96 challenging an order passed by the Fifth Additional District Judge, Gwalior, whereby he had rejected his application for the grant of Probate. The Probate had been sought for on the strength of the alleged 'wills' dated 23-8-76, 24-9-90 and 25-9-90; claimed to have been executed by his mother in his favour.

3. The miscellaneous appeal referred to hereinabove was dismissed by a learned Single Judge of this Court vide the judgment and order dated 4-2-97. Thereafter, Laxmi Narayan filed an application seeking review of the aforesaid order which was registered as M.C.C. No. 185/97. This application seeking review was also dismissed by the learned Single Judge vide the order dated 29-8-97.

4. It was thereafter that Letters Patent Appeal No. 257/97 was filed by Laxmi Narayan challenging the order passed by the learned Single Judge dated 4-2-97 as well as 29-8-97 referred to hereinabove.

5. The Letters Patent Appeal was heard by the Division Bench of Hon'ble S. Dwivedi and Hon'ble S.S. Jha, JJ. Hon'ble S.S. Jha, J., vide his detailed judgment dated 7-1-99 dismissed the appeal summarily upholding both the orders which had been challenged and were the subject matter of the Letters Patent Appeal. However, the other member constituting the Division Bench Hon'ble S. Dwivedi, J., expressing his inability to agree with the view taken by Hon'ble S.S. Jha, J., delivered a separate judgment on 7-1-99 whereunder the appeal was allowed and setting aside the order of the learned Single Judge as also of the Trial Court, the case was remitted to the Trial Court with certain directions.

6. Hon'ble S.S. Jha, J. had sent the draft judgment prepared by him for consideration to Hon'ble S. Dwivedi, J., vide the endorsement dated 18-8-96. Hon'ble S. Dwivedi, J., passed an order to the following effect thereafter.

'I express my inability to agree with the view taken by Hon'blebrother S.S. Jha, J.

My separate judgment is annexed.'

7. The separate judgment given by Hon'ble S. Dwivedi, J., was delivered on 7-1-99. Hon'ble S.S. Jha, J., signed his judgment on the same date.

8. On the order-sheet dated 7-1-99, learned Judges passed an order to the following effect.

'In view of the difference of opinion in the case, the file be placed before Hon'ble the Chief Justice for appropriate directions for placing the case before the third Judge.'

9. Thereafter, the file was put up before Hon'ble the Chief Justice with the following note.

'Kind attention is invited to the separate orders dated 7-1-99 passed by the Hon'ble S. Dwivedi and Hon'ble S.S. Jha, JJ, members of the Division Bench at Gwalior in L.P.A. No. 257/97.'

10. The Hon'ble Court has directed that in view of difference of opinion in the case, it be placed before Hon'ble Chief Justice for appropriate direction for placing the case before the third Judge.

11. Accordingly, it is submitted before the Hon'ble Chief Justice (In Chambers) for nomination of the third Judge.

12. On the aforesaid note put by the Registrar, the Hon'ble Chief Justice passed an order to the following effect on 10-2-99. 'List it before Hon'ble S.P. Srivastava, J.'

13. This is how the matter has now come up before me.

14. The application I.A. No. 9017/99 has been filed by the contesting respondent asserting that the present reference is incompetent and praying that the matter be referred to Hon'ble Chief Justice to constitute a Full Bench for deciding the Letters Patent Appeal on merits afresh.

15. The learned counsel for the respondent has placed reliance in support of the aforesaid application on a decision of this Court dated 16-2-98 passed in W.P. No. 1374/95, wherein taking into consideration identical facts, the reference made had been returned un-answered with the direction to the registry to lay the papers of the matter referred before the Hon'ble Chief Justice for appropriate order,

16. It may be noticed that after the reference was returned unanswered, the Hon'ble Chief Justice had constituted a Full Bench for deciding a writ petition and entire case afresh and the said decision is reported in 1999(2) MPLJ 259, *Sudha Gupta v. State of M.P.*

17. In the decision dated 16-2-98 referred to hereinabove, after taking into consideration, the provisions contained in Rule 11 of Section 1 of Chapter 1 of the M.P. High Court Rules and Clause 26 of the Letters Patent of Nagpur, it had been indicated that the nominated Judge to whom the matter is referred in consequence of the difference of opinion between the Judges constituting the Division Bench, has to hear the matter only so far as to give an opinion on the point of law stated by the Division Bench on which the members of the Division Bench had differed and the nominated Judge has to return the case with his opinion to the Division Bench. It was also indicated that the Division Bench must continue to remain seized of the case as it has to pronounce the final judgment according to the method provided by Clause 26 of the Letters Patent Appeal.

18. Drawing support from the Full Bench decision of this Court in the case of *Ladhuram Rameshwardayal (Firm) v. Krishi Upaj Mandi Samiti, Shivpuri and Ors.*, reported in 1977 J.L.J. 651, it was emphasised that the nominated/third Judge has no jurisdiction to decide any other point and it is the Division Bench, after the receipt of the opinion of the third Judge/ nominated Judge, which decides the point, although it cannot decide the point by applying its mind de-novo on merits but has to decide the point according to the majority opinion of the Judges. The Full Bench had clarified that although the jurisdiction is limited yet the jurisdiction to decide the point rests with the Division Bench itself.

19. Referring to the decision of this Court in the case of *Amalgamated Coalfields Ltd. v. State of M.P.*, reported in AIR 1967 MP 56, it was indicated that Rule 11 itself required that the Judges composing the Division Bench have to state the point on which they differ.

20. In the present case, what is apparent is that the Hon'ble Judges constituting the Division Bench have already delivered their decisions and after delivery of their separate judgments they had to be taken to have parted with the case.

21. In the aforesaid situation when separate conflicting judgments/orders had been signed and delivered there could no setting back of the clock so as to bring in a stage anterior to the decision keeping the grip over the proceedings permitting the exercise of the limited jurisdiction to decide the point which jurisdiction rested with the Division Bench itself as the said jurisdiction now stands exhausted with the rendering of the conflicting decisions.

22. Similar view had been expressed by the Allahabad High Court in its decision in the case of Birendra Kumar Rai v. Union of India, reported in AIR 1992 Allahabad 151.

23. In the facts and circumstances of the present case, in the absence of the formulation of the point of law by the Division Bench it is neither possible nor permissible for the third Judge/nominated Judge to cull out from the conflicting separate judgments rendered by the Hon'ble Judges constituting the Division Bench, the point of law on which they had differed, as the rule under consideration mandates that the Division Bench itself has to formulate and state the point in the order of reference on which there was a difference of opinion as the hearing before the referred Court/nominated Judge has to confine to the point stated by the Division Bench itself.

24. The provisions contained in Rule 11 of Section 1 of Chapter I of the M.P. High Court Rules read with Clause 26 of the Letters Patent do not contemplate a situation where the third Judge/nominated Judge stands empowered to certify one Judge right and another Judge wrong. Even otherwise, such a course cannot by any stretch of imagination be held to be appropriate. The key to unlock this situation as pointed out in the aforesaid decision lies in the matter being placed before the Larger Bench which can effectively deal with the situation as it will not be under any inhibition nor incompetent to hear every aspect of the case before it.

25. In view of the conclusions indicated hereinabove, this reference is returned unanswered.

26. The Registry is directed to lay the papers of the matter referred before the Hon'ble Chief Justice for appropriate orders at the earliest.

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