

SUPREME COURT OF INDIA

Haribhai Lakhmanbhai Seedhav

Vs.

State of Gujarat

C.A.No.7365 of 2009

(D.K. Jain and H.L. Dattu JJ.)

05.11.2009

JUDGEMENT

H.L. Dattu, J.

1. S.L.P(C) No. 11281 of 2006 Leave granted.
2. This appeal has been filed against the judgment of Gujarat High Court dated 17.4.2006 in MCA No. 892 of 2006 in Letters Patent 1 Appeal No. 832 of 2006, wherein and whereunder, the application for grant of leave to prefer Letters Patent Appeal is dismissed, firstly, on the ground that the wives of the original declarant had no right, title or interest over the land and, therefore, the Will executed by them in favour of the appellant would not give him any right in the land, secondly, on the ground of delay and laches in filing the appeal nearly after ten years from the date of the judgment and order passed in the writ petition by the learned Single Judge.
3. This case has a chequered history. Reference to all those proceedings may not be necessary for the disposal of this appeal.

“Suffice to notice the events and the orders passed by the authorities under *Gujarat Agricultural Land Ceiling Act, 1960* and the High Court on or after the year 1986.”

4. Sri Gelabhai Bhagwanbhai (hereinafter referred to as `Gelabhai'), resident of Village Adariyana, Taluka : Dasada, District :

“Surenderanagar, Gujarat, was an agriculturist and was owning large extent of agricultural lands at Adariyana Village. During his life time, he had filed an application on 27.9.1976, under Section 8 of the *Gujarat Agricultural Land Ceiling Act, 1960*, (hereinafter referred to as `the Act') before the competent authority under the Act. The order passed under the Act was the subject matter of several rounds of litigations before various forums under the Act.

During the pendency of these proceedings, the original declarant, Gelabhai expired on 17.1.1979, leaving behind his two wives. He had no sons or daughters. After the death of Gelabhai, the property vested with the wives. The two widows of Gelabhai, Smt. Samuben and Smt. Puriben expired on 18.6.1991 and 7.7.2000 respectively, but during their life time, they had executed General Power of Attorney in favour of Parmabhai Bhagwanbhai, resident of Village:

Adariyana, Taluka: Dasada, District: Surendranagar, Gujarat. Both the widows before their demise had also executed a Will in favour of their nephew, Sri Sindhav Bhavanbhai Laxmanbhai, who is the appellants in this appeal.”

5. Pursuant to the order passed by the Revenue Tribunal dated 21.1.1986 in Revision Application TEN/BA No. 1254 of 1984, the Mamlatdar and Agricultural Land Tribunals, Patdi, by his order dated 1st day of August, 1986, declared that the legal heirs of the original declarant are entitled to hold 54.00 Acres of unirrigated lands out of the total extent of 89.04 Acres and the excess lands of nearly 35.04 Acres is to be treated surplus land and requires to be surrendered to the State Government from the date of the order free from all encumbrances, however, subject to provisions of Section 21(2) and Section 19 and Chapter 8 of Land Ceiling Act. The Mamlatdar also recognized that the heirs of the original declarant were entitled to hold the highest ceiling of one unit of land.

6. Dissatisfied with the order passed by the Mamlatdar dated 1.8.1996, the appellants had filed Ceiling Appeal No. 1/90-91 before the Deputy Collector, Dhangdhra Sub-Division, Dhangdhra. The Deputy Collector rejected the Ceiling Appeal vide order dated 30.3.1991, holding that the order of the Mamlatdar declaring land measuring 35 Acres 04 Gunthas to be surplus, was in consonance with the provisions of the Act.

7. Being aggrieved by the said order dated 30.3.1991, the legal heirs of the original applicant had filed Revision Application No. TEN.BA/404/91 before the Gujarat Revenue Tribunal as provided under Section 38 of the Gujarat Agricultural Lands Ceiling Act, 1961. The Tribunal vide its order dated 14.6.1993, partly allowed the revision application by holding that "except transfer in respect of 4 Sy. No. 276 (A.5 Gs. 28-3/4), the rest of the transfers are to be ignored in accordance with Sections 7 and 8 of the Act". As a result of such order, the land measuring 5 Acres 28-3/4 Gs., was ordered to be excluded from the holding of Gelabhai and the matter was remanded back to the Mamlatdar for declaration of net area of surplus land and further a direction was issued to the Mamlatdar to give an opportunity to the declarant/landholders to exercise their option regarding selection of the surplus land to be surrendered and then to take possession of the surplus land.

8. Being aggrieved by the order dated 14.6.1993, the legal heirs of Gelabhai along with others filed a writ petition before the High Court in Special Civil Application No. 806 of 1993. The High Court by its order dated 4.4.1996 dismissed the Writ Petition.

9. The office of the Mamlatdar addressed a letter dated 29.9.2004 to the Power Attorney holder of legal heirs of the deceased Gelabhai and requested him to inform the latest status of

Special Civil Application No. 8064 of 1993. It is apparent that even the State Government was not aware of the order dated 4.4.1996 passed by the High Court. The Power Attorney holder by his letter dated 5 11.10.2004, informed the Mamlatdar that with the demise of both the legal heirs of Gelabhai, he had ceased to be their Power Attorney holder and had nothing to do with the dispute pending before various forums.

10. The appellants and others were served with a notice dated 30.10.2006, under Rule 10 of the Ceiling Rules by the office of the Mamlatdar, whereby they were informed that they were in possession of some lands which had been declared surplus land under the Ceiling Act in the hands of Gelabhai and they were directed, apart from others, to submit any objections or suggestions with regard to the surplus lands within one month from the receipt of the notice; to select such part or such parts which they wish to continue to possess; and to submit the details of the land selected within one month.

