

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8408 OF 2009

(Arising out of S.L.P. (Civil) No. 24019 of 2007)

Dwarika Prasad
Appellant

...

Versus

Rameshwar Dayal Khandelwal & ors.
...Respondents

J U D G M E N T

J.M. PANCHAL, J.

Leave granted.

2. Challenge in this appeal by special leave is to the judgment dated October 26, 2007, rendered by the High Court of Madhya Pradesh, Bench at Gwalior in Writ Petition No. 5073 of 2007, by which the order dated July 23, 2007, passed by the learned IVth Additional District Judge, Gwalior in Civil Suit No. 35-A of 2006 rejecting

the application filed by the appellant under Section 10 of the Code of Civil Procedure to stay the suit, is confirmed.

3. The relevant facts, which emerge from the record of the case are as under:

The respondent No. 1 herein is the original plaintiff. He has filed suit to declare that Sale Deed dated July 12, 2004 executed by the appellant and original defendants Nos. 2 and 3 in favour of original defendant No. 4 is invalid and illegal. He has also prayed the court to injunct the appellant and original defendants Nos. 2 and 3 from alienating the ancestral suit property. In the plaint it is stated that the property in dispute belonged to his father and the appellant as well as grandfather of the original defendants Nos. 2 and 3 and defendants Nos. 5 to 8. According to the plaint Ghisalal, who was owner of the property, expired on December 10, 1952 and was survived by three sons, i.e., the original plaintiff, the appellant and one Shankar Lal, who was father of defendants Nos. 5 to 8. What is

claimed in the plaint is that the suit property was ancestral property belonging to Hindu Undivided Family and after death of Ghisalal his three sons became owners and occupants of the suit land but the appellant with mala fide intentions submitted an application before the Tehsildar, Gwalior to record his name as owner of the disputed land stating that a Will was executed by Ghisalal in his favour. It is claimed in the plaint that on coming to know about the same, the plaintiff and Shankar Lal filed objections, which were allowed by order dated September 11, 1954 and a direction was given by Tehsildar to record the names of three brothers, i.e., the plaintiff, the appellant and Shankar Lal in revenue records, as far as the suit property is concerned. The respondent No. 1 has mentioned in the plaint that the appellant clandestinely got removed the name of the plaintiff and Shankar Lal from the revenue records vide order dated January 14, 2004 and when this fact came to the knowledge of the plaintiff, he filed an appeal in the Court of Sub Divisional Magistrate, Gwalior, but the appeal was

rejected on May 6, 2004 and, therefore, an appeal was preferred before the Additional Commissioner, Gwalior Division, which was allowed by an order dated July 14, 2004, against which the appellant had filed revision before the Court of Madhya Pradesh Board of Revenue, which is pending. According to the plaintiff, initially the Board had granted stay of the order passed by the Additional Commissioner, Gwalior Division, Gwalior but on application being filed by him, the said order was modified and the appellant was restrained from transferring the disputed property to any one in any manner. According to the plaintiff, the Will on the basis of which the appellant had advanced his claim was forged one and Ghisalal had not executed any Will in favour of the appellant on December 10, 1952 or on any other date. It is mentioned in the plaint that Shankar Lal had filed a suit for partition against the original plaintiff as well as the appellant in the Court of the learned Additional District Judge, Gwalior, wherein it was held that the Will propounded by the appellant was forged one. What is claimed in the plaint is that the

appellant and original defendants Nos. 2 and 3 transferred the suit property to the original defendant No. 4, which is illegal. Under the circumstances the respondent No. 1 has filed a suit and claimed the reliefs to which reference is made earlier.

4. The respondent No. 1 herein has filed another suit, i.e., Suit No. 35-A of 2006 impleading the appellant as defendant No. 1 and prayed to declare that he is the owner of the suit property. In the said suit, he has also claimed permanent injunction to restrain the appellant and others from alienating the suit property.
5. The appellant filed an application under Order 7 Rule 11 CPC and requested the Court to reject the plaint as, according to him, it did not disclose any cause of action. The said application was rejected by the Trial Court on July 12, 2006 and, therefore, the appellant had filed revision petition No. 122 of 2005 before the High Court, which was also dismissed on March 29, 2007. Thereupon,

the appellant had filed Special Leave Petition (C) No. 8853 of 2007. Initially, this Court had granted stay of further proceedings of the suit. Pleading this fact, the appellant filed an application under Section 10 of the Code of Civil Procedure to stay the proceedings of suit No. 35-A of 2006. That application was rejected by the Trial Court vide order dated July 23, 2007. Feeling aggrieved the appellant invoked extraordinary jurisdiction of the High Court under Article 227 of the Constitution by filing Writ Petition No. 5073 of 2004. The writ petition filed by the appellant was dismissed by the learned Single Judge of the High Court vide judgment dated October 26, 2007. The validity of the said judgment is subject-matter of the instant appeal.

6. This Court has heard the learned counsel for the parties and considered the record forming part of the appeal.

7. It is well to remember that the application filed by the appellant under Order 7 Rule 11 CPC was dismissed on July 12, 2006. On a perusal of the said application, it becomes at once clear that the appellant in paragraph 5 of the said application had referred to the pendency of the earlier suit and prayed to stay the same but, after considering the submissions and averments made in the plaint, the application filed under Order 7 Rule 11 CPC was dismissed. While rejecting the application filed under Order 7 Rule 11 CPC, it was noticed by the trial court that the suit filed earlier was at the stage of recording of evidence and the application under Order 7 Rule 11 CPC was filed to delay the proceedings of the suit. On scrutiny of the record, this Court finds that the reasons indicated in the application filed under Section 10 of the Code of Civil Procedure were also mentioned in the application, which was filed by the appellant under Order 7 Rule 11 CPC. Those reasons were considered and after

considering the matter in right perspective, the application filed under Order 7 Rule 11 CPC was rejected vide order dated July 12, 2006. Having regard to the reasons, which were indicated by the trial court in the order dated July 12, 2006, this Court finds that the High Court was justified in not entertaining the prayer of the appellant made under Section 10 of the Code of Civil Procedure. No ground has been made out by the learned counsel for the appellant to interfere with the impugned judgment and, therefore, the appeal deserves to be dismissed.

8. For the foregoing reasons the appeal fails and is dismissed. There shall be no order as to costs.

.....J.
[B. Sudershan Reddy]

.....J.
[J.M. Panchal]

New Delhi;
December 17, 2009.