
(2014) 08 GUJ CK 0001

In the Gujarat High Court

Case No : Letters Patent Appeal No. 911 of 2014 in Special Civil Application No. 13114 of 2011 and Civil Application No. 9235 of 2014 in Letters Patent Appeal No. 911 of 2014

Chmar Kalabhai Jethabhai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2014) 08 GUJ CK 0001

Hon'ble Judges : V.M. Sahai, J;R.P. Dholaria, J

Bench : Division Bench

Advocate : Hardik C. Rawal, Advocate for the Appellant

Judgement

@

V.M. Sahai, J.—We have heard Mr. Hardik C. Rawal, learned advocate appearing for the appellants.

2. By way of the present Letters Patent Appeal, the appellants-original petitioners have challenged the judgment dated 24.07.2014 passed by the learned Single Judge in Special Civil Application No. 13114 of 2011, whereby the learned Single Judge was pleased to dismiss the writ petition.

3. In the writ petition, the appellants-original petitioners have challenged the order of the Gujarat Revenue Tribunal in Revision Application No. TEN. B.A. 1/2002 and order passed by the Collector, Gandhinagar in Revision Case No. 58 of 2000 and the order passed by the Mamlatdar & ALT, Kalol in Tenancy Case No. 11/1996.

4. Learned counsel appearing for the appellant has urged that it is a case of fraud and if the Court hears the appeal that will discover that the fraud is here.

5. We cannot go into this means in an appeal which is not maintainable. Since

the learned Single Judge while dismissing the writ petition has not issued a writ of certiorari and the learned Single Judge has specifically observed in the impugned judgment that the writ petition is essentially under Article 227 of the Constitution of India. Therefore, the Letters Patent Appeal would not be maintainable.

6. The Five Judges" Full Bench of this Court in the case of Gujarat State Road Transport Corporation Vs. Firoze M. Mogal and 1 Another, rendered in Letters Patent Appeal No. 1149 of 2002, Dated : 26.12.2013, has held as under :-

"(M) (x) If the Special Civil Application is described as one not only under Article 226 of the Constitution, but also under Article 227 of the Constitution of India and the Court or the Tribunal whose order is sought to be quashed, is not made a party, the application is not maintainable as one for the relief of certiorari in the absence of the concerned Tribunal or Court as party, but the same may be treated as one under Article 227 of the Constitution of India. If the Court or Tribunal is not impleaded as a party respondent in the main petition, then by merely impleading such court or tribunal for the first time in the Letters Patent Appeal will not change the nature and character of the proceedings before the learned Single Judge. By merely impleading such a Court or Tribunal for the first time in the LPA, the appeal could not be said to be maintainable, if the proceedings before the learned Single Judge remained in the nature of supervisory proceedings under Article 227 of the Constitution.

xi) If the learned Single Judge, in exercise of a purported power under Article 227 of the Constitution sets aside the order of Tribunal or Court below and at the same time, the essential conditions for issue of writ of certiorari are absent, no appeal will be maintainable against such order in view of the specific bar created under Clause 15 of the Letters Patent itself and such an order can be challenged only by way of a Special Leave Petition before the Supreme Court.

To put it very explicitly, take a case where a petition is only under Article 227 of the Constitution of India, invoking superintending powers of the High Court and not under Article 226 of the Constitution of India. After examining the matter, if the court finds substance in the petition and sets aside the order of an authority, court or a tribunal, then against such an order, an LPA would not lie on the argument that since the court has set aside the order it has decided the matter on merits having found substance in the same.

To put it in other words, once a petition is under Article 227 of the Constitution of India, and while entertaining such a petition under Article 227 of the Constitution of India, if the court allows a petition by setting aside the order impugned, then against such an order no LPA would lie.

7. In view of the aforesaid Full Bench decision, the present Letters Patent Appeal is not maintainable. Hence, the present Letters Patent Appeal stands dismissed as not maintainable. We, however, make it clear that we have otherwise, not gone into the merit and the dismissal of this appeal will not stand in the way of

the appellant in seeking appropriate remedy before the appropriate forum in accordance with law. Interim relief, if any, stands vacated.

8. In view of dismissal of the present Letters Patent Appeal, Civil Application No. 9235 of 2014 also stands disposed of.