

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7492 OF 2004

KEDARNATH RAMNATH SOMANI & ANR. ... Appellants

VERSUS

CHANDRABHAGABHAI KESHARLAL SOMANI & ORS. ... Respondents

O R D E R

Respondent Nos. 1-8 were plaintiffs who filed Regular Civil Suit No. 195 of 1992 before the Court of Joint Civil Judge (Junior Division), Jalgaon, seeking a declaration that City Survey No. 32 is jointly owned by the plaintiffs and the defendants (appellants herein). This suit was dismissed by the Civil Judge vide judgment and decree dated 22.10.1992. Aggrieved thereby, respondent Nos. 1-8 filed Civil Appeal No. 289 of 1992 before the Court of District Judge, Jalgaon. The District Judge, Jalgaon, vide its judgment dated 05.04.1999, set aside the judgment and order dated 22.10.1992 passed by the Civil Judge, allowed the appeal and decreed the Suit of Respondent Nos.1-8. Appellants had taken the matter in the High Court by filing second appeal. This appeal had been dismissed by the High Court of Bombay vide orders dated 09.10.2002 on the ground that the appeal does not involve any substantial question of law which need to be determined under Section 100 of the Code of Civil Procedure. Special leave petition was filed against the said judgment in which notice was issued on

03.02.2003. This notice indicated that the Court may remand the second appeal back to the High Court for its decision after framing of appropriate substantial question of law. However, after notice, when the matter came up for hearing the Court chose not to adopt the aforesaid course of action but instead granted leave in the matter. This is how the present appeal has come up for hearing.

We have heard learned counsel for the parties at length. We were taken through the judgment of the Civil Judge as well as that of the first appellate Court. Learned counsel for the parties also referred to various documents in support of their respective submissions on the question involved, viz., whether City Survey No. 32 is in exclusive ownership of the appellants or it is a joint property of the appellants and respondents. As mentioned above, while decreeing the Suit in favour of respondent Nos.1-8 (the plaintiffs), the first appellate Court has passed the decree of declaration, as sought by the plaintiffs, holding the said plot comprising of said Survey No. 32 to be in the joint ownership. Various documents were produced by respondent Nos. 1-8/ plaintiffs in support of their submission which were taken into consideration by the first appellate Court while arriving at the aforesaid findings.

We, thus, feel that the High Court was right that the entire matter was factual and the findings of facts which were recorded by the first appellate Court (last court as

far as question of facts are concerned) had attained finality and no substantial question of law was involved.

We may record that there was a dispute between the appellants herein and respondent No. 9 which forced the appellant to file Civil Suit against respondent No. 9 and decree in favour of the appellants was passed in the said Suit, which was affirmed by the first appellate Court, and that decree had also attained finality as no further appeal was preferred by respondent No. 9 in those proceedings. Since respondent Nos. 1-8 were not party to the said Suit, it is rightly held by the first appellate Court that the said decree would not operate as *res judicata* for respondents Nos. 1-8. However, we make it clear that insofar as that decree is concerned, it is binding on respondent No. 9.

With these observations the appeal is dismissed.

....., J.
[A.K. SIKRI]

....., J.
[ASHOK BHUSHAN]

New Delhi;
July 12, 2017.

ITEM NO.101

COURT NO.7

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

Civil Appeal No. 7492/2004

KEDARNATH RAMNATH SOMANI & ANR.

Appellant(s)

VERSUS

CHANDRABHAGABHAI KESHARLAL SOMANI & ORS.

Respondent(s)

Date : 12-07-2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Appellant(s)

Mr. P. H. Parekh, Sr. Adv.
M/s. Parekh & Co., AOR

For Respondent(s)

Mrs. Sudha Gupta, AOR

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

The appeal is dismissed in terms of the signed order.

(NIDHI AHUJA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

[Signed order is placed on the file.]