

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. 8085 OF 2004

JAMUNA DEVI

Appellant (s)

VERSUS

SARBATI DEVI(DEAD) THROUGH LRS.

Respondent(s)

(With appln(s) for permission to file additional documents and  
with office report)

Date: 08/05/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s)

Mr. Shanti Bhushan, Sr.Adv.

Mr. Ashok Grover, Sr.Adv.

Mr. Vijay Sharma,Adv.

Mr. Jai Raj Mudgal,Adv.

Mr. Ashwani Kumar,Adv.

For Respondent(s)

Mr. Mahabir Singh, Sr.Adv.

Mr. S.P. Singh Chauhan,Adv.

Mr. Nikhil Jain,Adv.

Mr. Gagandeep Sharma,Adv.

Mr. S. Srinivasan,Adv.

UPON hearing counsel the Court made the following

O R D E R

at Heard the learned senior counsel for the parties  
length.

The appeal is disposed of in terms of the signed order.

(A.S. BISHT)  
COURT MASTER

(PUSHAP LATA BHARDWAJ)  
COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVI

L APPEAL NO

. 8085 OF 2004

JAMUNA DEVI

..... APPELLANT  
(S)

:VERSUS:

SARBATI DEVI (DEAD) THROUGH L.RS.

..... RESPONDENT  
(S)

O R D E R

One of the questions which has been raised before us, although does not appear to have specifically raised before the learned First Appellate Court as also before the High Court, is as to whether in view of the fact that one of the attesting witnesses to the Will dated 25.8.1971 executed by Suraj Bhan, was dead and another was declared hostile, the execution of the Will could have been proved in terms of Section 71 of the Indian Evidence Act.

The High Court, unfortunately, has not formulated any substantial question of law as is required in terms of sub-section (4) of Section 100 of the Code of Civil Procedure.

Even such a question has not been formulated by the appellant in her memo of appeal. Be that as it may, in our opinion, interest of justice will be met if the High Court is requested to consider the matter afresh. Accordingly, the impugned judgment is set aside and the matter is remitted to

the High Court for its consideration afresh and, in the event, it thinks  
it fit that any substantial question of law arises for its consideration in  
the light of the provisions of Section 71 of the Indian Evidence Act, it  
may do so and proceed to determine the second appeal in accordance  
with law.

As the matter is pending for a long time, we would request the  
High Court to consider the desirability of disposing of the matter as  
expeditiously as possible.

The appeal is disposed of with the aforesaid observations.

.....J  
(S.B. SINHA)

.....J  
(MARKANDEY KATJU)

NEW DELHI,

MAY 8, 2007.