

(2016) 06 MP CK 0028
In the Madhya Pradesh High Court
Case No : S.A. No. 315 of 2014

Smt. Karuna Gehlot

APPELLANT

Vs

Manikchand Choubey

RESPONDENT

Date of Decision : 20-06-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2017) 1 CivilLJ 761 : (2016) 4 MPLJ 536

Hon'ble Judges : Sanjay Yadav, J.

Bench : Single Bench

Advocate : Shir J.L. Soni, Learned Counsel, for the Appellant; Ms. Neelam Goel, Learned Counsel, for the Respondent No. 1

Final Decision : Dismissed

Judgement

Sanjay Yadav, J. - Shir J.L. Soni, learned counsel for the appellant.

Ms. Neelam Goel, learned counsel for respondent No. 1.

2. Appellant who was not party in Civil Suit No.7-A/96 nor in Regular Civil Appeal No. 17-A/1999, vide application I.A. No. 5200/2014 seeks leave to file Second Appeal against judgment and decree passed in Civil Suit and affirmed in Regular Appeal.

3. Civil Suit No.7-A/1996 was filed by Ram Dayal owner of 13.13 Acre of land which was subjected to an auction conducted by respondent no.6, State of M.P. through Excise Officer, Excise Department, District Raisen and purchased by respondent no.1 Manik Chand Choubey. During pendency of said suit Ram Dayal expired and the suit was carried forward by respondents 2, Naresh Kumar, respondent no.3 Suresh Kumar and respondent no.4 Dinesh Kumar.

4. The suit was partly decreed by Judgment/Decree dated 27.9.1997 in the following terms:

mHk; i{k dk nkok izfrnkok ds fu"d"kZ dks /;ku esa j[krs gq, fuEufyf[kr fMdzh

fd;k tkrk gSA 1- ;g ?kksf"kr fd;k tkrk gS fd oknxzLr Hkwfe 13-93 ,dM+ Hkwfe tks xzke fiify;k xTtw esa [k0ua0 10@1 jdok 10-15 ,dM+ [k0ua0 12 jdok 2-60 rFkk [k0ua0 51@1 rFkk 51@2 jdok 1] 22 ,dM+ dqy 13-93 ,dM+ esa ls 5 ,dM+ dk fodz; voS/k gS ek= 5-93 ,dM+ Hkwfe dk fodz; izfroknh 1 ds i{k esa oS/k gSA 2- izfroknh mDr 5-13 ,dM+ vkf/kiR; Hkwfe okn Hkwfe esa ls viuk caVokjk ukekarj.k djkdj vkf/kiR; izkfIr gsrq jktLo U;k;ky; esa fof/kor dk;Zokgh djsaA

3- izfroknh] oknh ls vkt fnukd caVokjk okn vkf/kiR; ikus rd izfroknh 2625@& nks gtkj NS% lks iPhl :i;s e;/orhZ ykHk ikus dk gdnkj gS oknh mDr jde rn~uqlkj vnk djsaA mHk; i{k viuk viuk okn O;; o vf/koDrk "kqYd vnk djsxkA

5. Respondents no.2., 3 and 4 preferred Regular Civil Appeal No.17- A/1999 which was dismissed on 16.1.2004 being barred by 345 days. That during the lifetime Ram Dayal the original plaintiff alienated the land bearing KhasraNo.20 and 35, area 11.67 acres to Umesh Singh , Bapulal and Vishnu Prasad. These three persons further transferred the present agricultural land to Kamlesh Babu and thereafter he(i.e. Kamlesh Babu) sold the land to Smt. Malti Sakalle, Smt. Shailja Sakalle and Smt.Neha Sakalle vide registered sale deed dated 29.3.2008. Present appellant purchased the land bearing Khasra No. 20/1,20/2,20/3 and 35 area 5.160 hectares =12.75 acres from Smt.Malti Sakalle, Smt. Shailja Sakalle and Smt.Neha Sakalle.

6. It is on the strength of sale deed dated 29.3.2008, the appellant has filed the present application seeking leave to challenge the judgement/decree passed by the Civil Court and affirmed in Regular Civil Appeal.

