
(2012) 03 MP CK 0149
In the Madhya Pradesh High Court
Case No : S.A. No. 407 of 1994

Lolar (Smt.) and Another	Vs	APPELLANT
Gulab Singh and Others		RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4, Order 22 Rule 9
Limitation Act, 1963 — Section 5

Citation : AIR 2013 MP 38 : (2012) ILR (MP) 1638

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : Amit Khatri, for the Appellant; Vipin Yadav, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.—Learned Counsel for the parties are heard on I.A. nos. 2876/2012, 2877/2012 and I.A. No. 2879/2012 filed under Order 22 Rule 4 CPC, under Order 22 Rule 9 CPC and u/s 5 of the Indian Limitation Act respectively. In the application under Order 22 Rule 4 CPC (I.A. no. 2876/2012) it has been averred that during the pendency of this second appeal, respondent no. 1 Gulab Singh died on 11.10.1996, respondent no. 4 Suryabali Singh died on 26.05.1998 and respondent no. 2 Munna Singh also died on 26.10.2010 leaving behind their legal representatives mentioned in the application. Photocopies of death certificate of these deceased respondents have also been filed. In the application under Order 22 Rule 9 CPC (I.A. no. 2877/2012) it has been stated that appellants have no connection to the respondents and their LRs and the distance between the two villages where the respective parties live is quite far away to each other and hence the delay in filing the application to bring the LRs of deceased respondents 1, 2 and 4 be condoned and the abatement be set aside and the same prayer has been made in the application u/s 5 of the Indian Limitation Act (I.A. no. 2879/2012).

2. The aforesaid applications of appellants have been vigorously opposed by Shri

Vipin Yadav, learned Counsel for the respondents no. 1 to 4 by filing reply and also filed photocopies of proceedings dated 10.7.2008, 25.9.2008 and 16.10.2008 of the Tahsildar, Raipur, District Rewa in Case No. 2A6/07-08. A photocopy of certified copy of application of compromise executed between Smt. Chandrawati (widow of respondent no. 4 Suryabali of this appeal) and others Vs. Sukhmanti (second appellant of this appeal) and others has also been filed and it is submitted that appellants and respondents are near relatives to each other and looking to the application of compromise which was filed before Tahsildar and upon which the order was passed by it on 10.7.2008 to 16.10.2008, it cannot be said that the factum of death of these respondents were not known to the appellants because Chandrawati Singh who is one of the applicant before the Tahsildar is the widow of fourth respondent Suryabali Singh while Sukhmanti who is appellant no. 2 in this appeal, jointly filed the compromise application. Learned Counsel for the respondents further submits that although the parties belong to two different villages but they are closely related to each other.

3. Learned Counsel for the respondents further submits that this Court on 7.7.2011 allowed the appeal of appellants in part and plaintiffs were declared Bhumiswami of Survey Nos. 243, 274, 258 and 261 but since the judgment was passed against three dead respondents, hence this Court on 22.02.2012 in Review Petition 42/2012 allowed the review application on the said ground. Learned Counsel submits that Survey Nos. 243, 274, 258 and 261 are not even the part of suit property and, therefore, a decree in favour of plaintiffs for these survey numbers cannot be allowed.

4. Having heard learned Counsel for the parties, I am of the view that these three applications deserves to be dismissed and the appeal also deserves to be abated.

5. This Court earlier on 7.7.2011 partly decreed the suit of appellants/plaintiffs by passing a decree in their favour in regard to survey numbers 243, 274, 258 and 261. But, this Court on 22.2.2012 set aside that judgment in Review Petition 42/2012 since it was passed against the dead persons. On bare perusal of the list of survey numbers which are disputed in the plaint, nowhere survey numbers 243, 274, 258 and 261 for which the decree was passed were made part of the suit property.

6. On account of showing by the appellants themselves, all these three applications are hopelessly time barred and the limitation to set aside the abatement for respondents no. 1 and 4 namely Gulab Singh and Suryabali Singh respectively had expired for more than a decade since respondent no. 1 died 16 years ago while respondent no. 4 died 14 years ago.

7. A party cannot be permitted to submit an application based upon false averments by concealing reality. Very conveniently in the applications it has been submitted by appellants that they had no connection with the respondents and they were not aware about the factum of their death and hence they could not

file the applications well in time. But, if we uplift the veil, the appellants are exposed and just like a naked truth it is apparent that they were quite aware about the factum of death of these persons because necessary applications were filed in the revenue case, the description whereof has been mentioned hereinabove for compromise and the order has also been procured by the appellants and in the compromise application before the Tahsildar, Chandrawati Singh (widow of respondent no. 4 Suryabali Singh) was one of the party and she described herself to be the widow of Suryabali Singh. Similarly, second appellant Sukhmanti was also a party in the said compromise application which was filed in the revenue case and hence if the applications are allowed it would mean to over power the false averments upon the true facts which were well known to the appellants and which law would never permit them.

8. In this view of the matter, I am of the view that looking to the abnormal delay of 16 years, 14 years and more than a year after the death of respondent nos. 1, 4 and 2 respectively, it cannot be condoned and all these three applications deserve to be and are hereby dismissed. Resultantly, this appeal stands dismissed as abated.