

**The State of Madhya Pradesh
v.
Satish Jain (Dead) by Lrs & Ors.**

(Civil Appeal No. 6884 of 2012)

18 April 2024

[Vikram Nath* and K.V. Viswanathan, JJ.]

Issue for Consideration

Issue arose that when there is an agreement based on ex-parte decree, and the ex-parte decree having been set aside, parties if could rely upon the agreement.

Headnotes

Suit – Ex-parte decree – Agreement based on ex-parte decree – Ex-parte decree having been set aside, parties if could rely upon the agreement – Suit property owned by the State, however, defendant No.1 perfected his rights by adverse possession and transferred all his rights in favour of the plaintiff as also handed over possession – Defendant No.1 allegedly likely to transfer the said land again in favour of the third party and that some officers of the State tried to remove the fencing put up by the plaintiff on the suit land – Suit for declaration, permanent injunction and mandatory injunction by plaintiff, against defendant no. 1 and the State – Suit decreed ex-parte – Appellate court set aside the same and remanded the matter to the trial court – Suit pending before the trial court – Meanwhile agreement between the State Municipal Corporation and the plaintiff that the plaintiff would vacate the suit land, allowing the Corporation to construct the bus stand, in lieu of separate plots – Plots allotted but some were cancelled later – Thereafter arbitral award passed whereby plaintiff would pay the stipulated amount to the Corporation and in turn the Corporation would fulfil its obligation of allotment of land – Objections by the State to the award, allowed by the trial court – In revision filed by the plaintiff, the High Court set aside the order of the trial court – Correctness:

Held: Ex-parte decree having been set aside, there was no occasion for the plaintiff to further act upon the agreement since

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no rights had crystallized to the parties – Basis of that agreement was the ex-parte decree of declaration and injunction in favour of the plaintiff – Once the ex-parte decree has itself been set aside and the suit was to proceed further from the stage of filing of written statement by the State, the agreement would lose all its credibility assuming there was any semblance of any right to enter into the agreement – Agreement would not have any sanctity in the eye of law even inter se parties – Right created in the plaintiff under the ex-parte decree stood extinguished and, thus, the Corporation ought to have been careful enough of not placing any reliance any further on the said agreement – Application filed by the Corporation u/s 89 CPC was also not maintainable based on the agreement – There appears to be some kind of collusion between the Corporation and the plaintiff – Whether or not there was any condition in the agreement for appointment of Arbitrator, the very basis of entering into the agreement having been set aside, the agreement itself could not have been relied upon by any of the parties – Suit land admittedly was owned by the State – Even if the State had allotted it to the Corporation for constructing a bus stand, the Corporation could not have dealt with it and treated it to be in the ownership or possession of the plaintiff by entering into the agreement – Corporation would be bound as an allottee of the State to utilise the said land for the purpose for which it was given – It ought to have taken appropriate steps for removal of possession of the plaintiff – Thus, the trial court justified in allowing the application by setting aside the award – High Court erred in not considering the relevant aspects and in placing reliance on the statement made by the State before the trial court that the State had no interest inasmuch as it had allotted the land to the Corporation to set up a bus stand – Impugned order passed by the High Court set aside. [Paras 4-7]

List of Acts

Code of Civil Procedure, 1908.

List of Keywords

Suit; Ex-parte decree; Agreement; Adverse possession; Suit for declaration, permanent injunction and mandatory injunction; Arbitration award; Appointment of Arbitrator.

Digital Supreme Court Reports**Case Arising From**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6884 of 2012

From the Judgment and Order dated 14.11.2005 of the High Court of Madhya Pradesh at Jabalpur in Civil Revision No. 201 of 2005

Appearances for Parties

Saurabh Mishra, A.A.G., Ms. Mrinal Gopal Elker, Abhinav Shrivastava, Advs. for the Appellant.

