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SLP(C)No. 6513 OF 1999

ITEM No.201

Court No.12

SECTION IX
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.6513/1999

(From the judgement and order dated 27/01/1999 in FA 1067/92
of The HIGH COURT OF BOMBAY)

LILABAI R. RAJWADE & ORS

Petitioner (s)

VERSUS

MADHUSUDAN S. RAJWADE & ORS

Respondent (s)

(With prayer for interim relief) (With Appln(s). for bringing LRs on
record c/delay in filing appl. for bringing LRs on record c/delay in
filing substitution appln.deletion of the name of petitioner No.1 and
deletion of the name of respondent No.4(D) and office report) (For
Final Disposal)

Date : 25/01/2002 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.P. SETHI
HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

For Petitioner (s) Mr. Makrand D.Adkar,adv.
Mr. M.R.Pranjape,adv.
Mr. Vishwajit Singh,Adv.

For Respondent (s) Mrs. J.S.Wad,adv.
Mr. Ashish Wad,adv.
Ms. Niharika Bahl,adv.for
M/s. J.S. Wad & Co.,Advs.

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

.....L.....I.....T.....T.....T.....T.....T.J
.SP2

All the I.As. are allowed.
Leave granted.
Appeal is allowed.

.SP1

(Suman Wadhwa)
Court Master

(S.Malkani)
Court Master

Signed order is placed on the file.

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.PL58

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2002@@
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(Arising out of SLP(C)No. 6513/99)

Lilabai R.Rajwade & Ors. ...Appellants

Vs.

Madhusudan S.Rajwade & Ors. ...Respondents

ORDER@@
CCCCC

.....L.....I.....T.....T.....T.....T.....T.....T.....J.
.SP2

All the I.As. are allowed.
Leave granted.

Respondent No.1 filed an application for claiming mesne profits of the property known as Rajwade Mangal Karyalya by way of miscellaneous application No.3 of 1982. The application was allowed with the following terms:

.....L.....I.....T.....T.....TJ.
.SP1

(a) The applicant is entitled to claim his 8/28th share in the amount of Rs.10,30,000/-.

(b) The opponents Nos.1 and 2 shall be entitled to have 8/28th share each in the amount mentioned above.

(c) The opponent Nos.3,4,5 and 6 shall get 1/28th share in the amount mentioned above.

(d) Parties are directed to pay court fees on the amount to the extent of their share in the abovesaid amount.

(e) The opponent No.1 is directed to deposit an amount of Rs.10,30,000/- in the court within two months from today.

....2/-

.....L.....I.....T.....T.....T.....T.....T.....T.....J.
.SP2

-2-

Aggrieved by the aforesaid direction the appellant herein preferred an appeal in the High Court which was dismissed alongwith the cross objections filed by respondent No.1.

The learned counsel appearing for the appellant has contended that on facts the High Court has found that there was no basis for the lower court to issue directions for deposit of Rs.10,30,000/- but despite that the appeal filed by the appellants herein was dismissed. Our attention has

been drawn to the findings of the High Court in para Nos.13-15.

The learned counsel appearing for the respondents could not dispute the position on facts, and it is also evident from the impugned order. She, however, stated that as the appellants failed to produce the relevant record which was in their possession the courts below had no option but to arrive at the calculations on the guess work.

Keeping in view the facts and circumstances of the case and in the interests of justice, we feel that the application No.3/82 of Respondent No.1 requires to be reconsidered by the trial court for determining the total mesne profits earned by the appellants and the extent of it payable to the respondents. Learned counsel appearing for the parties have also no objection if the matter is

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remanded to the court of first instance to determine afresh the extent of the mesne profits and the rights of respective parties therein.

The learned counsel appearing for Res.No.1 has submitted that her client is 85 years of age and if no amount is paid to him as an interim measure, he is likely to starve. We find substance in the submissions of the learned counsel.

In the circumstance, the appeal is allowed by setting aside the order of the High Court and remitting the case back to the court of first instance for ascertaining the exact amount of mesne profits and the extent to which the parties are entitled to their shares. The order of remand is, however, subject to the condition that the appellants shall deposit a sum of Rs.2 lakhs within a period of two months from today, failing which the present appeal shall be deemed to have been dismissed and the orders impugned to have been revived. If the amount is deposited, the same shall be paid to Respondent No.1 upon his furnishing an undertaking that in case application filed by him is decided against him, the amount shall be refunded back to the appellants herein on such terms and

...4/-

-4-

conditions as the court of first instance may direct while disposing of the application for payment of mesne profits. The lower court is directed to complete the enquiry and decide the application for mesne profits within a period of six months from the date of the receipt of the record. Learned counsel appearing for the parties have assured us of full cooperation to the court for concluding the proceedings within the aforesaid period.

.SP1

.....J.
(R.P.SETHI)

New Delhi
January 25, 2002

.....J.
(K.G.BALAKRISHNAN)