

IVA

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. 3777-3778 OF 1999

DURGABAI & ORS

Appellant

(s)

VERSUS

ANANDI & ORS

Respondent

(s)

(With appln(s) for exemption from filing O.T. and with office
report)

With IA 9-10 (Application for taking on record which formed part of
the records of the Court's below)

Date: 16/12/2004 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE A.K.MATHUR

For Appellant(s)

Mr. S.N. Bhat,Adv.

For Respondent(s) Mr. R.S. Hegde, Adv.
 Mr. Chandra Prakash, Adv.
 Ms. Savitri Pandey, Adv.
 Mr. P.P. Singh, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Civil Appeal is allowed with no order as to costs in terms
of the signed order.

(Parveen Kr. Chawla)

(Kanwal Singh)

Court Master

Court Master

[Signed Order is placed on the File]

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.3777-3778 OF 1999

Durgabai & Others
PELLANT(S)

..APP

VERSUS

Anandi & Others
PONDENT(S)

..RES

O R D E R

Plaintiffs-respondents filed a suit being O.S. No. 100 of 1984 for partition

against a number of persons including appellant who was defendant No.10 in the trial Court. The suit was decreed by the trial court. The first appellate court reversed the judgment and decree passed by the trial court and dismissed the suit.

Plaintiffs-respondents, being aggrieved, filed Regular Second Appeal Nos. 496 of 1992 and 646 of 1992. At the time of the admission of the appeal,

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no substantial question of law was framed. During the course of the hearing of the second appeals, the learned Single Judge framed the following two questions of law:

"1) Whether oral partition claimed by the 2nd defendant is true or not?

2. Whether the will executed by the 1st defendant in favour of the 10th defendant who is his brother's daughter is valid?

Even learned Single Judge without adverting to the basic facts and without recording any reasons whatsoever has set aside the findings of the first appellate

court and restored the order of the trial court.

We are not satisfied in the manner in which the questions of

law were

framed or the same have been dealt with. Framing of questions of law itself shows that the findings on these questions would be on appreciation of evidence. Without advertent to the basic facts the findings recorded by the first appellate court could not have been set aside.

In view of the above, the judgment under appeal is unsustainable in law.

We deem it appropriate to set aside the impugned order and remit the matters back to the High Court for fresh decision in accordance with law. The High Court would first frame the substantial questions of law, if any, arising in these appeals and then proceed to decide the same in accordance with law. The questions of law which were framed by the Single Judge during the course of hearing may not be taken to be the questions of law arising in the appeals and the High Court would be at liberty to frame the fresh questions of law or reframe the questions of law, already framed.

Since the proceedings pertain to a suit having been instituted in the year 1984, we would request the High Court to dispose it of at an early date.

The Registry is directed to transmit the record forthwith.

The appeals are allowed with no order as to costs.

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.....J.

[ASHOK BHAN]

NEW DELHI ;
.....J.

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DECEMBER 16, 2004.

[A.K. MATHUR]