

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 4812 OF 2002

DATTATRAYA

Appellant (s)

VERSUS

SADASHIV & ORS.

Respondent(s)

O R D E R

Heard learned counsel for the parties. This appeal is directed against the judgment and order dated 22nd January, 2001 by the High Court of Karnataka in RSA No. 857 of 2000. While passing such order the High Court proceeded on the basis that in respect of the property in question there is no averment in the plaint nor any evidence has been led by the plaintiff whether the property was a joint family property. The dispute arose between the parties under the following facts and circumstances.

The appellant and the respondent No. 3 are brothers and respondent Nos. 1&2 are their parents. According to the appellant they constitute undivided Hindu Family. The case of the appellant is that respondent No.1- their father, while under intoxication, executed a sale deed and sold the land to the father of the respondent nos. 4 to 7. The further case of the appellant is that the father of the appellant has no exclusive right to sell the said property since the same was a part of the ancestral property.

The High Court, in dismissing the second appeal filed against finding of the First Appellate Court, quoted a part of the plaint of the suit in paragraph 4 of its order. from perusal of the portion of the averment in plaint quoted in the order of the High court that in respect of the property in question, there is an averment that the same is a joint family

It appears

property. Apart from that from the judgment of the First Appellate Court, it is clear that there is an admission of the defendant that the suit land was a joint family property of the plaintiff and defendant Nos. 1&2. The relevant portion is extracted:

"According to defendant Nos. 4 to 7, defendant No. 1 had executed the sale deed in respect of the suit land on 20.4.1967 for valuable consideration. Defendant admit that this suit land was a joint family property of the plaintiff and defendants 1 to 2. According to these defendants they have nothing to say in respect of house property No. 416/2.

According to the defendants the sale is executed as the defendant No.1 was in need of money and it is for the family necessity. And now plaintiff cannot claim for cancellation of the sale deed. And further cancellation of the sale deed now at this state is barred by limitation."

We have perused the written statement filed by the defendant and it was also stated in the statement that the property is an ancestral property.

In view of such clear averment in the pleading and the

3

admission of the defendant about the nature of the property, we are of the opinion that the High Court proceeded on an erroneous basis. The High Court has not considered other relevant questions in the matter.

In that view of the matter, we are constrained to set aside the judgment of the High Court whereby the second appeal was dismissed at the stage of admission.

The matter is remanded to the High Court for re-hearing of the second appeal after framing substantial question of law.

We, however, make it clear that we have not made any observations on the merits of other question which may be involved in the matter. We have only confined our observations and findings on the limited question discussed above. Since the matter is pending for a long time, we request the High Court to explore the possibility of deciding the matter as early as possible preferably within a period of six months from the date of production of this order before the High Court.

The appeal is thus allowed to the extent indicated above.

The parties are left to bear their own costs.

.....J  
( G.S. SINGHVI)

.....J  
(ASOK KUMAR GANGULY)

NEW DELHI  
OCTOBER 7, 2010

4

ITEM NO.110

COURT NO.11

SECTION 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(s). 4812 OF 2002

DATTATRAYA

Appellant (s)

VERSUS

SADASHIV & ORS.

Respondent(s)

(With office report )

Date: 07/10/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Appellant(s)

Mr. M.K. Dua,Adv.

For Respondent(s)

Mr. Shridhar Y. Chitale, Adv.

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

The appeal is allowed in terms of the signed order.

(NEELAM GULATI)  
Sr. P.A.

(PHOOLAN WATI ARORA)  
COURT MASTER

(Signed order is placed on the file)