

,(
SLP(C)No. 4260-4261 OF 2003
ITEM No.202

Court No.10

SECTION XII
A/N MATTER

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

Petition(s) for Special Leave to Appeal (Civil) No.4260-4261/2003

(From the judgement and order dated 13/08/2002 in SA 1954 & 1955 of 1989 of The HIGH COURT OF JUDICATURE AT MADRAS)

KASTHURI & ORS.

Petitioner (s)

VERSUS

L.K. SRIDHAR

Respondent (s)

(With prayer for interim relief and office report)
(For Final Disposal)

Date : 03/09/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE S.H. KAPADIA

For Petitioner (s)

Mr. V.R. Reddy, Sr. Adv.
Mr. V. Krishna Murthy, Adv.

For Respondent (s)

Mr. Joseph Pookkatt, Adv.
Mr. Prashant Kumar, Adv.

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

The appeals are allowed in terms of the signed order.

(Satish K. Yadav) (Kanwal Singh)
Court Master Court Master
(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.5767-5768 OF 2004
(Arising out of SLP© Nos.4260-4261 of 2003)

Kasthuri & Others .Appellants

Versus

L.K. Sridhar..Respondent

O R D E R

Second Appeal Nos. 1954 of 1989 and 1955 of 1989 arising in O.S. No. 4676 of 1986 and O.S.No.4373 of 1985 were filed in the High Court of Judicature at Madras. At the time of admission the High Court framed the following four questions of law in Second Appeal No. 1954 of 1989:

- "1.Whether the lower appellate Court had not failed to see that as per Ex. A.3, the Settlement Deed in favour of the defendant, what was conveyed to him was only the building portion and not any vacant land abutting the building?
- 2.Whether the lower appellate Court was correct in dismissing the suit in entirety even though the appeal was valued only for a sum of Rs.400/-?
- 3.Whether the lower appellate Court was right in dismissing the suit by trotting out a new case in favour of the defendant quite contrary to the pleadings and the evidence adduced by the defendant?
- 4.Whether the lower appellate Court was right in rejecting Ex. B2 plan as a house plan whereas it is the plan demarcating the property settled in favour of the defendant signed by the Settlor and registered along with Ex.A.3?"

In Second Appeal No. 1955 of 1989 the following substantial questions of law at the time of admission were framed:

- "1.Whether the lower appellate Court was right in rejecting out a new case and granting the relief of injunction on the ground of adverse possession which was not pleaded and proved?
- 2.Whether the lower appellate Court was right in rejecting Ex. B2, as a house plan, whereas it is the certified copy of the plan as annexure of the Settlement Deed Ex. A3, dated 31.3.1970 in favour of the plaintiff?
- 3.Whether the lower appellate Court was right in not drawing an adverse inference against the plaintiff for the failure on his part to produce the plan annexed to Ex. A3?
- 4.The subject matter of the two appeals belonged to one Ayyavu Naidu. He executed a settlement deed under Ex. A3 dated 31.3.70 in respect of a property in favour of his grandson Sridhar under Ex. B1, dated 10.10.73, he executed a settlement deed in favour of his son Parthasarathy of the northern property. The question in the two appeals is as to the properties comprised in the two settlement deeds and as to whether the disputed property formed part of Ex.A3 or Ex. B1."

The two appeals were disposed of by passing a common order which is impugned in these appeals. At the time of final disposal, though the High Court referred to the substantial questions of law framed at the time of admission but without dealing with any of the questions of law, has answered the questions against the appellants. The High Court should have dealt with each of the questions separately or if the High Court was of the view that substantial questions of law did not arise then the appeals should have been dismissed on the ground that substantial questions of law did not arise in the appeals. The questions of law framed could not be answered against the appellants without even referring to the questions framed.

The impugned order of the High Court cannot be sustained and the same is set aside. The appeals are remitted back to the High Court for a fresh decision in accordance with law. The appeals stand allowed in the above terms.

[Ashok Bhan]

.....J.

.....J.

[S.H. Kapadia]

New Delhi,
September 03, 2004.