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C.A.No. 4771 OF 1998

ITEM No.102

Court No. 9

SECTION XI

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. 4771 of 1998

RAM KUMAR Appellant (s)

VERSUS

DY. DIRECTOR OF CONSOLIDATION & ORS.Respondent (s)

(With office report)

Date : 10/02/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Appellant (s)Mr. Shrish Kumar Misra,Adv.

For Respondent (s)Mr. S.W.A. Qadri,Adv.
Mr. Kamlendra Mishra,Adv.

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

Heard the learned counsel for the parties from 11.35 a.m. to 11.55 a.m.

The learned counsel for the respondents is permitted to file Vakalatnama during the course of the day.

The civil appeal is dismissed.

No costs.

[T.I. Rajput] [Kanwal Singh]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4771 OF 1998

Ram Kumar ...Appellant(s)

Versus

O R D E R

The order made by the High Court in the writ petition dismissing it is under challenge in this appeal.

The only question that arose for consideration before the High Court in the writ petition was whether permission was required for sale of the land from the Settlement Officer, Consolidation. The High Court held that permission was needed. In that view, finding no merit in the writ petition, the High Court dismissed it. Hence, this appeal.

The learned counsel for the appellant contended that as per unamended Section 5(1)(c)(ii) of the Consolidation of Holdings Act, 1953, permission was required for transfer by way of sale, gift or exchange any part of the holding in the consolidation area and after the amendment in 1974, permission was required in case of transfer by way of sale, gift or exchange of holding or any part thereof. The learned counsel submitted that since sale deed was executed in this case on 20th September, 1971, that is prior to 1974 amendment, permission was required only in case part of the holding was to be sold. According to the learned counsel, the vendor had lands comprised in two Khatas, namely, Khata

No. 1103 and Khata No.1108; the appellant had purchased only the land comprised in Khata No. 1108; that being an independent land covered by an independent Khata, there was

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no need to take permission for the sale of the said land as it was not a part of the holding. In opposition, the learned counsel for the respondents argued in support of and in justification of the impugned order. He submitted that the appellant has not placed any material to show that the land comprised in Khata No. 1108 was not part of the holding of his vendor; it is also not shown that both the Khata numbers were not held under one tenure. Thus, according to the learned counsel, there is no merit in the appeal.

It is true that prior to the amendment in 1974, permission was required to transfer by way of sale, gift or exchange in respect of any part of the holding only but after the amendment, such permission was required either for the entire holding or any part thereof. The vendor of the appellant in his holding had both the lands comprised in Khata Nos. 1103 and 1108. There is no material placed on record to show that both the lands comprised in these Khata numbers were not in one holding of the vendor of the appellant. It is also not shown by the appellant that at these Khata Nos.1103 and 1108 were not held under one tenure. Looking to the definition of the word "holding" and in the absence of any material to establish that the land in question was not the part of the holding, it is not possible for us to say that the impugned order suffers from any infirmity in law. Once it is found that sale was made without taking permission, as required, the High Court was right in rejecting the claim of the appellant. We do not find any good ground or valid reason to disturb the impugned order. In the result, the appeal is dismissed.

No costs.

.....J.
[SHIVARAJ V. PATIL]

.....J.
[Dr. AR. LAKSHMANAN]
New Delhi,
February 10, 2004.