Puneet Jani, Ms. Christi Jain, Mann Arora, Ms. Akriti Sharma, Lisha Bhati, Ms. Pratibha Jain, Ashwani Kumar, Sanjay K. Agrawal, Sarthak Nema, Ms. Ankita Khare, Yahsovardhan Jain, Ramsakha Kushwaha, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Judgment****Vikram Nath J.**

1. The Appellant-State of Madhya Pradesh¹-Defendant in the Original Suit filed by Satish Jain (Respondent No.1), since deceased, represented by his legal heirs, is in appeal assailing the correctness of the judgment and order dated 14.11.2005 passed by the Madhya Pradesh High Court allowing Civil Revision No. 201 of 2005, titled "Satish Jain versus Rama & Ors.", whereby the High Court set aside the order of the Trial Court dated 22.12.2004, and further directed the Trial Court to proceed in accordance with law to implement the award of the Arbitrator. It also rejected the objections of the appellant dated 09.11.2004, and further the order rejecting the report of the Arbitrator was also set aside. The operative part of the impugned order as contained in the paragraph 27 thereof is reproduced hereunder:

"27. Therefore, the order under revision is set aside. The objection dated 09.11.2004 filed by respondent no.2 stands dismissed. The order rejecting the report of the arbitrator is also set aside. The Trial Court shall proceed further according to law for implementing the award."

¹ Hereinafter referred to as the, "State-Appellant"

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2. The relevant facts giving rise to the filing of the present appeal are briefly stated hereunder:
- (i). Satish Jain s/o Dayanand Jain instituted a civil suit impleading one Rama s/o Parasram as defendant No.1 and State of Madhya Pradesh through Collector, Bhopal as defendant No.2 praying for a decree of declaration, permanent injunction and mandatory injunction. It was registered as C.S. No. 65A of 1990. The basis of the claim was that the property in dispute being Khasra Nos. 48 & 49 area 3.53 acres situated in Village Halalpur, Tehsil Huzur, District Bhopal was owned by the State of Madhya Pradesh. However, defendant No.1 was enjoying continuous and peaceful adverse possession over the suit land for the last 50-60 years and as such has perfected his rights by adverse possession and had become the owner of the land.
 - (ii). It was further alleged that defendant No.1 has transferred all his rights, title, and interest over the suit land in favour of the plaintiff and had also handed over possession of the suit land on 05.09.1988.
 - (iii). Thereafter the plaintiff had erected wired fencing on 06.09.1988, and had been enjoying possession of the suit land.
 - (iv). It is further alleged in the plaint that defendant No.1 was likely to transfer the said land again in favour of the 3rd party and he also came to know that some officers and employees of the State (defendant No.2) had visited the suit land and tried to remove the fencing. In such circumstances, the plaintiff was compelled to institute the suit for declaration, permanent injunction and mandatory injunction.
 - (v). According to the plaintiff, the cause of action arose on 07.10.1988, and again on 11.10.1988 when the officers/employees of the State tried to remove the fencing.
 - (vi). The Trial Court decreed the suit ex-parte vide judgement and order dated 22.06.1990.
 - (vii). The State preferred an appeal under Section 96 of the Code of Civil Procedure, 1908² which was dismissed on the ground

² In short, "CPC"

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of delay of 8 days only by the IVth Additional District Judge, Bhopal.

- (viii). The State preferred a civil revision before the High Court which was registered as Civil Revision No. 300 of 2002. The said revision was allowed by the High Court vide order dated 13.08.2003. It set aside the order of the Appellate Court dated 11.05.1991, rejecting the application under Section 5 of the Limitation Act. It also condoned the delay of 8 days after allowing the application for condonation of delay, and further directed the Appellate Court to hear the parties on merits and decide the appeal in accordance with law.
- (ix). The said appeal was allowed vide order dated 09.01.2004 and the case was remanded to the Trial Court for deciding the same on merits after providing reasonable time to the State to file its written statement. The said suit is still pending before the Trial Court.
- (x). It would be worthwhile to mention that the State has filed its written statement after remand by the Appellate Court.
- (xi). In the meantime, it appears that the suit land was allotted to the Bhopal Municipal Corporation³ for constructing a bus stand. There is an agreement dated 30.07.1991 entered between BMC and the plaintiff that the plaintiff would vacate the suit land, allowing the BMC to construct the bus stand, and in lieu, separate plots would be allotted to the plaintiff.
- (xii). It is also alleged that some allotments were made by BMC in favour of the plaintiff but they were later on cancelled.
- (xiii). After remand, written statement was filed by the State. Further, BMC was impleaded as defendant No.3 by order of Trial Court dated 13.03.2004.
- (xiv). The appellant filed an application under Order VII Rule 11 CPC and also under Order VI Rule 17 CPC on 17.08.2004.
- (xv). Further BMC filed an application under Section 89 of the CPC stating that under the agreement of 30.07.1991 plaintiff

³ In short, "BMC"

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be directed to pay Rs. 30,00,000/- (Rupees Thirty lacs only) against the value of the allotted land. It was further stated that in case the full amount is deposited, BMC is ready to fulfil its obligations. It therefore prayed that the parties may be relegated to a Mediator/Arbitrator for settlement of the dispute under Section 89 CPC. This application is dated 27.08.2004.

