

ITEM NO.33

COURT NO.11

SECTION XIV

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(s).21840/2007
(From the judgement and order dated 15/11/2006 in CRP No. 230/2003
of The HIGH COURT OF DELHI AT N. DELHI)

PROMILA BHAGAT

Petitioner(s)

VERSUS

VIJAY KUMAR GUPTA

Respondent(s)

(With appln(s) for permission to place addl. documents on record and
prayer for interim relief and office report)

Date: 13/09/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. Shashi Bhushan Kumar, Adv.

Mr. Sanmugam Patio, Adv.
Mrs. Santosh Singh, Adv.
Mr. Rakesh K. Mudgal, Adv.
Mrs. Tullica Prakash, Adv.

For Respondent(s) Mr. S.B. Upadhyay, Sr. Adv.
Mr. Pawan Upadhyay, Adv.
Mr. Pram Mishra, Adv.

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

Mr. Shashi Bhushan, who was appointed by the
Supreme Court Legal Services Committee to assist the
petitioner, says that he may be permitted to withdraw
from the case because the petitioner has engaged an
advocate.

The request of the learned counsel is
accepted and he is allowed to withdraw from the case.

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Heard learned counsel for the parties and
perused the record.

The petitioner is aggrieved by the High
Court's refusal to interfere with order dated 7.11.2002
passed by Additional District Judge, Delhi whereby he
allowed the application filed by the respondent under
Order IX, Rule 13 read with Section 151 of the Code of
Civil Procedure, 1908 and set aside the ex-parte decree
dated 20.9.1995 passed in favour of the petitioner.

The learned counsel made efforts to convince
us that the order passed by the trial Court was
perverse and the High Court committed a serious error
by refusing to entertain the petitioner's challenge to
that order, but we have not felt impressed.
Undisputedly, the order for substituted service of
notice upon the legal representative of the deceased
defendant was passed by the trial Court without
noticing that no effective step had been taken by the

petitioner for serving the legal representative by ordinary process. The High Court took cognizance of the fact that even though the petitioner had taken up the stand that she was not aware of the name of the legal representative of the deceased defendant and his address, at the stage of filing process for substituted service, she had given name of the legal representative and held that the trial Court rightly set aside the ex-parte decree.

In our view, the discretion exercised by the trial Court in setting aside ex-parte decree did not suffer from any legal infirmity and the High Court rightly declined to interfere with the same.

The special leave petition is accordingly

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dismissed.

Since the matter is pending for last 47 years, we direct the trial Court to make an endeavour to dispose of the suit filed by the petitioner within a period of one year from the date of receipt/production of copy of this order.

We also direct that till the disposal of the suit, the parties shall not alienate the property to any person in any manner whatsoever.

(A.D. Sharma)
Court Master

(Phoolan Wati Arora)
Court Master