

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

Petitions for Special Leave to Appeal (Civil) Nos.6012/2008
(From the judgement and order dated 06/11/2007 in LPA No.457/2002 of The
HIGH COURT OF JHARKHAND AT RANCHI)

BHARAT MAHTO

Petitioner(s)

VERSUS

DURGA CHARAN MAHTO

Respondent(s)

(With appln(s) for permission to file additional documents and prayer for
interim relief and office report)
(FOR FINAL DISPOSAL)

WITH SLP(C) NO. 10288-10289 of 2009
(With appln. for c/delay in filing SLP and c/delay in refiling SLP and
office report)
(For Final Disposal)

Date: 25/02/2014 These Petitions were called on
for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. DATTU
HON'BLE MR. JUSTICE S.A. BOBDE

For Petitioner(s) Mr. Sunil Kumar, Sr. Adv.
Ms. Rohini Prasad, Adv.
Mrs Sarla Chandra, Adv.

Mr. S.B. Sanyal, Sr. Adv.
Mr. Manish Mohan, Adv.
Ms. Puja Sarkar, Adv.
Ms. Anita Mohan, Adv.
Mr. Ugra Shankar Prasad, Adv.

For Respondent(s) Dr. G.C. Bharukha, Sr. Adv.
Mr. Devashish Bharuka, Adv.
Mr. Vaibhav Nita, Adv.

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

SLP(C) No. 6012 of 2008

Fresh steps be taken in respect of unserved respondents, returnable in four weeks.

Petitioner shall also effect service of the notice through the Ld. District Judge, Jamshedpur.

SLP(C) Nos. 10288-10289 of 2009

The lis in these special leave petitions is between three brothers, namely, Bhanwar Lal Khandelwal, Ramanand Khandelwal and Santulal Khandelwal. They are the sons of Suraj Mal Khandelwal, who expired on 22.01.1982.

Santulal Khandelwal is the youngest of the three namely; Bhanwar Lal Khandelwal and Ramanand Khandelwal. Santulal Khandelwal had filed a suit for partition and separate possession of 1/3rd share in suit Schedule 'A' and 'B' properties. In the said suit Bhanwar Lal Khandelwal was arrayed as Defendant No.1 and Ramanand Khandelwal was arrayed as Defendant No.2.

The Trial Court based on the documentary and the oral evidence of the parties had come to the conclusion that the plaintiff - Santulal Khandelwal is entitled for a preliminary decree for partition of 1/3rd share in the suit properties described in Schedule 'A' and 'B'.

Being aggrieved by the judgment and order passed by the Trial Court the petitioners preferred First Appeal before the Learned Single Judge of the High Court.

It is pertinent to mention here that in the course of proceedings before the High Court, Ramanand Khandelwal, Defendant No. 2 has expired and after his death his sons; Vinod, Jagdish and Vikash are arrayed as Legal Representatives (LRs) of the deceased Ramanand Khandelwal.

The learned Single Judge confirmed the judgment and decree passed by the Trial Court. Being aggrieved by the aforesaid judgment and order the petitioners preferred Letters Patent Appeal before the Division Bench of the High Court. The High Court dismissed the Letters Patent Appeal filed by the petitioners. It is the correctness and otherwise of this order which is called in question by the LR's of Defendant No. 2 before this Court.

The parties to this litigation are primarily concerned with the suit 'A' scheduled property. Schedule 'A' property has a pucca double storey building standing over a piece of land measuring more or less 6 = kathas of land recorded in R.S. Plot No.1628, R.S. Khata No. 19, Recent Survey Plot No.146, Municipality Holding No. 127, Station Road, Kutcheri Mohalla, Jugsalai, P.S. Jugsalai, Town-Jamshedpur, District- Singhbhum.

Shri S.B. Sanyal, learned senior counsel submits that the plaintiff namely, Santulal Khandelwal is entitled for half share of the schedule 'A' property. According to learned senior counsel the LRs of Defendant No. 2 are willing to bifurcate/ divide the said property into equal proportions and according to him this can only be done by a Court Commissioner appointed by this Court.

The submission so made by Shri Sanyal appears to be reasonable and is also not opposed by Dr. G.C. Bharukha, learned senior counsel appearing for the respondents.

Keeping in view the submission so made by Learned senior counsels for the parties, we now appoint Ms. T. Anamika, Advocate as the Court Commissioner.

The Court Commissioner will visit the schedule 'A' property at Jamshedpur and prepare a sketch indicating how the Schedule 'A' property can be divided into equal proportions, bearing in mind the property in occupation of LRs of Defendant No. 2 and the plaintiff.

By way of tentative expenses towards the traveling and lodging etc., we fix the fee of the Court Commissioner at Rs.50,000/- payable by the plaintiff and LRs of Defendant No. 2 to the Court Commissioner in equal shares within three weeks' time from today.

We reiterate that after the receipt of the money towards traveling and lodging expenses, the Court Commissioner with the assistance of the Registrar, Jamshedpur Civil Court will visit the Schedule 'A' property at Jamshedpur and prepare a sketch and submit a report before this Court within three weeks' time thereafter.

Shri Sanyal is requested to furnish all the papers pertaining to the special leave petitions to the Court Commissioner so appointed by us.

List thereafter.

| [Charanjeet Kaur]
| Court Master

| [Vinod Kulvi]
| Asstt. Registrar

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