

ITEM NO.39

COURT NO.12

SECTION IX

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). 4468-4469/2014

(Arising out of impugned final judgment and order dated 17/12/2013 in SCA No. 2021/2011 and in SCA No. 2036/2011 passed by the High Court Of Gujarat At Ahmedabad)

CHIRAG ARVINDBHAI PATEL & ANR

Petitioner(s)

VERSUS

MANGUBEN R PATEL (D) TH. LRS & ORS

Respondent(s)

WITH

SLP(C) No. 4892-4893/2014

(With Interim Relief and Office Report)

Date : 04/05/2017 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE AMITAVA ROY

For Petitioner(s)

Mr. V.V. Giri, Sr. Adv.

Mr. Shyam Divan, Sr. Adv.

Mr. R. Sanjanwala, Sr. Adv.

Mr. Shamik Sanjanwala, Adv.

Mr. Manan Mehta, Adv.

Mr. Sunil Kaundal, Adv.

Mr. K. V. Sreekumar, Adv.

Mr. Alok Bhachhawat, Adv.

Mr. Tavishi Chandra, Adv.

Ms. K. V. Bharathi Upadhyaya, Adv.

For Respondent(s)

Mr. Purvish Jitendra Malkan, Adv.

Mr. D.N. Ray, Adv.

Mr. Lokesh K. Choudhary, Adv.

Mrs. Sumita Ray, Adv.

Mr. C.A. Sundaram, Sr. Adv.

Mr. Huzefa Ahmadi, Sr. Adv.

Mr. Anal Shah, Adv.

Mr. Pradhuman Gohil, Adv.

Mr. Vikash Singh, Adv.
Ms. Taruna Singh Gohil, Adv.
Ms. Jaikriti S. Jadeja, Adv.
Mr. Himanshu Chaubey, Adv.

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

Leave granted.

Appeals stand disposed of in terms of the signed
order.

Pending applications, if any, shall stand disposed
of.

(NEELAM GULATI)
COURT MASTER

(TAPAN KR. CHAKRABORTY)
COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s). 6341-6342 OF 2017
(Arising out of SLP(C) Nos.4468-4469 of 2014)

CHIRAG ARVINDBHAI PATEL & ANR. Appellant(s)

VERSUS

MANGUBEN R PATEL (D) TH. LRS & ORS. Respondent(s)

WITH

CIVIL APPEAL No(s). 6811-6812 OF 2017
(Arising out of SLP(C) Nos.4892-4893 of 2014)

O R D E R

Heard learned counsel for the parties.

Leave granted.

The amendment had been allowed by the trial court which order had been affirmed by the High Court in Regular Civil Suit No. 399 of 1999. The suit pertains to permanent injunction and for declaration that compromise agreement dated 30th May, 1998 is not binding upon the plaintiffs. Whereas two other suits are pending for partition i.e. Civil Suit No. 32 of 2006 and 399 of 2007.

The amendment which was sought in Regular Civil Suit No. 399 of 1999 was with respect to the rights claimed on the basis of the amendment made in the Hindu Succession Act, 1956 (in short 'the Act') in the year 2005 so as to stake the claim. The proper remedy, in our opinion, would have been to file appropriate application in the pending partition suits so as to claim the extended rights by the successors of the daughters/widow, if any, as the case may be.

It was submitted by learned senior counsel Mr. C.A. Sundaram, that application had been filed in order to plead accrual of the rights to certain incumbents on the basis of the amendment made in the Act in the year 2005. To get rid of situation, prayer has been made by the plaintiff to withdraw the pending partition suits i.e. Civil Suit No. 399 of 2007

After hearing learned senior counsel for the parties, we are of the opinion and as rightly

agreed to the amendment ought to have been filed in the suit for partition. As enlargement of the right to claim title if any has to be considered in the partition suit when two suits for partition are pending, obviously no useful purpose will be served by permitting withdrawal of the partition suit as such the suit for partition will not be withdrawn by the plaintiffs. There can always be transposition of parties in a suit for partition as plaintiff to claim it. Suffice it observe that both suits for partition to continue. It would not be proper to withdraw the partition suit. It is also agreed that two suits for partition be consolidated. Hence two suits for partition are hereby consolidated with the consent of the parties and other suit which is pending C.S. No. 399 of 2007 shall also be tried and decided simultaneously with the partition suit so as to avoid the conflicting decisions in the suit

Ms. Ruchir H. Patel is permitted to be impleaded as party in Regular civil suit no. 399 of 1999 and can take all the pleas based on the

basis of amendment made in the Act and other available pleas as also agreed to.

No objection will be raised by any of the parties to above course which has been ordered with the consent of the learned counsel for the parties. Amendment made in the Regular Civil Suit No. 399 of 1999 is hereby disallowed.

Appeals are disposed of accordingly.

.....J.
(ARUN MISHRA)

.....J.
(AMITAVA ROY)

NEW DELHI;
MAY 04, 2017