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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9941 OF 2016

MARY PUSHPAM ...APPELLANT(S)

VERSUS

TELVI CURUSUMARY & ORS. ...RESPONDENT(S)

J U D G M E N T

VIKRAM NATH, J.

1. The rule of 'Judicial Discipline and Propriety' and the Doctrine of precedents has a merit of promoting certainty and consistency in judicial decisions providing assurance to individuals as to the consequences of their actions. The Constitution benches of this court have time and again reiterated the rules emerging from Judicial Discipline. Accordingly, when a decision of a coordinate Bench of same High court is brought to the notice of the bench, it is to be respected and is binding subject to right of the bench of such co-equal quorum to take a different view and refer the question to a larger bench. It is the

only course of action open to a bench of co-equal strength, when faced with the previous decision taken by a bench with same strength.

2. The plaintiff is in appeal assailing the correctness of the judgment and order dated 21.07.2009 passed by the Madurai Bench of Madras High Court, whereby, the Second Appeal filed by the defendant-respondent was allowed, the judgment and decree passed by the Sub-Judge, Padmanabhapuram dated 13.10.2003 was set aside and that of the Trial Court dated 30.06.1997 was restored and confirmed.

3. The appellant instituted a civil suit for declaration of title, possession and permanent injunction against the respondents which was registered as OS No. 308 of 1995 in the Court of District Munsiff-cum-Judicial Magistrate at Eraniel. The basis for filing the suit was that earlier in 1976, the respondents had filed a suit for ejectment of the appellant which was registered as OS No. 70 of 1976. The said suit was dismissed, First Appeal was dismissed and

the Second Appeal was also dismissed by the High Court, vide judgment dated 30.03.1990. The same became final as it was not carried any further.

4. The appellant continued in possession of the property in suit. However, as the respondents were trying to interfere with the possession of the appellant, she filed the suit.

5. The respondents contested the suit and filed their written statements. According to them, the defence taken was that they had purchased 8 cents of land by way of registered sale deed on 13.03.1974 which was with respect to an open piece of land and did not contain any building as such. The suit of 1976 filed by them was with respect to the constructions raised by the appellant and not with respect to 8 cents of land. The appellant had no right, title or interest over the suit property. The suit was liable to be dismissed.

6. The Trial Court framed the following six issues:

(i). Whether the suit property properly absolutely belongs to the plaintiffs?

(ii). Whether the decision of the Honourable High Court of Madras in S.A. No. 2082/1990 relates to the entire 8 cents of the suit property or whether it pertains to the house in a portion of the suit property?

(iii). Whether the plaintiffs have been in possession and enjoyment of the entire suit property?

(iv). Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?

(v). Whether the suit property is to be demarcated and northern boundary is put up as prayed for?

(vi). What reliefs are the Plaintiffs entitled to?

7. Issue No. 2 related to the question whether the judgment of the High Court in Second Appeal No. 2082 of 1990 related to the entire 8 cents of the property or whether it pertained only to the house in a portion of the land in dispute.

8. The Trial Court, vide judgement dated 30.06.1997, decreed the suit for declaration of title, possession and permanent injunction but only with respect to the portion over which the house property was situated out of the total extent of 8 cents of the suit property. With respect to the other property, the suit was dismissed.

9. Aggrieved by the dismissal of the suit, the appellant preferred an Appeal which was registered as Appeal No. 169 of 1997. The Sub-Judge vide judgement dated 13.10.2003 modified the judgement and decree of the Trial Court and declared that the appellants were entitled for the entire suit property for relief of declaration of title, permanent injunction and for setting up their boundary for securing the said property. The learned Sub-Judge had mainly relied upon the judgment of the High Court dated 30.03.1990 in the earlier round of litigation.

10. Aggrieved by the judgment of the Sub-Judge, the respondents preferred second appeal before the

High Court registered as Second Appeal No. 451 of 2004. The High Court, by the impugned judgment dated 21.07.2009, allowed the appeal, set aside the judgment of the Sub-Judge and restored the decree of the Trial Court. Aggrieved by the same, the plaintiff has preferred the present appeal.

11. Heard learned counsel for the parties and perused the material on record.

12. The main argument advanced on behalf of the appellant is that the High Court in the first round in its judgment dated 30.03.1990 had specifically recorded that the dispute was with respect to 8 cents of land and the construction standing thereon. The Trial Court or the High Court therefore in the present round of litigation could not have confined it only to the construction and not the entire portion of land measuring 8 cents. It is further submitted that under the law of merger, the judgment of the Trial Court and the First Appeal Court in the first round of litigation merged with the judgment of the High Court

dated 30.03.1990 and it is that judgment alone which has to be read as final and binding between the parties. It is also submitted that the First Appeal Court in its judgement dated 13.10.2003 in the present round had specifically recorded that the Trial Court had no jurisdiction to go against the judgement of the High Court. The High Court in its impugned judgement has in fact breached the judicial discipline by taking a view contrary to the earlier judgement.

13. On the other hand, learned Counsel for the respondents submitted that the judgements of the Trial Court and the High Court in the present round is correct in law and facts. The earlier round of litigation initiated by the respondents was only with respect to the constructions raised by the appellant which of course they had lost. The respondents had throughout been in possession of the 8 cents of land. The appellants were never in possession thereof. The judgement of the Trial Court and that of the High Court deserves to be maintained.

14. In the judgement of the High Court in the first round dated 30.03.1990, it is not at one place but at number of places that the High Court has recorded that the suit property comprised of 8 cents of land which was the land purchased by the respondents in 1974. It would be relevant to refer to such facts noted in the said judgment. In the opening paragraph the High Court mentioned as follows:

> "The suit property is consisting of 8 cents. The defendant was residing in this property even prior to the purchase of this property by the plaintiff."

