

CASE NO.:
Appeal (civil) 4361 of 2007

PETITIONER:
Harichand (Dead) through LRs

RESPONDENT:
Dharampal Singh Baba & Ors

DATE OF JUDGMENT: 18/09/2007

BENCH:
A.K.MATHUR & MARKANDEY KATJU

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 4361 OF 2007
[Arising out of S.L.P.(c) No.16368 of 2006]

A.K. MATHUR, J.

1. Leave granted.

2. This appeal is directed against the order passed by learned Single Judge of the High Court of Madhya Pradesh at Gwalior on 22.8.1989 in First Appeal No.1 of 1975 whereby the learned Single Judge set aside the judgment and decree of the trial court and allowed the appeal and dismissed the suit. Aggrieved against this order the present special leave petition was filed but prior to this one L.P.A. against this order was filed before the Division Bench of the High Court of Madhya Pradesh which came to be registered as L.P.A.No.55 of 1989 whereby the Division Bench held that the present L.P.A. was not maintainable as the State has abolished the same and the said decision was upheld by this Court. Subsequently, the State Government restored the same but in the meanwhile, this appeal came up before the Division Bench and the Division Bench of the High Court dismissed the L.P.A. as not maintainable in view of the decision of the High Court in Harshlal Dwivedi v. State of M.P. & Ors decided on 29.8.2005. Thereafter the present appeal was filed against the order dated 22.8.1989 passed by learned Single Judge in F.A.No.1 of 1975. Office reported that the appeal is barred by 5866 days. Therefore, an application was filed for condonation of delay in filing the S.L.P. before this Court and accordingly the delay was condoned by this Court on 15.9.2006. Now, the appeal has come up for final disposal.

3. We have heard learned counsel for the parties and perused the record. A suit was instituted on 17.2.1964 by Shiv Singh, the father of the plaintiff- Bapu Saheb Temak. However during the pendency of the suit, the plaintiff was not interested in prosecuting the suit. Therefore, Defendant No.6- Hari Chand secured an order from the Court and his interest was restricted to the question raised in the plaint by virtue of an agreement for sale executed in his favour by Shiv Singh on 18.3.1967. The suit was accordingly contested between Defendant No.1- Dharmawati (deceased) and Defendant No.6- Hari Chand. Earlier, Suit No.25 of 1962 was filed by Bapu Bhaiya Temak, the father of the plaintiff against the State Government for recovery of rent in respect of the suit premises for a period of 26.9.1948 to 26.6.1950 and in that suit Janki Bai was impleaded as Defendant No.2. Defendant No.1- State Government pleaded that it was prepared to pay the rent but the question of

entitlement of rent was the issue between the plaintiff and defendant No.2. Two issues were framed in that suit which read as follows:

- " i) Whether defendant No.1 is a tenant of the plaintiff and he is entitled to collect the rent ?
ii) Whether the plaintiff was entrusted with the arrangement of the Sansthan including the disputed house and no right of ownership was transferred to him?"

Both the issues were decided in favour of Defendant No.1 and she was entitled to receive the rent from the State Government for the suit premises. This decision of the trial court was eventually affirmed in the second appeal and a finding was recorded that Bapu Bhaiya Temak was her agent only and entitled to receive the rent for the suit premises which belonged to Janki Bai. In order to come to this finding the High Court in second appeal relied on a decision of the Council of Regency. That suit came to an end after the finding given in second appeal. The present suit was filed in 1964. In this suit, the plaintiff- Shiv Singh challenged the sale deed dated 10.1.1963 that the same be declared not binding on the plaintiff- Shiv Singh and the respondents be enjoined permanently from interfering with the plaintiff's ownership and possession of the premises covered by the sale deed. The sale deed was executed by defendant No.2- Janki Bai and that binds her. She died during the trial of the suit and her adopted son was impleaded as respondent No.2. This suit was decreed by the trial court and aggrieved against this suit, the present appeal was filed by the legal representatives of defendant Janki Bai.

4. In order to appreciate the controversy involved in this appeal, a few facts may be narrated here. The dispute relates to the property situated in Gwalior and belonged to one Santoba Temak, also known as Sirdar Temak. These two properties were residential houses known as 'Badi Kothi' and 'Chhoti Knthi' located in a big bagicha (garden). The pedigree reveals that Madho Rao Temak had two sons namely, Yashwant Rao Temak and Bapu Sahab Temak. Yashwant Rao Temak died in 1924. Bapu Sahab Temak died in the year 1964. Janki Bai, the wife of Yashwant Rao Temak died on 12.12.1968 leaving behind Vijay Singh, the adopted son. Vijay Singh died during the pendency of the first appeal. Bapu Sahab Temak's son Shiv Singh, the original plaintiff died during the pendency of the first appeal. Yashwant Rao Temak was in the service of erstwhile Gwalior State and this was his Jagir. When he died his brother, Bapu Saheb Temak was alive and the plaintiff's case was that the said property devolved on Bapu Saheb Temak by right of survivorship as it was the ancestral property of the family. However, after the death of Yashwant Rao Temak, the husband of Janki Bai, the land was mutated in revenue records in her favour. But Bapu Sahab Temak claimed the property by way of survivorship after the death of his brother, Yashwant Rao Temak, challenging the order passed by the Tahasildar for mutating the property in the revenue records in favour of Janki Bai, the wife of late Yashwant Rao Temak. An order was passed on 17.4.1962 in his favour but that order was set aside by order dated 22.7.1963 and the mutation effected in favour of Janki Bai was affirmed. That decision was challenged before the Revenue Board unsuccessfully. Notwithstanding this, the rights of Janki Bai were matured and affirmed in Civil Suit No.25 of 1962. In that suit it was held that Bapu Saheb Temak was only the manager of the property and he had no title, therefore, he could only collect the rent as a manager of the property. Meanwhile, this property in question was sold by Janki Bai to one Dharmawati Bai by sale deed executed on 10.1.1963 and this was upheld by the High Court.

5. So far as the present suit is concerned, this was wholly

misconceived and engineered by the plaintiff on the basis of the so called family settlement. In fact, the rights of the parties having matured in civil suit No.25 of 1962 wherein the High Court took the view in second appeal that the position of Bapusaheb Temak was nothing but the manager and in that connection they relied on the Regency order dated 17.11.1931 and indicated that Bapusaheb Temak was never appointed as a manager and therefore, so far as the right of Smt. Janki Bai was concerned, the same stood affirmed. The subsequent suit brought by Shiv Singh was totally misconceived as on the basis of the so called family settlement once the rights of the parties have matured by operation of the decision of the High Court, there was no occasion for the present suit being filed on the basis of the so called family settlement. When the land does not belong to Bapusaheb Temak or his son, Shiv Singh, there was no occasion for the so called family settlement. Family settlement could only be if one has lawful right over that property and then alone family settlement could be executed. When there was no lawful rights of the parties over the property, there was no occasion for the suit being filed on that basis. Therefore, in our opinion, the view taken by the High Court appears to be correct that Janki Bai was the owner of the property. When Bapusaheb Temak was only the manager of the property and the real owner was Janki Bai, the suit filed by Shiv Singh was rightly dismissed in First Appeal by the High Court setting aside the judgment and decree passed by the trial court.

6. Consequently, we are of opinion that the view taken by learned Single Judge of the High Court is correct and there is no merit in this appeal and the same is dismissed. No order as to costs.