

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2603 OF 2013
(Arising out of SLP(C) No.20810/2011)

NIRANJAN KUMAR JAIN

...Appellant

VERSUS

KANCHHEDILAL JAIN(D) TR.LRS.& ORS.

...Respondents

ORDER

Leave granted.

This appeal is directed against judgment dated 29.3.2011 of the learned Single Judge of the Madhya Pradesh High Court whereby he allowed the second appeal filed by the respondent, set aside the judgments and decrees passed by the trial Court and the lower appellate Court and dismissed the suit filed by the plaintiff (appellant herein) for declaration of title over the suit property and for permanent injunction.

One Gulab Chand was the owner of the suit property. He had two children, viz., Kanchhedi Lal (son) and Smt. Shanti Bai (daughter). The appellant is the son of Smt. Shanti Bai. After the death of Gulabchand his widow Smt. Raj Rani executed Will dated 24.12.1987 in favour of the appellant.

In the suit filed by him, the appellant pleaded that he was doing business in the suit property in the name of Neelam General Store for last about 20 years; that the respondent did not raise any objection till 22.10.1994, the day on which he made an attempt to forcibly evict him; that in the wake of threat held out by the respondent, he lodged a report with the police but the respondent did not desist from holding out threats and, therefore, it became necessary to seek relief from the Court.

The defendant (respondent herein - who is now represented by his legal representatives) contested the suit. In his written statement, the defendant pleaded that his mother had not executed any Will and the Will relied upon by the appellant was forged and had been obtained by fraud; that he is the owner of the suit property; that appellant used to work in the shop as manager and that he was removed because of bad behaviour.

On the pleadings of the parties, the trial Court framed the following issues:

"1. Whether plaintiff has been doing business in the disputed shop which has been shown in the map by letter ABCD annexed with plaint without any dispute for the last 18 years.

2. Whether the Nani of the plaintiff had executed Will dated 24.12.87 in favour of the plaintiff in the respect of the disputed shop.

3. Whether plaintiff has acquired title of the shop.

4. Whether the plaintiff is entitled to the relief of permanent injunction in respect of the disputed shop against the defendant.

5. Whether the Will dated 24.12.87 executed in favour of plaintiff was forged."

After analyzing the pleadings and evidence of the parties, the trial Court held that the Will executed by Smt. Raj Rani was valid and by virtue of the Will, the appellant had acquired title over the suit property. The trial Court further held that the appellant was entitled to the relief of permanent injunction and, accordingly, decreed the suit.

The appeal filed by respondent was dismissed by the lower appellate Court, which concurred with the findings recorded by the trial Court on the issues of validity of the Will and the appellant's title over the suit property. The lower appellate Court also agreed with the trial Court that the appellant was entitled to permanent injunction.

In the second appeal filed by the respondent, the High Court framed the following questions of law:

"(i) Could Mst. Rajrani wd/o Gulab Chand having undivided interest bequeath the specific property by will Ex. P/1?

(ii) Whether the suit property marked ABCD in plaint map formed the subject matter of Will Ex. P/1?

(iii) Whether exclusion of material documents including Ex. D/4 certificate of registration dated 27.3.79 has vitiated the finding that the plaintiff is the owner of suit shop?"

The learned Single Judge opined that after the death of Gulab Chand his heirs became entitled to 1/3rd share in the suit property and Smt. Raj Rani could have bequeathed her share in the suit property but she was not competent to bequeath any specific portion in favour of the appellant. On this premise, the learned Single Judge allowed the appeal and set aside the judgments and decrees passed by the trial Court and the lower appellate Court.

We have heard Shri Pramod Swarup, learned senior counsel for the appellant and Dr. Rajeev B. Masodkar, learned counsel for the respondents. In our view, the learned Single Judge did not commit any error by recording a finding that in the absence of partition of the suit property among the legal heirs of Gulab Chand, Smt. Raj Rani could not have bequeathed any particular portion thereof in favour of the appellant and the Courts below committed an error by holding that by virtue of the Will executed by Smt. Raj Rani the appellant had become owner of the suit property. However, it is not possible to uphold the impugned judgment in its entirety because the High Court did not frame any substantial question of law on the appellants entitlement to seek relief of permanent injunction and without finding any patent legal error in the concurrent finding recorded by the trial Court and the lower appellate Court that the appellant was in possession of the suit property and was entitled to permanent injunction, the learned Single Judge could not have set aside the decree of injunction.

In the result, the appeal is partly allowed, the impugned judgment is set aside to the extent of denial of relief of injunction to the appellant and the decree passed by the trial Court, which was confirmed by the lower appellate Court restraining the respondent from interfering with the appellant's possession is restored.

.....J
(G.S. SINGHVI)

.....J
(KURIAN JOSEPH)

ITEM NO.9

COURT NO.3

SECTION IVA

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

Petition(s) for Special Leave to Appeal (Civil) No(s).20810/2011

(From the judgement and order dated 29/03/2011 in SA No.117/2002 of The
HIGH COURT OF M.P AT JABALPUR)

NIRANJAN KUMAR JAIN

Petitioner(s)

VERSUS

KANCHHEDILAL JAIN(D) TR.LRS.& ORS.

Respondent(s)

(With prayer for interim relief and office report)
(for final disposal)

Date: 19/03/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR JUSTICE KURIAN JOSEPH

For Petitioner(s) Mr. Pramod Swarup, Sr. Adv.
Ms. Sushma Verma, Adv.

For Respondent(s) Dr. Rajeev B. Masodkar, Adv.
Mr. S.R. Setia, Adv.

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

Leave granted.
The appeal is partly allowed.

[SUMAN WADHWA]
COURT MASTER

[PHOOLAN WATI ARORA]
COURT MASTER

Signed order is placed on the file.