

Gujarat High Court

Lalgar vs Nareshbhai on 6 May, 2010

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Gujarat High Court Case Information System

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SCA/5768/2010 3/ 3 ORDER

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL
CIVIL APPLICATION No. 5768 of 2010

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LALGAR
ALIAS LALO NARAYAN GOSWAMI - Petitioner(s)

Versus

NARESHBHAI
GOVINDBHAI MODI & 11 - Respondent(s)

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Appearance

:

MR PANCHAL with SHIVANIRAJ
PUROHIT for Petitioner(s) : 1,
None for Respondent(s) : 1 -
12.

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CORAM

:

HONOURABLE

MR.JUSTICE RAVI R.TRIPATHI

Date
: 06/05/2010

ORAL
ORDER

1.0 The petitioner applicant of Probate Application No. 43 of 2006 is before this Court contending that the objectors, who filed exh. 14 application in the aforesaid Probate Application on 15th September 2006, a copy of which is produced at Annexure 'B' to this petition, were in know of the order passed by this Court in Appeal from Order No. 79 of 2009 with Civil Application No. 2406 of 2009 on 30th November 2009 and without disclosing the fact that they have already prayed to the Court by filing exh. 14 in the Probate Application to be impleaded as party respondents, they filed a new suit being Special Civil Suit No. 23 of 2010 and obtained an order of appointment of Commissioner and got the Commissioner Report prepared, which is they want to the Court to take into consideration for passing appropriate orders in Special Civil Suit No. 23 of 2010.

2.0 The learned advocate Mr. Panchal for the petitioner vehemently submitted that this is nothing but an abuse of process of Court, more particularly, when the plaintiffs of Special Civil Suit No. 23 of 2010 are the objectors in Probate Application No. 43 of 2006, wherein, they them selves have filed exh. 14 and have requested the Court to permit them to be impleaded as respondents in the proceedings and they are also in know of the order passed by the High Court in Appeal from Order No. 79 of 2009 as the said order was placed on record before the Collector, Surat, where the plaintiffs of Special Civil Suit No. 23 of 2010 were also the parties.

2.1 The learned advocate for the petitioner submitted that this is done so as to steal a march over the present petitioner in the matter of possession of the property. He submitted that the matter assumes greatest significance in light of the fact that the Probate Application No. 43 of 2006 and the application exh. 14 filed by the plaintiffs of the suit is fixed for hearing on 14th May 2010. He submitted that after expiry of about four years, the suit is filed only with a view to see that the plaintiffs of that suit are able to obtain orders at the back of the petitioner by getting an ex-parte order of appointment of Commissioner.

2.2 The learned advocate for the petitioner submitted that if status quo, as on today, is not ordered that will prejudice the rights of the petitioner and will also render the hearing of the Probate Application No. 43 of 2006 and exh. 14 application adversely affected. The learned advocate for the petitioner submitted that the fact that the plaintiffs of new suit i.e. Special Civil Suit No.

23 of 2010, though in know of an order passed by this Court dated 30th November 2009, is not brought to the notice of the Court shows their ill design and oblique motive.

3.0 The matter requires consideration. Hence, Rule.

3.1 Notice as to Interim Relief returnable on 15th June 2010.

Ad-interim relief in terms of Para 9(C). Direct service is permitted today.

[Ravi R. Tripathi, J.] hiren Top