

S U P R E M E C O U R T O F
R E C O R D O F P R O C E E D I N G S

I N D I A

Civil Appeal No(s). 4751/2007

KOMALBAI & ORS.

Appellant(s)

VERSUS

NARMADABAI (DEAD)THROUGH

LRS. & ORS.

Respondent(s)

ing substitution appln. (s) for substitution and c/delay in fil
ice substitution appln. and exemption from filing O.T. and off
report)

Date : 10/07/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE M.Y. EQBAL

For Appellant(s)

Mr. Sushil Kr.Jain,Sr.Adv.
Mr. Puneet Jain,Adv.
Ms. Ankita Gupta,Adv.
Ms. Pratibha Jain ,Adv.

For Respondent(s)

Rr-ex-parte

Mr. Milind Kumar ,Adv.
Mr. Shovan Mishra,Adv.

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

Delay condoned in filing substitution application

of Application for substitution of the legal representatives
deceased respondent No.1 is allowed. Cause title be amen
ded accordingly.

Appeal is allowed in terms of the signed order.

[O.P. SHARMA]
Signature Not Verified

[SNEH LATA SHARMA]

COURT MASTER
Digitally signed by
Om Parkash Sharma
Date: 2014.07.17

COURT MASTER

16:52:00 IST
Reason: (Signed order is placed on the file)

CIVIL APPELLATE JURISDICTION

Civil Appeal No(s). 4751/2007

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VERSUS

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O R D E R

The appellant is the respondent in the suit which was dismissed by the learned trial Court. The first appellate court had decreed the plaintiff's suit on the basis that the suit house has fallen to the share of plaintiff's husband in a partition. The said order has been affirmed in the Second Appeal.

The substantial questions of law framed by the High Court are to the following effect:

"(i) Whether the finding of the learned first appellate court that the suit house had fallen to the share of plaintiff's husband in partition is vitiation inasmuch as there is no pleading to that effect nor is there any direct evidence of partition having taken place?

(ii) Whether the finding that the appellants are residing in the suit premises as licensee of respondent Narmadabai is bad in law because admittedly Narmadabai got a release deed in her favour in the year 1978, whereas the appellants are admittedly residing in the suit accommodation since 1944?"

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The High Court had recorded the finding that the learned first appellate court could not have decreed the suit and reversed the decree passed by the learned trial court on the basis of the partition without there being any pleading to the said effect and also without there being any issue framed for trial in the suit. After recording the said findings, curiously, the High Court, instead of allowing the appeal, dismissed the same.

A similar glaring error was again committed by the High

Court in respect of the second substantial question of law framed in the suit inasmuch as the High Court came to the finding that Narmadabai through whom the plaintiff had claimed had got the lease deed in her favour in the year 1978 whereas the defendants were residing since the year 1944.

For the aforesaid reasons, we allow this appeal, set aside the operative part of the impugned order of the High Court and restore the decree of dismissal of the suit passed by the learned trial Court.

.....J.
[RANJAN GOGOI]

NEW DELHI
JULY 10, 2014

.....J.
[M.Y. EQBAL]