
(2003) 02 MP CK 0040
In the Madhya Pradesh High Court
Case No : Second Appeal No. 270/84

State of M.P. and Others

APPELLANT

Vs

Fakir Mohammad and Others

RESPONDENT

Date of Decision : 18-02-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2003) 2 MPHT 446

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : V.P. Khare, for the Appellant; Bhagwan Singh, for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre, J.—Having heard learned Counsel for the parties and having perused the record of the case, I am inclined to allow this appeal, as in my opinion, the question involved in this appeal stands answered and settled by Their Lordships of Supreme Court in a decision rendered in the case of Smt. Sooraj and others Vs. S.D.O., Rchli and others, . This issue is decided in favour of the appellant and against the respondent thereby resulting in dismissal of suit filed by the respondent.

2. This appeal is preferred by the defendant u/s 100 of CPC as a Second Appeal against the judgment and decree, dated 19-12-1983, passed by learned IIIrd Additional District Judge, Ujjain in C.A. No. 27-A of 1981, which in turn arises out of Civil Suit No. 67-A of 1976, decided by Civil Judge, Class II, Tarana on 30-4-1981. It was admitted for final hearing on the following substantial questions of law:--

"Whether on the facts and in the circumstances of the case the Appellate Court committed an error of law in holding that notice u/s 80, CPC to the Government was not necessary ?"

3. In view of the limited controversy and the nature of the question of law,

referred supra, it would appear that the plaintiff filed a suit under the provisions of M.P. Ceiling on Agricultural Holdings Act without serving notice u/s 80 to the State of M.P., i.e., defendant herein. The suit was decreed by the Trial Court. The matter was then taken to the First Appellate Court in an appeal against the order of the Trial Court by the defendant State. Before the Appellate Court, it was contended that since the plaintiff did not serve any notice u/s 80, CPC to the State Government prior to filing of the suit, nor even thereafter, the suit was liable to be dismissed, as not maintainable. It is this contention which did not find favour to the First Appellate Court, it dismissed the appeal and upheld the decree passed by the Trial Court and decreed the suit preferred by the plaintiff. It is against this judgment/decreed, the defendant has come before this Court in second appeal which as stated supra, was admitted for final hearing on the aforementioned substantial question of law.

4. The question, whether suit is maintainable, if filed under the provisions of State Ceiling Act without serving a notice ? cropped up before Their Lordships of Supreme Court in Smt. Sooraj's case (supra). Their Lordships in the aforesaid judgment in Paragraph 5 in clear terms held that since no notice u/s 80 prior to filing of the suit was served on State, the suit was not found to be maintainable. It was accordingly dismissed. This is what was Their Lordships held in Paragraph 5 :--

"The question then is whether the suit as such is maintainable. It is seen that under the provisions of the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960, the surplus land shall stand vested in the State. The State has not been impleaded eo nomine as a party defendant to the suit nor notice u/s 80 of CPC was issued to the State. The first defendant is only a statutory authority under the Ceiling Act. Therefore, without impleading the State Government or the Collector and without issuing the notice to the Government as enjoined u/s 80, the suit itself is not maintainable and is liable to be dismissed on this ground."

5. In my opinion, therefore, the aforesaid view of the Supreme Court settles the controversy in so far as maintainability of the suit is concerned, if and when filed under the provisions of State Ceiling Act. Since, admittedly in this case no notice u/s 80 of CPC was given by the plaintiff to the defendant State, the suit should have been held to be not maintainable by the Courts below.

6. The learned Counsel for the respondent (plaintiff) relied upon a judgment, Kishanlal Baldevji and Ors. v. Collector, Indore, reported in 1975 MPLJ 766, and submitted that it was not necessary to serve a notice u/s 80 in view of the decision rendered in Kishanlal's case (supra). In my opinion, the judgment rendered in Kishanlal's case (supra) stands overruled by the authoritative pronouncement of the Supreme Court rendered in Smt. Sooraj's case (supra). It is the law laid down by the Supreme Court that binds this Court under Article 141 of the Constitution. Since, the decision of Supreme Court in the case of Smt. Sooraj (supra) was rendered subsequent to the decision of Kishanlal (supra), the same could not be taken note of by the Division Bench. Be that as it may, in view

the law laid down by Their Lordships of Supreme Court, quoted supra, this Court has no hesitation in allowing this appeal and while setting aside the judgment/decree of the Trial Court dismiss the suit as not maintainable for want of notice u/s 80 of CPC. I, thus, need not consider the merits and demerits of the case, which had resulted in decree in favour of plaintiff on facts as the same is of no consequence.

7. Accordingly and in view of aforesaid discussion, the appeal succeeds and is allowed. Impugned judgment/decree of two Courts is set aside and the suit filed by the plaintiff stands dismissed.

8. No costs.