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C.A.No. 3592 OF 1999

ITEM No.112

Court No. 7

SECTION XV

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. 3592 of 1999

SAJJAN RAJ & ORS. Appellant (s)

VERSUS

STATE OF RAJASTHAN Respondent (s)

Date : 07/04/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s) Mr. B.S. Banthia, Adv.

For Respondent (s) Mr. Aruneshwar Gupta, Addl. AG.,
Mr. Amarjit Singh Bedi, Adv.
Mr. Jog Singh, Adv.

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

Heard the learned counsel for the parties.

The civil appeal is allowed.

The respondent-State shall pay the costs of Rupees five thousand to the appellants.

[T.I. Rajput] [Shelly Sengupta]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3592 OF 1999

Sajjan Raj & Ors. ...Appellant(s)

Versus

O R D E R

The order passed by the High Court in a revision petition is under challenge in this appeal. The appellant succeeded before the High Court in the second appeal and got an executable decree in his favour. Pursuant to that decree, he was entitled to construct the wall. Thereafter, when there was obstruction, he approached the executing court seeking execution of the decree by filing an application in Execution Case No. 6 of 1996. That application was allowed on 12th August, 1998 and certain directions were given by the executing court by appointing a Commissioner for the purpose of carrying on the construction work and, if need be, police help could be taken. The decree passed by the High Court in the second appeal attained finality. The State did not challenge the decree but strangely filed revision petition before the High Court questioning the validity and correctness of the order dated

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12th August, 1998 passed by the executing court. The High Court, by the impugned order, set aside the order dated 12th August, 1998 passed by the executing court on the ground that opportunity should have been given to the respondent. We can say that the reasons recorded in the impugned order for setting aside the order made by the executing court are untenable.

Before us, the learned counsel for the appellants strongly contended that the High Court was not at all justified on facts or in law in interfering with the order passed by the executing court giving direction to execute the decree with the help of the Commissioner and with police help, if need be. The learned counsel for the State did not find himself in a comfortable position to support the impugned order.

Under the circumstances, this appeal is entitled to succeed. Accordingly, it is allowed. The impugned order is set aside.

The respondent-State shall pay the costs of Rupees five thousand to the appellants.

.....J.
[SHIVARAJ V. PATIL]

.....J.
[D.M. DHARMADHIKARI]
New Delhi,
April 07, 2004.