

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). 6507 OF 2001

KAILASH & ORS.

Appellant (s)

VERSUS

SHREECHAND (DEAD) & ORS.

Respondent(s)

(With office report )

Date: 07/12/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY  
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

For Appellant(s)

Mr. C.L. Sahu,Adv.

For Respondent(s)

Mr. B.S. Banthia,Adv.  
Mr. P. Narasimhan ,Adv  
Rr-Ex-Parte ,Adv

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

The appeal is dismissed as abated in terms of the  
signed order.

(DEEPAK MANSUKHANI)  
Court Master

(RENUKA SADANA)  
Court Master

(The signed order is placed on the file)  
IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6507 Of 2001

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O R D E R

The respondent's suit for specific performance was dismissed and confirmed in the First Appeal. Aggrieved by the same, the respondent preferred Second Appeal in the High Court. The High Court partly allowed the Second Appeal directing that the land bearing Khasra no. 165 ad-measuring 11.75 hectares of village Gadha be partitioned and half of the share be allotted to the plaintiffs and the other half to respondents 6 to 9.

It is the case of the appellants that the said appeal was disposed of by the High Court ex-parte without providing any opportunity whatsoever to the appellants. It is their case that they were arrayed as respondent nos. 6 to 9 in the Second Appeal and have engaged their Advocates to appear on their behalf. The Second Appeal was listed on 5.10.1999 as Item 1 in the list for its hearing and disposal. But the names of the Counsel representing the appellants were not shown in the cause list published by "the Bar Association" as well as in the cause list though their advocates by that time had already filed their

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appearance in the matter. The Second Appeal was heard and disposed of on merits in the absence of the appellants herein.

Thereafter, the appellants filed an application purporting to be under Order 41 Rule 21 read with Section 151 of the Code of Civil Procedure to set aside the ex-parte decree and judgment and to hear the Second Appeal on merits. The said application was dismissed by the High Court vide Order dated 4.2.2000. The same is under challenge in this appeal.

This Court vide order dated 11.5.2000 directed issuance of a limited notice confined to the question as to why the order rejecting the application for recall of the order may not be set

aside.

The only question that arise for consideration is whether the order rejecting the application filed by the appellants herein for recall of the order and for hearing of the second appeal on merits is required to be set aside or not. The High Court vide order dated 4.2.2000 disposed of the application filed by the appellants herein in the following manner:-

"The record of the second appeal perused. The questions of law have been decided in that second appeal. Learned Counsel for the applicants would not point out how the decision is said to be erroneous. There is to erroneous.(sic) There is no force in this petition. It is dismissed."

It is clear from the impugned order that the High Court did not consider the application filed by the appellants herein

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to set aside the ex-parte decree on its own merits. The appellants' case before the High Court was that their advocates did not appear in the matter for their names were not shown in the cause list of the day and the appeal was heard ex-parte. This version of theirs remains unrebutted. In the circumstances, it is clear that the appellants have made out a case for setting aside the ex-parte decree and for re-hearing of the second appeal on merits.

In the aforesaid circumstances, we would have passed orders directing the restoration of the Second Appeal for its hearing on merits. But it so happened the first respondent Shreechand (plaintiff in the suit) died long time ago and the appellants failed to bring his legal representatives on record as is evident from the Office Report dated 6th December, 2010. However, the learned Cousnel for the appellants without any basis whatsoever and ascertaining the records asserted as if the legal representatives of the deceased Shreechand were already on record. There is no truth in the assertion. The record does not disclose filing of any such application and order permitting

the legal representatives of the deceased to be brought on record.

In the circumstances, we have no option except to dismiss the appeal as abated.

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The appeal is accordingly dismissed as abated.

.....J.

(B. Sudershan Reddy)

.....J.

(Surinder Singh Nijjar)

New Delhi  
December 07, 2010.