

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(s). 4996 OF 2000

GORAKH BHAGAT & ANR

Appellant (s)

VERSUS

SUKHDEO THAKUR & ORS

Respondent(s)

Date: 14/12/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s) Mr. D.N. Goburdhan,Adv.

For Respondent(s) Mr. Ugra Shankar Prasad,Adv.(NP)

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed in terms of the signed order.

(Meenu Sethi)

(Pushap Lata Bhardwaj)

Court Master

Court Master

Signed order is placed on the file

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4996 OF 2006

Gorakh Bhagat & Anr. ...Appellants

Versus

Sukhdeo Thakur & Ors. ..Respondents

O R D E R

Although none appears on behalf of the respondents, we have heard learned counsel for the appellants and have also gone through the matter.

The appellants herein filed a Suit for declaration that Sale Deed dated 8.10.1969 executed in favour of defendants Nos. 1,2 and 3 is illegal and void. The said Suit, inter alia, was filed on the premise that the property in question was a joint family property. It was held to be so by the learned trial Judge. The First Appellate Court, however, reversed the said finding, opining:

"....Once it is observed that family of plaintiffs and defendants no.3 has separated at the time of execution of Exts. A and A/2 then no question arises to hold that sale deeds executed by defendant no.3 in favour of defendants no.1 and 2 are not genuine valid for legal necessities and for considerations and for binding on the plaintiffs. In which a situation Plaintiffs are not entitled for

any relief as claimed."

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By reason of the impugned judgment, the learned Single Judge of the Patna High Court dismissed the Second Appeal preferred by the appellant summarily.

We would not have ordinarily interfered with the finding of the High Court that no substantial question of law arises for consideration in the appeal, but it may be noticed that while so holding the learned Judge had also observed that findings of the First Appellate Court appear to be correct. Such a finding could not have been arrived at without going into the merit of the matter. It was, therefore, in our opinion necessary for the learned Judge to apply his mind as to whether even for the purpose of upholding the correctness of the finding of the learned First Appellate court, a substantial question of law was required to be framed. It has not been found that no substantial question of law arises in view of the findings of fact arrived at by the Courts below.

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The impugned judgment is set aside and the matter is remitted to the High Court for fresh consideration.

The appeal is allowed accordingly.

.....J.

[S.B. SINHA]

.....J.

[MARKANDEY]

KATJU]

New Delhi,

December 14, 2006.