

Gajanand & Another

v.

Gappu Lal Meena & Others

HON'BLE DR. JUSTICE AR. LAKSHMANAN HON'BLE MR. JUSTICE
Y.K. SABHARWAL

(Supreme Court Of India)

C. A. No. 1160 of 2002 | 15-01-2004

1. By order dated 29-12-1969 passed by the Naib Tahsildar, sanction was accorded for partition of the land in question. The plaintiff Mst Nabbo instituted a civil suit in respect of the said land against the appellant and others, seeking a declaration of title and permanent injunction restraining them from taking possession from her. In the suit, challenge was also made to the aforesaid order dated 29-12-1969 on the ground that the plaintiff Nabbo was not served in the proceedings of partition that had been initiated under S.178 of the Madhya Pradesh Land Revenue Code. One of the issues before the civil court was whether the notice had been served on Nabbo or not. The trial court on appreciation of oral as well as documentary evidence, came to the conclusion that there was proper service and the partition order dated 29-12-1969 was correctly passed by initiating ex parte proceedings against Nabbo. The order of the trial court was affirmed in first appeal.

2. In the second appeal filed under S.100 by the legal representatives of Nabbo, she having died in the meanwhile, the High Court has set aside the concurrent finding of facts and decreed the suit and hence this appeal on grant of leave.

3. By the impugned judgment, the High Court on reappreciating a part of the evidence, has come to the conclusion that the service of proceedings of partition by the Revenue Court, Ext. D 8, upon Nabbo was not proper and in the circumstances the order of partition by the Revenue Court is not binding on the plaintiff.

4. The substantial questions of law that were framed by the High Court are as under:

(i) Whether service of proceedings of partition by the Revenue Court vide Ext. D 8 upon the plaintiff was proper.

(ii) If the service was not proper, whether the order of partition by the Revenue Court is binding upon the plaintiff.

Both these questions have been answered in favour of the respondents. Undoubtedly, Nabbo had to be served in partition proceedings initiated under S.178 of the Code, aboveresferred. The mode of service is provided in Schedule I prescribing for the Rules of Procedure of Revenue Officers and Revenue Court. In regard to issue of summons, R.11 to 14 to which our attention was drawn by learned counsel for the respondent read as under:

"MODE OF SERVING NOTICE

11. Every notice shall be served by tendering or delivering a copy of it to the person concerned personally or to his recognised agent:

Provided that, where the recognised agent of the person concerned is a pleader, the notice may be served by leaving a copy thereof at his office or at place of his ordinary residence, and such service shall be deemed to be as effectual as service on the recognised agent personally.

12. Where the person concerned cannot be found and has no recognised agent, service may be made on any adult male member of the family of the person concerned, who is residing with him.

Explanation.--A servant is not a member of the family within the meaning of this rule.

13. Where the serving officer delivers or tenders a copy of the notice to the person concerned personally or to an agent or other person on his behalf, he shall require the signature of the person, to whom the copy is delivered or tendered to an acknowledgment of service endorsed on the original notice.

14. If service of the notice cannot be effected in the manner provided in R.11, 12 and 13, a copy thereof may be affixed at the last known place of residence of the person concerned or at some place of public resort in the village in which the land to which the notice relates is situate or from which the land is cultivated."

5. From the record it seems that at various stages prior to 29-12-1969 summons were served on Nabbo. For determining whether there was proper service as reflected in summons, Ext. D 8, the trial court as also the first appellate court besides Ext. D 8 had further referred to Exts. D 6, D 7 and D 9 as well. Ext. D 9 is the service during partition proceedings before the Tahsildar. As per this document notice had been affixed on the notice board of the Tehsil as also at the chopal of two villages besides the proclamation by beat of drums in the said villages. Summons, Ext. D 6, shows personal service on her on 23-7-1968 by the process server of the Court of Collector to whom the report had been submitted by the Naib Tahsildar. The Collector by order dated 23-8-1968 accepted the report of the Naib Tahsildar and thereafter returned the case to the Tahsildar, for making necessary corrections in the land revenue record. Summons, Ext. D 7, shows personal service on her on 14-8-1969 from the Court of Naib Tahsildar after the case had been received back from the Collector. These are circumstances under which the ex parte order against Nabbo was passed by the Naib Tahsildar on 29-12-1969.

6. The High Court without even referring to Exts. D 6, D 7 and D 9 or to the testimony of DW 4 to DW 6 has disturbed the concurrent finding by holding that there is no proper service on Nabbo on the ground that first there had to be a personal attempt to serve her. The aforementioned summons and reports thereupon show that Nabbo had also been personally served. The evidence of the process server, DW 4, could not be reappreciated in isolation without referring to the other relevant evidence, both oral and documentary. The relevant oral evidence was that of the attesting witnesses to the service reports besides the process

server, DW 4. It had to be borne in mind that DW 4 at the time of examination was 85 years of age and in his testimony he was referring to the service effected 20 years earlier. Exts. D 6, D 7 and D 9 in addition to Ext. D 8, clearly prove that Nabbo had been served. It cannot be said that there was any non compliance with the Rules aforequoted. In any case there was substantial compliance. No case was made out before the High Court for disturbing concurrent findings recorded by the two courts.

7. Under the aforesaid circumstances, we are unable to sustain the impugned judgment of the High Court. Setting aside the said judgment, we allow the appeal and restore the judgment of the first appellate court affirming that of the trial court dismissing the suit. In the facts and circumstances of the case, the parties are left to bear their own costs.