- (xvi). The Trial Court, by order dated 17.09.2004, referred the matter to Shri Hemant Kumar. The said Arbitrator/Mediator in less than a month gave an award/report dated 14.10.2004. In brief, the said award was to the effect that the plaintiff would pay Rs. 30,00,000/- to BMC and such lease rent as maybe determined, and in turn the BMC would fulfil its obligation of allotment of land, as per the agreement dated 30.07.1991.
- (xvii). The Appellant-State of Madhya Pradesh filed objections dated 09.11.2004 to the award of the Arbitrator dated 14.10.2004 praying for setting aside the same on various grounds. It was specifically stated in the objections that the ownership of the land still remains with the State of Madhya Pradesh and that BMC had no business or right to deal with such land without the written consent or approval of the State.
- (xviii). The Trial Court, after inviting objections to the application of the State dated 09.11.2004, allowed the same by order dated 22.12.2004. Aggrieved by the same, the plaintiff preferred a civil revision, which has since been allowed by the impugned order, giving rise to the present appeal.
- 3. We have heard learned counsels for the parties and perused the material on record.
- 4. It is an admitted position that the suit is still pending before the Trial Court. The plaintiff has not been granted any declaration as such till date. The ex-parte decree having been set aside, there was no occasion for the plaintiff to further act upon the agreement dated 30.07.1991 since no rights had crystallized to the parties. The basis of that agreement was the ex-parte decree of declaration and injunction in favour of the plaintiff. Once the ex-parte decree has itself been set aside and the suit was to proceed further from the stage of filing of written statement by the Appellant- State, the agreement dated

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30.07.1991 would lose all its credibility assuming there was any semblance of any right to enter into the agreement. The application filed by BMC under Section 89 CPC was also not maintainable based on the agreement of 30.07.1991. There appears to be some kind of collusion between BMC and the plaintiff. Whether or not there was any condition in the agreement dated 30.07.1991 for appointment of Arbitrator, the very basis of entering into the agreement having been set aside, the agreement itself could not have been relied upon by any of the parties.

5. The suit land admittedly was owned by the Appellant-State. Even if the State had allotted it to BMC for constructing a bus stand, BMC could not have dealt with it and treated it to be in the ownership or possession of the plaintiff by entering into the agreement dated 30.07.1991. BMC would be bound as an allottee of the State to utilise the said land for the purpose for which it was given. It ought to have taken appropriate steps for removal of possession of the plaintiff which under law was totally unauthorised and illegal.
6. A perusal of the agreement dated 30.07.1991 clearly mentions that the plaintiff was claiming right under the ex-parte decree dated 22.06.1990 and the dismissal of the First Appeal on 11.05.1991. Later on when both the orders had been set aside and the suit itself was to proceed from the stage of the Appellant-State filing its written statement, the agreement itself would not have any sanctity in the eye of law even *inter se parties*. The right created in the plaintiff under the *ex-parte* decree stood extinguished and, therefore, BMC ought to have been careful enough of not placing any reliance any further on the said agreement. The Trial Court was justified in allowing the application by setting aside the award. The High Court committed a grave error in not considering the relevant aspects and in placing reliance on the statement made by the Appellant- State before the Trial Court that the State had no interest inasmuch as it had allotted the land to BMC to set up a bus stand and therefore, it should be deleted from the array of parties as defendant no.2. In any case, all the applications are still pending before the Trial Court if not already disposed off or withdrawn by the State.
7. In view of the above, the appeal deserves to be allowed and is accordingly allowed. The impugned order passed by the High Court is set aside.

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8. The Trial Court will proceed with the suit and decide the same on merits on the basis of evidence which may be led before it.
9. There shall be no order as to costs.
10. Pending applications, if any, also stand disposed of.

Headnotes prepared by: Nidhi Jain

Result of the case:

Appeal allowed.