

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s). 10728 OF 2017
(Arising out of SLP(C) No. 36751 of 2014)

UNIVERSITY OF AGRICULTURAL SCIENCES

Appellant(s)

VERSUS

SMT.SAROJA GUPTA

Respondent(s)

O R D E R

Leave granted.

Heard learned counsel for the parties.

The appeal has been preferred by the University of Agricultural Sciences aggrieved by the judgment and decree passed by the trial court which has been affirmed by the High Court of Karnataka at Bangalore in Regular First Appeal No. 1218 of 2010 on 06.08.2013.

Facts lies in a very narrow compass. There had been land acquisition proceedings under the provisions of Land Acquisition Act 1894 (in short 'the Act'). The land had been acquired way back in the year 1977 and in 1980. The dispute arose with

respect to the land acquired in the year 1980. Notification under Section 4 of the Act was issued on 9.3.1978 and it was finally acquired in the year 1980. The plaintiff had purchased some part of the land in the year 1982 by a sale deed. On the basis of the sale deed he filed a suit for relief of permanent injunction contending that he was the owner, his land had not been acquired and he continued to be owner of the land as such University of Agricultural Sciences be permanently restrained from interfering with the possession. The suit was ultimately decided on merits and trial court dismissed the suit holding that the suit land formed part of the land which had been acquired for the purpose of University. The dispute was with respect to the fact whether the land of the plaintiff was covered in acquisition. Be that as it may, it is an admitted fact that the suit land was the same in the previous suit for permanent injunction and issue had been framed in previous suit with respect to the fact whether the suit land had been acquired by the University. After dismissal of the suit the first appeal and the suit itself was withdrawn, however,

without reserving any liberty to institute fresh suit. The suit and appeal arising out of aforesaid 1993 suit were withdrawn on 13.8.2001.

Thereafter fresh suit for declaration and permanent injunction was filed on 9.10.2002 out of which the present appeal arises. The same had been decreed by the trial court which had been affirmed by the High Court in the first appeal mainly on the ground that the defendant - University was unable to prove that the suit land had been acquired by it in the acquisition proceedings. However, certain documents had been filed later on indicating that the suit land had been acquired.

The main submission raised by Sh. Krishanan Venugopal, learned senior counsel appearing on behalf of the appellant-University is that the suit is barred by the provisions of Order XXIII Rule 1(4) of the Code of Civil Procedure, 1973, and it is also barred by the provisions of Order II Rule 2 of the CPC. Suit was hopelessly barred by limitation and the documents which have been filed indicate that suit land in fact had been acquired.

It was urged by the learned counsel appearing on behalf of the respondent that the plea of Order XXIII Rule 1(4) had not been raised in the written statement as such the defendant is barred from raising it. It was further submitted that since plaintiff was in possession the suit could not be said to be barred by limitation as the defendant has miserably failed to prove that the land in question had been acquired, as such, no case for interference in the appeal is made out.

After hearing learned counsel for the parties, we are of the considered opinion that appeal deserves to be allowed on the singular ground that too in view of the admitted fact that the judgment of the previous case had been exhibited before the trial court. The previous suit was admittedly filed with respect to the very same suit land for relief of permanent injunction based on title with the averment that suit land had not been acquired for the purpose of the Agricultural University. The said suit was dismissed on merits on the basis of the finding that land had not been acquired. The Regular First Appeal arising out of the same was

withdrawn vide order dated 13.08.2001 and also the suit. Since the suit as well as the appeal was withdrawn and the liberty has not been reserved for instituting a fresh suit under Order XXIII Rule 1(3). Hence the provision under Order XXIII Rule 1(4) preclude the plaintiff to institute the fresh suit .

Order XXIII Rule 1 is extracted hereunder:

“Withdrawal of suit or abandonment of part of claim - (1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim;

Provided that where the plaintiff is a minor or other person to whom the provisions contained in Rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

2. An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

3. Where the Court is satisfied, -

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs."

Bare reading of the aforesaid Order XXIII Rule 1(4) makes it crystal clear that the plaintiff can, as against all or any of the defendants, abandon his suit or abandon a part of his claim with the permission to file fresh suit in respect of the very same subject matter or such part of the claim. The Court under Order XXIII Rule 1(3) can grant permission to file fresh suit in the exigencies provided under Order XXIII Rule 1(3)(a)(b) in case permission has not been granted under Order XXIII Rule 1(3), the Rule 1(4) of Order XXIII preclude institution of fresh suit in respect of such subject matter or its part of the claim. Merely by the fact that in the fresh suit prayer had been added for declaration of title alongwith injunction would not change the complexion of the case. The relief of declaration of title could have

been claimed in the earlier suit otherwise also previous suit was based on title. The bar of Order XXIII, Rule 1(4) is clearly attracted and fresh suit could not be said to be maintainable.

We need not go into the other questions as suit itself was not maintainable. Hence we set aside the judgment and decree passed by the trial court as affirmed by the High Court and order of the dismissal of the suit filed by the plaintiff. The appeal is allowed. Parties to bear their own costs.

.....J.
(ARUN MISHRA)

.....J.
(NAVIN SINHA)

NEW DELHI;
AUGUST 21, 2017

ITEM NO.3

COURT NO.10

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 36751/2014

(Arising out of impugned final judgment and order dated 06-08-2013 in RFA No. 1218/2010 passed by the High Court of Karnataka At Bangalore)

UNIVERSITY OF AGRICULTURAL SCIENCES

Petitioner(s)

VERSUS

SMT.SAROJA GUPTA

Respondent(s)

Date : 21-08-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE NAVIN SINHA

For Petitioner(s) Mr. Krishan Venugopal, Sr. Adv.
Mr. E. C. Vidya Sagar, AOR
Mr. Sunashchandra Sagar, Adv.

For Respondent(s) Mr. G.L. Vishwanath, Adv.
Mr. Naveen Chawla, Adv.
Mr. T. Mahipal, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application, if any shall stand disposed of.

(NEELAM GULATI)
COURT MASTER (SH)

(TAPAN KUMAR CHAKRABORTY)
BRANCH OFFICER

(signed order is placed on the file)