

**SUPREME COURT OF INDIA**

Prasadi Devi

Vs.

Nagar Palika Sawai Madhopur,

C.A.No....of 2017

(R.K.Agrawal and Abhay Manohar Sapre,JJ.,)

13.11.2017

**JUDGMENT**

**Abhay Manohar Sapre,J.,**

SLP (C) No.27333/2015

1. Leave granted.

2. This appeal is filed by the plaintiff against the final judgment and order dated 16.04.2015 passed by the High Court of Rajasthan at Jaipur in S.B. Civil Writ Petition No.4592 of 2014 whereby the High Court dismissed the writ petition filed by the appellant herein and affirmed the order of the Trial Court.

3. It may not be necessary to set out the entire facts for the disposal of the appeal in detail except to state those facts, which are necessary to appreciate the short issue raised in the appeal. This is because the learned counsel for the appellant (plaintiff) has made a statement at the Bar, which we are inclined to accept. Learned counsel for the respondent (defendant) has no objection to the statement made by learned counsel for the appellant and indeed rightly.

4. The appellant (plaintiff) has filed a civil suit being civil suit No.248 of 1983 (re-numbered as C.S. No.40/2013) in the Court of Civil Judge, Sawai Madhopur against the respondent (defendant). The suit relates to a plot of land situated at Mantown in village Alampur in Sawai Madhopur (hereinafter referred to as the "suit land"). The suit is filed for permanent injunction restraining the respondent (defendant)-Nagar Palika, Sawai Madhopur from interfering in the appellant's possession over the suit land and also for an injunction restraining the respondent from creating any third party rights in the suit land to the detriment of the appellant's interest in the suit land.

5. The respondent(defendant) is contesting the suit and has filed their written statement. The case is pending for recording of the evidence of the parties.

6. The appellant is an illiterate old lady in her early eighties. She had executed a General Power of Attorney(GPA) in favour of one Mr. Gajanand Goyal and wanted to examine the Power of Attorney Holder in support of her case. The respondent before the Trial Court opposed this prayer which was upheld by the Trial Court.

7. The appellant felt aggrieved of the Trial Court's order and filed writ petition under Article 227 of the Constitution of India in the High Court Bench at Jaipur. By impugned judgment, the High Court dismissed the appellant's writ petition and affirmed the Trial Court's order. It is against this judgment, the plaintiff felt aggrieved and filed this appeal by way of special leave in this Court.

8. Heard Mr. Sushil Kumar Jain, learned senior counsel for the appellant and Mr. Shiv Mangal, learned counsel for the respondent.

9. Mr. Sushil Kumar Jain, learned senior counsel for the appellant (plaintiff) stated that the appellant, instead of examining her Power of Attorney Holder, would personally appear to give her evidence in support of her case.

10. In view of this statement now having been made by the learned counsel for the appellant (plaintiff), it is not necessary to examine the legality and correctness of the impugned judgment on its merits.

11. We, accordingly, set aside the impugned judgment and dispose of this appeal with the following directions.

12. The appellant (plaintiff) is allowed to appear and get herself examined in support of her case set up in the plaint and lead her evidence. The appellant, if for any reason, is unable to appear in the Court due to her old age, she is permitted to get herself examined on commission at her residence at her expenses. The Court will, accordingly, appoint any lady lawyer as Local Commissioner for recording the evidence of the appellant, if the appellant makes such request.

13).The appellant is also allowed to examine other witnesses in addition to her own evidence as she may decide to examine. All other witnesses of the appellant would be examined in Court. After the appellant's case is closed, the respondent would lead their evidence.

14. Since the case is quite old, the same should be disposed of in accordance with law within a period of six months from the date of appearance of the parties. Parties are directed to appear before the concerned Trial Court on 04.12.2017.

15. With these directions, the appeal stands disposed of.