Then again in paragraph no.2, the High Court records as follows:

> "The learned counsel appearing for the appellant contended that the suit property is comprised of 8 cents of land and the appellant purchased the same by a sale deed dated 13.03.1974, which is marked as Exhibit A-1".

The above clearly shows that not only the High Court notes that it was 8 cents of land which was in dispute

but also the Counsel for the appellants therein (respondents herein) whose submissions are recorded understood it in the same manner. Again, in paragraph no.3, the High Court records as follows:

> "In the sale deed dated 13.03.1974 (Exhibit A1) there is no mention about the superstructure in which the respondent herein is residing. The sale deed merely states about the sale of 8 cents of land. As already stated, that the respondent was residing in the suit property even prior to the purchase by the appellant."

Lastly, the High Court records its finding as follows:

> "The courts below found that all the documents produced by the respondent herein are in the name of the respondent. Therefore, considering all these documents, the courts below came to the conclusion that the respondent herein is in possession of the suit property for more than the statutory period and so she had perfected her title by adverse possession."

15. In the light of the above facts, arguments and findings recorded by the High Court in its judgment dated 30.031990, apparently no

defence was left for the respondents to take as it was already held that the appellant had perfected her rights by adverse possession over the suit property which was 8 cents of land. The construction of the appellant was standing over the 8 cents of land may be on part of it but she was found in possession of the entire 8 cents.

16. The respondents never sought any clarification of the findings of the High Court or the observations made therein nor did they assail the same before any higher forum. The judgement dated 30.03.1990 attained finality. Interpreting the said judgement which was clear in itself any differently would clearly amount to judicial indiscipline. The Sub-Judge in its judgement dated 13.10.2003 had rightly observed that the Trial Court had no business to interpret the judgement of the High Court dated 30.03.1990 in any other way than what was recorded therein.

17. The doctrine of merger is a common law doctrine that is rooted in the idea of maintenance of the decorum of hierarchy of courts and tribunals.

The doctrine is based on the simple reasoning that there cannot be, at the same time, more than one operative order governing the same subject matter. The same was aptly summed up by this Court when it described the said doctrine in **Kunhayammed & Ors. v. State of Kerala & Anr.**[1]:

> "44 (i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of the Law."

18. The legal position on Coordinate Benches has further been elaborated by this Court in **State of Punjab & Anr. v. Devans Modern Breweries Ltd. & Anr.**[2]**:**

> "339. Judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles of law enunciated by another Bench, the

[1] (2000) 6 SCC 359
[2] (2004) 11 SCC 26

matter may be referred only to a larger Bench.

340. In Halsbury's Laws of England (4th Edn.), Vol. 26 at pp. 297-98, para 578, it is stated: "A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow."

19. We have already discussed about the importance of ensuring judicial discipline and the same has also been upheld by various judgement of this Court. In **Central Board of Dawoodi Bohra Community & Anr. vs. State of Maharashtra & Anr.**[3], this Court has summed up the legal position of rules of judicial discipline as follows:

"12. ***

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.

(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the

[3] (2005) 2 SCC 673

> matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted."

20. In the current case, as previously mentioned, the High Court's judgment from the initial round dated 30.03.1990, noted that the disputed property included 8 cents of land, not just the building structure on it. As per the Doctrine of Merger, the judgments of the Trial Court and the First Appellate Court from the first round of litigation are absorbed into the High Court's judgment dated 30.03.1990. This 1990 judgment should be regarded as the conclusive and binding order from the initial litigation. Following the principles of judicial discipline, lower or subordinate Courts do not have the authority to contradict the decisions of higher Courts. In the

current case, the Trial Court and the High Court, in the second round of litigation, violated this judicial discipline by adopting a position contrary to the High Court's final judgment dated 30.03.1990, from the first round of litigation.

21. The argument of the Counsel for respondents is mainly that the judgment of the Trial Court and First Appellate Court in the first round of litigation clearly stated in the case of the plaintiff that it was with respect to the constructed portion only in which the mother of the appellant was residing and not the whole area of 8 cents purchased by them. The High Court committed a bona fide error in recording that the suit property was 8 cents along with constructions standing over it. As such the Trial Court and the High Court in the present round were correct in limiting the decree only to the constructions and not the entire area of 8 cents.

22. In order to test the above agreement, we carefully examined the judgement of the Trial Court as also the First Appellate Court. What is

discernible is that nowhere it is recorded the actual boundary or the measurements of the property in possession of the mother of the appellant (defendant therein). The respondents-plaintiff therein had based her case on the ground that they had purchased 8 cents of open piece of land and the defendant therein had raised construction over some adjoining land, and had trespassed over part of her purchased land as such decree of possession be granted.

23. We are unable to appreciate the said argument of the respondents. Suit for possession has to describe the property in question with accuracy and all details of measurement and boundaries. This was completely lacking. A suit for possession with respect to such a property would be liable to be dismissed on the ground of its identifiability. Further, it may be noted that if the construction by the defendant were not made over 8 cents of purchased land, then the plaintiff therein would not have a claim to possession of the same. The argument thus has to be rejected

not only on facts but also on legal grounds as discussed above.

24. The appeal is, accordingly, allowed. The impugned judgment and order of the High Court is set aside and that of the First Appellate Court dated 13.10.2003 passed by the Sub-Judge, Padmanabhapuram is restored and maintained.

25. There shall be no order as to costs.

.....J.
(VIKRAM NATH)

.....J.
(RAJESH BINDAL)

NEW DELHI

JANUARY 03, 2024