

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).326/2009

KAMLARAJE CHARITABLE TRUST

Appellant(s)

VERSUS

STATE OF M.P. & ORS.

Respondent(s)

WITH

C.A. No.328/2009 (IV-A)

Date : 04-04-2018 These appeals were called on for hearing
today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Appellant(s) Mr. N.K. Modi, Sr. Adv.
Mr. R.N. Karanjawala, Adv.
Mr. Debmalya Banerjee, Adv.
Mr. Varun Chopra, Adv.
Mr. Kartik Bhatnagar, Adv.
Mr. A.S. Aman, Adv.
Mr. Manish Sharma, Adv.
for
M/s. Karanjawala & Co., Advs. [AOR]

Mr. Vikas Mehta, Adv. [AOR]

For Respondent(s) Mr. Manish Yadav, Adv.
Mr. Rohit Chandra, Adv.
for
Mr. Arjun Garg, Adv. [AOR]

Mr. Adarsh Upadhyay, Adv. [AOR]

UPON hearing the counsel the Court made the following
O R D E R

The appeals are disposed of in terms of the signed
order. There shall be no order as to costs.

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Pending applications, if any, stand disposed of.

(Subhash Chander)
AR-cum-PS

(H.S. Parasher)
Assistant Registrar

[Signed Order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.326 OF 2009

Kamlaraje Charitable Trust ... Appellant

Versus

State of M.P. & Ors. ... Respondents

W I T H

CIVIL APPEAL NO.328 OF 2009

O R D E R

C.A.No.326 of 2009

The present appeal assails the judgment and order dated 10.03.2006 passed by the High Court of Madhya Pradesh, Jabalpur, Bench at Gwalior in W.P.No.2157 of 2004 whereby the High Court has declined to grant relief to the present appellant holding, inter alia, the land in respect of which right, title and interest was set forth by the appellant, is part of a public street and the property of the State.

It is submitted by Mr. Modi, learned senior counsel appearing for the appellant that some of the purchasers who had purchased the property from the appellant filed a review petition before the High Court and the High Court, vide order dated 17.12.2009, has observed as follows :

"

9. The next contention raised by learned counsel ... /2

for the petitioner is that in the writ petition the question of title was not in issue. From a perusal of the relief clause in the writ petition, it appears that the petitioner in W.P. No.2157/04 has prayed for a relief that the respondents should not interfere in the possession of the petitioner without following the due procedure laid down by law and if the respondent state require the said property for public purpose may acquire in appropriate proceeding under Land Acquisition Act. Thus, the question of title was not in dispute in the said petition.

10. In such circumstance, in our opinion the learned writ court was not required to embark upon the title of the party because that was not an issue. In fact the nature of the petition was that of a suit for perpetual injunction and in a suit for injunction the question of title is always irrelevant. The only question in such a case is the factum of possession which is undisputedly with the petitioner in that case.

11. In such a situation, when the issue of title was not at all involved, the Division Bench in our opinion has certainly committed error in deciding the issue and this can be said to be error apparent on the face of the record. Apart from that, proper forum for deciding the question of title is a Civil Suit and not a petition under Article 226/227 of the Constitution of India. Hence, we recall the finding of possession delivered in Writ Petition No.2157/04. The said finding will not come in the way of any of the parties in any Civil Suit. Any revenue entry made on the basis of the order in W.P.No.2157/04 shall stand corrected.

12. However, so far as dismissal of writ petition is concerned, we do not find any mistake apparent on the face of record in dismissing the writ petition. In that case the petitioners have prayed for a direction restraining the respondents from interfering in their possession and the proper remedy for seeking injunction is a civil suit and an

application under Order 39 Rules 1 & 2 of CPC and not a writ petition. In such circumstances, this Court has rightly dismissed the writ petition filed by Kamlaraje Charitable Trust and therefore, there is no error apparent on face of record in that part of order."

Be it noted, the State Government filed an application for review of the aforesaid order. The High Court, vide order dated 08.04.2013, disposed it of keeping in view pendency of the present appeal before this Court.

In our considered opinion, what has been really urged before us is the dispute pertaining to right, title and interest in the subject property. The Writ Court has, however, observed that it is an undisputed position that it is a public street.

It is worth noting here, the suit was filed by the purchasers and they had sought injunction which was refused by the trial court and that order was affirmed by the High Court. The said order has been challenged by filing Special Leave Petition before this Court, being Civil Appeal No.328 of 2009.

We have also been apprised that the civil suit filed by the purchasers has since been decreed and the Municipal Corporation as also the State have filed appeals before the

High Court being F.A. No.250 of 2007 and 154 of 2009 respectively.

We think it appropriate only to request the High Court to dispose of the said appeals within a span of six months. If the appellant has grievance with regard to any other property (not the subject matter of abovementioned appeals but limited to the properties referred to in W.P.No.2157 of 2004) against the State, liberty is granted to initiate appropriate civil action in that regard within two months hence. The benefit of Section 14 of the Limitation Act shall be applicable if the suit is filed within the time granted by us.

Needless to say, the observations made by the High Court in the review petition filed by the purchasers with regard to the right, title and interest shall not weigh with the civil court. Be it clarified, we have not expressed any opinion with regard to the character and nature of the land in praesenti.

The appeal stands disposed of accordingly. There shall be no order as to costs.

C.A.No.328 of 2009

In view of disposal of C.A.No.326 of 2009, this appeal

stands disposed of. There shall be no order as to costs.

.....CJI.
[DIPAK MISRA]

.....J.
[A.M. KHANWILKAR]

.....J.
[Dr. D.Y. CHANDRACHUD]

New Delhi.
April 04, 2018.