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C.A.No. 1160 OF 2002

ITEM No.102

Court No.4

SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.1160/2002

GAJANAND & ANR.

Appellant (s)

VERSUS

GAPPU LAL MEENA & ORS.

Respondent (s)

Date : 15/01/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K.SABHARWAL
HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Appellant (s) Mr.U.N.Bachawat,Sr.Adv.
Mr.Sushil Kumar Jain,Adv.
Mr.H.D.Thanvi,Adv.
Mr.A.P.Dhamija,Adv.
Ms.Ruchi Kohli,Adv .

For Respondent (s) Mr.Prakash Shrivastava,Adv.
Mr.Nitin Bhardwaj,Adv.

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

Mr.U.N.Bachawat, learned senior counsel appearing for the appellants commenced his arguments at 2.55 p.m. and concluded at 3.15 p.m. Thereafter, Mr.Prakash Shrivastava, learned counsel appearing for the respondents, made his submissions at 3.15 p.m. and concluded at 3.35 p.m. The appeal is allowed in terms of the signed order. Parties are directed to bear their own costs .

(V.P.Tyagi) (N.K.Gandhi)
COURT MASTER AR-cum-PS

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1160 OF 2002

GAJANAND & ANR.... APPELLANT (S)

VERSUS

GAPPU LAL MEENA & ORS. ... RESPONDENT (S)

O R D E R

By order dated December 29, 1969, passed by Naib Tehsildar, sanction was accorded for partition of the land in question. The plaintiff Mst. Nabbo instituted a civil suit in respect of the said land against the appellant and others seeking a declaration of title and permanent injunction restraining them from taking possession from her. In the suit, challenge was also made to the aforesaid order dated December 29, 1969 on the ground that the plaintiff Nabbo was not served in the proceedings of partition that had been initiated under Section 178 of the Madhya Pradesh Land Revenue Code. One of the issues before the Civil Court was whether the notice had been served on Nabbo or not. The Trial Court on appreciation of oral as well as documentary evidence, came to the conclusion that there was proper service and the partition order dated December 29, 1969 was correctly passed by initiating ex-parte proceedings against Nabbo. The order of the Trial Court was affirmed in first appeal. In the second appeal filed under Section 100 by the legal representatives of Nabbo, she having died in the meanwhile, the High Court has set aside the concurrent finding of facts and decreed the suit and hence this appeal on grant of leave.

: 2 :

By the impugned judgment, the High Court on re-appreciating a part of the evidence, has come to the conclusion that the service of proceedings of partition by Revenue Court, Exh.D-8, upon Nabbo was not proper and in the circumstances the order of partition by revenue court is not binding on the plaintiff.

The substantial questions of law that were framed by the High Court are as under :

(i) Whether, service of proceedings of partition by revenue court vide Exh.D-8, upon the plaintiff, was proper.

(ii) If the service was not proper, whether, the order of partition by the revenue court is binding upon the plaintiff.

Both these questions have been answered in favour of respondents. Undoubtedly, Nabbo had to be served in partition proceedings initiated under Section 178 of the Code, above referred. The mode of service is provided in Schedule I prescribing for Rules of Procedure of Revenue Officers and Revenue Court. In regard to issue of summons. Rules 11 to 14 to which our attention was drawn by learned counsel for the respondent read as under :

" 11. MODE OF SERVING NOTICE -

Every notice shall be served by tendering or delivering a copy of it to the person concerned personally or to his recognised agent :

Provided that, where the recognised agent of the person concerned is a pleader, the notice may be served by leaving a copy thereof at his office or at place of his ordinary residence and such service shall be deemed to be as effectual as service on the recognised agent personally.

12. Where the person concerned cannot be found and has no recognised agent, service may be made on any adult male member of the family of the person concerned, who is residing with him.

: 3 :

Explanation - A servant is not a member of the family within the meaning of this rule.

13. Where the serving officer delivers or tenders a copy of the notice to the person concerned personally or to an agent or other person on his behalf, he shall require the signature of the person, to whom the copy is delivered or tendered to an acknowledgment of service endorsed on the original notice.

14. If service of the notice cannot be effected in the manner provided in rules 11, 12 and 13, a copy thereof may be affixed at the last known place of residence of the person concerned or at some place of public resort in the village in which the land to which the notice relates is situate or from which the land is cultivated."

From the record it seems that at various stages prior to December 29, 1969 summons were served on Nabbo. For determining whether there was proper service as reflected in summons Exh.D-8, the Trial Court as also the First Appellate Court besides Exh.D-8 had further referred to Exhs.D-6, D-7 and D-9 as well. Exh.D-9 is the service during partition proceedings before Tehsildar. As per this document notice had been affixed on the Notice Board of the Tehsil as also at the Chopal of two villages besides the proclamation by beat of drums in the said village. Summons, Exh.D-6, shows personal service on her on July 23, 1968 by the process server of the Court of Collector to whom the report had been submitted by the Naib Tehsildar. The Collector by order dated August 23, 1968 accepted the Report of Naib Tehsildar and thereafter returned the case to Tehsildar, for making necessary corrections in the Land Revenue record. Summons, Exh.D-7, shows personal service on her on August 14, 1969 from the court of Naib Tehsildar after the case had been received back from the Collector. These are circumstances under which the ex-parte order against Nabbo was passed by Naib Tehsildar on December 29, 1969.

: 4 :

The High Court without even referring to Exhs.D-6, D-7 and D-9 or to the testimony of DW-4 to DW-6 has disturbed the concurrent finding by holding that there is no proper service on Nabbo on the ground that first their had to be of personal attempt to serve her. The aforementioned summons and reports thereupon show that Nabbo had also been personally served. The evidence of process server, DW-4, could not be re-appreciated in isolation without referring to the other relevant evidence both oral and documentary. The relevant oral evidence was that of the attesting witnesses to the service reports besides the process server DW-4. It had to be borne in mind that DW-4 at the time of examination was 85 years of age and in his testimony was referring to the service effected 20 years earlier. Exhs.D-6, D-7 and D-9 in addition to Exh.D-8, clearly prove that Nabbo had been served. It cannot be said that there was any non-compliance of rules afore-quoted. In any case there was substantial compliance. No case was made out before High Court for disturbing concurrent findings recorded by the two courts. Under the aforesaid circumstances, we are unable to sustain the impugned judgment of the High Court. Setting aside the said judgment, we allow the appeal and restore the judgment of the First Appellate Court affirming that of the Trial Court dismissing the suit. In the facts and circumstances of the case the parties are left to bear their own costs.

.....J.

[Y.K.SABHARWAL]

.....J.

[DR.AR. LAKSHMANAN]

New Delhi,
January 15, 2004.