7. The relief as sought is being opposed by respondent no.1 on the ground, that being not a party to earlier suit since the decree passed in Civil Suit No.7-A/1996 attained finality with dismissal of Regular Civil Appeal No.17-A/1999 on 16.1.2004.The appellant who purchased the land in question vide sale deed dated 29.3.2008, has no locus to question the decree.It is further contended on behalf of respondent no.1 that a Civil Suit is filed by answering respondent in the year 2010 seeking decree of declaration that sale deed in favour of the present appellant and other defendants be declared as null and void. Present Appeal has been filed seeking leave to file a Second Appeal to over reach the challenge to over reach the challenge to their sale deed.

8. In realm of these facts, the question which arises for consideration is as to whether appellant can be granted leave to file an appeal against judgment/decree dated 27.9.1997 passed in Civil Suit No.7- A/1996 and affirmed in Regular Civil Appeal No.17-A/1999 dismissed on 16.1.2004.

9. Trite it is that unless conferred by a statute a person does not have an inherent right of Appeal. It is held in M/s M. Ramanarain Private Limited and another v. State Trading Corporation of India Limited : (1983) 3 SCC 75:

"16. The right to prefer an appeal is a right created by Statute. No party can file an appeal against any judgment, decree or order as a matter of course in the

absence of a suitable provisions of some law conferring on the party concerned the right to file an appeal against any judgment, decree or order. The right of appeal so conferred on any party may be lost to the party in appropriate cases by the provisions of some law and also by the conduct of the party. The law of limitation may deprive a party of the right he may enjoy to prefer an appeal by virtue of any statutory provisions. Also, in appropriate cases a party may be held to have become dis entitled from enforcing the right of appeal which he may otherwise have."

10. In case at hand that lis attained a finality in the year 2004 with the dismissal of Regular Civil Appeal No. 17-A/1999 and the appellant having purchased the property vide Registered sale deed dated 29.3.2008 cannot be said to have acquired any right allegedly claimed through Ramdayal who transferred the property to Umesh Singh, Bapulal and Vishnu Prasad who later on sold the land to Kamlesh Babu and Kamlesh Babu sold the land to Smt.Malti Sakalle, Smt. Shailja Sakalle and Smt.Neha Sakalle, who later on sold the land to present appellant. If the appellant thinks that she is a bona fide purchaser of the land which was declared to be that of the ownership of Ramdayal, she is always at liberty to bring a fresh suit as she does not inherit a right to claim through said Ramdayal's land more than 8 Acres which has been declared in his favour.

11. In view whereof, no leave can be granted to the appellant. The decision relied by the appellant in Yashwant Raj and others v. Sadanand Singh and others: 2014(3) M.P.H.T 45 (CG) and (2013) 9 SCC 261 Hardevinder Singh v. Paramjit Singh and others, would be of no assistance to the appellant as the judgment turns on their respective facts.

12. In Hardevinder Singh (supra) the appellant who sought leave to file an appeal the facts as borne out from paragraphs 23, 25 and 26 reveals that Plaintiff claiming to be a co-sharer filed the suit and challenged the will. Defendant no.5, brother of the plaintiff supported his case. The trial Court decreed the suit in an appeal in the instance of defendants no.1 to 4. The judgment/decreed was over ruled. Plaintiff entered into a settlement with a contesting defendants who had preferred the Appeal. Such a decree prejudicially affects defendant no.5 as he was benefited by the decree passed by the Trial Court and the same having been unsettled, the benefit accrued in his favour became extinct and thus having suffered legal injury by virtue of the overturning of the decree. Defendant no.4 was a person aggrieved as was prejudicially affected by the decree passed by the Appellate Court and hence he was well within his right to have preferred an Appeal.

13. Whereas in case of Yashwant Raj (supra) learned Single Judge of Chattisgarh High Court while dwelling upon the right of a party who in turn claimed his right from grand father but was not impleaded in the suit.

14. Present being not the case as were the cases, decision whereof are cited by the appellant, the appellant is not benefited from said two decisions.

15. Having thus considered, since this Court does not find any merit in the leave sought by the appellant. I.A.No.5200/2014 stands dismissed.

16. Consequently. Appeal is also dismissed. There shall be no costs.