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C.A.No. 6472 OF 1998

ITEM No.106

Court No.10

SECTION IX

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.6472/1998

Bhika (Dead) by Lrs. & Ors. Appellant (s)

vs.

Anusayabai & Anr. Respondent (s)

Date:20/07/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE S.H.KAPADIA

For Appellant (s) Mr. C.G. Solshe,Adv.
Mr. Rakesh K. Sharma,Adv.

For Respondent (s)

UPON hearing counsel the Court made the following

O R D E R

The appeal is accepted and the matter is remanded to the High Court in terms of the signed order.

(Sarojbala)(Kanwal Singh)

PA to Addl.Registrar

Court Master

(The signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6472 OF 1998

Bhika (Dead) by Lrs. & Ors.
?Appellants

Versus

Anusayabai & Anr.
?Respondents

O R D E R

Plaintiffs/Respondents (hereinafter referred to as "the respondents") are the daughters of the deceased Bhika Punjaba from his first wife Sakrabai. After the death of Sakrabai, Bhika Punjaba married Nathabai Narayan Aher. Nathabai was also named as Sakrabai after marriage and be

referred to Sakrabai-II. Defendant/appellant is the son of Sakrabai-II from her first husband Narayan.

Bhika Punjaba owned landed property in Survey No. 21/2B Ground No. 31 at Chandapur Tq. Sillod. The said land was acquired by Government for building a dam and in lieu of the said land granted property bearing layout plot No. 38A (25) 8 acres situated at Mehun Tq. Kannad.

Bhika Punjaba died in the year 1948 and Sakrabai-II died in the year 1977. Plaintiffs/respondents filed the suit alleging that Bhika Punjaba had given field property to Sakrabai-II for her maintenance. After the death of Bhika Punjaba, Sakrabai-II executed an agreement in favour of Plaintiff/Respondent No. 1 and delivered the property to plaintiff/Respondent No. 1 in consideration for Rs. 600/- for repayment of loan outstanding against the first husband of Sakrabai-II. Claiming themselves to be the only heirs of Bhika Punjaba and Sakrabai-II and were absolute owners filed the present suit. Defendant/appellant claimed title to the suit property by virtue of a will and sale deed executed by Sakrabai-II in his favour.

Trial Court dismissed the suit. Aggrieved against which the plaintiffs/respondents filed an appeal in the Court of 3rd Additional District Judge which was accepted. Judgment and decree of the Trial Court was set aside. Suit was decreed. Aggrieved against the aforesaid order of the Additional District Judge defendant/appellant filed the second appeal which has been dismissed by the impugned order. The High Court held that the judgment and decree of the first appellate court could not be interfered with as no substantial question of law arose from the findings recorded by the first Appellate Court.

In our view, a substantial question of law does arise and the High Court had erred in dismissing the appeal on the ground that the substantial question of law did not arise from the findings recorded by the first Appellate Court. Without expressing any opinion on the dispute between the parties we frame the following question of law arising in the appeal for the consideration of the High Court:

"As to whether a son by the first husband of a female Hindu is entitled to succeed to the property on her death inherited by her from her second husband under Section 15 of the Hindu Succession Act, 1956."

Appeal is accepted and case is remanded back to the High Court for fresh decision on the aforesaid question of law.

The record of the case which has been received in the Registry be sent back to the High Court forthwith.

Since the respondents are not represented before us, the High Court should issue a fresh notice to respondents for appearance.

?????????????.J.
(Ashok Bhan)

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(S.H. Kapadia)
New Delhi;
July 20, 2004