11. The appellant who claims to be the beneficiary under the Will, said to have been executed by both the wives of the original declarant, filed Letters Patent Appeal, inter alia, challenging the order passed by learned Single Judge in SCA No. 8064 of 1993, along with an application for leave to appeal being MCA No. 892 of 2006 and also an application for condonation of delay in filing the appeal.

12. The Division bench of Gujarat High Court vide its order dated 17.4.2006, dismissed the application MCA No. 892 of 2006, inter alia, holding that the wives of Gelabhai had no right over the land and, if any Will was executed in favour of the appellant, no right over the land could have been conferred by such a will and, lastly, leave to file appeal cannot be granted against an order dated 4.4.1996 after a lapse of 10 years.

13. We have heard Sri L. Nageshwar Rao, learned Senior Counsel for the appellant and Smt. Hemantika Wahi, learned counsel for the respondent. Learned Senior Counsel for the appellant submitted that the High Court was in error in rejecting the application filed by the appellant for grant of leave to file the appeal against the order passed by the learned Single Judge on the ground of delay and laches on the part of the appellant in approaching the court nearly after ten years from the date of passing the impugned order and, secondly, the wives of late Gelabhai, the original declarant, had no title, right or interest over the land and even, if any, Will was executed in favour of the appellant, the same did not confer any right over the land in view of the provisions of the Ceiling Act. The learned counsel for the respondent justifies the impugned order passed by the High Court.

14. We do not propose to go into the question on the merits of the main appeal, in view of the course, we propose to adopt while disposing of this appeal, which is primarily against the order passed by the Division Bench of the High Court rejecting the application filed for leave to appeal against the order passed by the learned Single Judge in SCA No. 8064 of 1993 dated 04.04.1996.

15. The first issue is, whether there was any delay in filing the application for grant of leave to prefer Letters Patent Appeal in the facts and circumstances of the case. The original

declarant Gelabhai Bhagwanbhai expired on 17.1.1979, leaving behind his two wives Smt. Samuben and Smt. Puriben who had inherited the property of the declarant. Since they did not have their own sons and daughters, they had executed the General Power of Attorney in favour of Shri Parambhai Bhagwanbhai and others, not only to manage the affairs of vast extent of agricultural lands, and also several litigations pending before various forums including the authorities under the Land Ceiling Act. The facts which are not in dispute and which cannot be disputed would reveal that the Power of Attorney holders were prosecuting the lis before various forums diligently. They had also filed SCA No. 8064 of 1993 before the learned Single Judge of Gujarat High Court challenging the order passed by the Gujarat Revenue Appellate Tribunal. It has also come on record, that, during their life time, they had executed a Will in favour of their nephew Sri Sindhav Bhavanbhai Laxmanbhai, and they were not aware of the execution of the Will in their favour till the year 2002 and, therefore, they could not take possession of the lands in question till 2002. These details, in our view, may not be crucial factors for deciding these appeals, but they are noticed only for narration of completion of factual matrix. The question is whether, the appellants who claim that they have some interest, right and title in the land were not aware of the disposal of the SCA No. 8064 of 1993 dated 4.4.1996. The answer to this issue is not a vexed issue, since, firstly, appellant was not a party to the proceedings before the High Court nor was aware of the proceedings pending before the High Court, since the affairs of litigation of the ceiling proceedings of the lands in question was taken care of by the General Power Attorney holders of the wives of the original owner of the lands. It is the case of the applicant that after the demise of the wives of the declarant, the General Power of Attorney holder had not participated in the pending proceedings before the High Court. It is also brought on record the letter from the office of Mamlatdar dated 29.9.2004, addressed to the Power of Attorney holder of the legal heirs of Gelabhai to inform them the status of the proceedings pending before the High Court. It only demonstrates that even the respondents were not aware of the dismissal of the writ petition, though they were parties in the writ petition. If this was the state of affairs, what to say about the applicant who was not even a party to any of the proceedings either before the Revenue authorities or before the High Court. Therefore, the assertion made, that they came to know the dismissal of the writ petition filed by General Power of Attorney holder, only when they were served with notice dated 30.1.2006 under Rule 10 of the Ceiling Rules by the office of Mamlatdar. The applicant/appellant within a reasonable period thereafter has taken steps to file Letter Patent's appeal accompanied by an application for grant leave to file the appeal and also an application for condonation of delay in filing the appeal. In our opinion, in view of the facts narrated by us, the High Court has erred in rejecting the Letters Patent Appeal on the ground of delay and laches on the part of the appellant in approaching the court nearly after 10 years of passing the impugned order.

16. The High Court has also rejected the Letters Patent Appeal, on the ground that the wives of the original declarant Gelabhai had no right over the land and, therefore, they could not have executed any Will in favour of the applicant bequeathing the lands in question. This reasoning of the Division Bench of the High Court is also not correct in view of the orders passed by Mamlatdar, who had recognized the rights of the wives of the original declarant, who had died during the pendency of the proceedings before him and that finding has

become final, since the respondents have not questioned the same before any superior forums.

17. In view of the above discussion, we cannot sustain the impugned order passed by the Division Bench of Gujarat High Court.

18. In the result, the appeal is allowed. The impugned order is set aside.

“The matter is remitted back to the High Court, with a request to restore the Letters Patent Appeal No. 832 of 2006 on its board and decide the appeal on merits. In the facts and circumstances of the case, parties are directed to bear their own costs.

S.L.P.(C) No. 11368 of 2006 Leave granted.

In view of the judgment in the abovesaid Civil Appeal No...../2009 arising out of S.L.P.(C) No. 11281 of 2006 pronounced today by us, the appeal is allowed and the parties are directed to bear their own costs.”