

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). 5473 OF 2004

DUTT RAM (D) BY LRS.

Appellant (s)

VERSUS

PREM BALLABH

Respondent(s)

(With appln(s) for discharge of Advocate-on-Record and with office report)

WITH Civil Appeal NO. 5476 of 2004

(With applicatin for discharge of Advocate-on-Record and with office report)

Date: 25/04/2007 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. M.N. Rao, Sr. Adv.

Ms. Promila,Adv.

For Respondent(s)

Mr. S. Bisaria, Adv.

Ms. Nidhi,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeals are allowed in terms of the signed order.

(Meenu Sethi)

Court Master

(Pushap Lata Bhardwaj)

Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5473/2004

Dutt Ram(D) by Lrs. ...Appellants

Versus

Prem Ballabh ...Respondent

With

C.A. No.5476/2004

ORDER

In view of the order proposed to be passed by

us, it is not necessary to notice the fact of the matter.

Suffice it to notice that the Second Appeal

before the High Court arose out of judgment and decree

passed in suit for specific performance of contract filed by the

respondents herein.

Two substantial questions of

law were purported to have been formulated which in the

language of the High Court are:

"...Whether the defendant is stopped from making

any objection regarding the execution of the sale-deed on the

basis of the so called agreement dated 2.12.1964(wrongly

typed as 7th December, 1964 in the Court's order dated

19.5.1988). What is the nature of the document which is

referred as the agreement dated 2.12.1964(wrongly typed as 2.7.1964) and whether the suit barred by limitation."

The High Court, unfortunately, did not apply its mind on the said questions of law and proceeded to dispose of the appeal by devoting one paragraph each thereto and only referred to the findings arrived at by the Courts below.

Even on the question of limitation the High Court observed as follows:

"The learned lower Appellate Court has dealt with this question thoroughly and has cited case laws in this regard. I do not find any legal infirmity in the finding recorded by the Courts below. The Judgments of the learned lower Courts are well reasoned."

In our opinion the manner in which the Second Appeal has been dealt with by the High court is wholly unsatisfactory. We set aside the impugned judgment and remit the matter back to the High Court for consideration of the matter afresh. The High Court shall frame appropriate substantial question(s) of law and determine the matter on merit. All contentions of the parties shall remain open.

The appeals are allowed.

.....J.

[S.B. SINHA]

...J.

.....
[MARKANDEY

KATJU]

New Delhi,

April 25, 2007