

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

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.5619 OF 1999

BAIDYANATH PD. SINGH  
ant(s)

Appell

VERSUS

GAURI SHANKAR PD. SINGH & ORS.

Respondent(s)

Date: 16/02/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE A.K.MATHUR

For Appellant(s)

Mr. S.B. Upadhyay, Adv.

Mr. R.R. Dubey, Adv.

Mr. Shiv Mangal Sharma, Adv.

Mr. Santosh Mishra, Adv.

For Respondent(s)

Mr. Atul Jha, Adv.

Mr. Manish Singhvi, Adv.

Mr. Nirmal Mittal, Adv.

Mr. Anil K. Chopra, Adv.

UPON hearing the Court made the following

O R D E R

Appeal is allowed in terms of the signed order.

(Parveen Kr. Chawla)

(Kanwal Singh)

Court Master

Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5619 OF 1999

Baidyanath Pd. Singh

Appellant (s)

Versus

Gauri Shankar Pd. Singh & Ors.

Respondent (s)

O R D E R

Appellant who was the defendant in the suit has, by grant of special leave, filed the present appeal.

Suit filed by the plaintiffs-respondents for partition was decreed by the trial court. In the first appeal, judgment and decree passed by the trial court was reversed and the suit was ordered to be dismissed.

Aggrieved against the order of reversal, the plaintiffs-respondents filed the Appeal from the Appellate Decree No. 135 of 1989 in the High Court. At the time of admission of the appeal,

following substantial questions of law were framed:

"(a) Whether the lower appellate court was right in not upholding the judgment of the trial court in the face of the provisions of Section 4 of the Hindu Adoption and Maintenance Act, 1956?

(b) Any other substantial point of law may also be raised at the time of hearing?"

The learned Single Judge, before whom the second appeal came up for hearing, without referring to the questions of law framed at the time of admission, referred to above, and without addressing himself on these questions, reversed the judgment of the first appellate court on re-appreciation of evidence.

This Court in a number of judgments has held that the High Court can exercise jurisdiction under Section 100 Code of Civil Procedure only on a substantial question of law. Since the High Court has reversed the judgment of the first appellate court on re-appreciating the evidence without referring to the questions of law framed at the time of admission, the order under appeal cannot be sustained.

Accordingly, this appeal is allowed. The impugned judgment of the High Court is set aside and the case is remitted back to the High Court for a fresh decision in accordance with law. The High Court shall now decide the appeal afresh in the light of questions of law, already framed, or frame additional questions of law, if any, arising in the appeal.

Since the proceedings pertain to a suit having been instituted in

the year 1975, we would request the Hon'ble Chief Justice to list the second appeal out of turn and, if possible, dispose it off within three

months of the receipt of a copy of this order and the records. Counsel for the parties would be at liberty to mention before the Hon'ble Chief Justice of the High Court for fixing an early date of hearing of the appeal.

The Registry is directed to transmit the record of this case to the High Court forthwith.

The appeal stands allowed accordingly.

.J.

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(ASHOK BHAN)

New Delhi;  
...J.  
February 16, 2005.

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(A.K. MATHUR)