

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.4688 OF 2009

BHAGWANTI & ORS.

APPELLANT(S)

VERSUS

ARJAN SINGH (DEAD) THROUGH LRS.

RESPONDENT(S)

O R D E R

This appeal has been filed against the judgment of the High Court dated 29.09.2005 by which the High Court has dismissed the R.S.A. No.2258 of 1999 filed by the appellant's predecessor-in-interest. The predecessor-in-interest of the appellant filed a Civil Suit No.484 of 1984 along with his two other brothers as plaintiffs No.1, 2 and 3 against Banarsi and Arjan Singh, who are arrayed as defendant Nos.1 & 2. Suit was filed for declaration to the effect that decree dated 10.05.1984 obtained by defendant No.2 against defendant No.1 regarding the ancestral land is without consideration, legal necessity and is against the reversionary interest of the appellants/plaintiffs. The suit was contested and the Trial Court framed 11 issues and after answering the

issues dismissed the suit. The plaintiffs, who were agnates to the defendant No.1 had challenged the decree alleging that it is in nature of alienation which is not permissible under the custom. It was the case of the plaintiffs that under customary law defendant No.1 was not entitled to alienation. One of the issue i.e. issue No.3 was framed by the Trial Court "as to whether the parties are governed by the custom in matter of alienation and what that custom"? Trial Court returned a finding that there is a custom, as pleaded, but there is one exception to the custom that a person who has rendered service to the alienater and who has some special tie with him or has associated with him in the management of the property, alienation to him is permissible.

On the aforesaid ground, the Trial Court further returned a finding that defendant No.2 was residing with defendant No.1 and because of that both had special tie with each other, hence exception to the custom was applicable, and the suit was dismissed.

Against the said order, Civil Appeal was filed, which was also dismissed by Additional District Judge, Ambala reaffirming the findings returned by the Trial Court. Aggrieved, Regular Second Appeal was filed by the plaintiffs where the High Court took the view that

plaintiffs are merely agnates and the question of succession could open only after the death of defendant No.1, hence they had no locus to file the suit. The High Court further noted that when this was put up to the counsel for the appellant, an argument was made that matter regarding customary law has been referred to five-Judge Bench, hence the matter be deferred. The High Court took the view that the present case was not a case where the decision of the Full Bench be awaited. Consequently, the appeal was dismissed.

Learned counsel for the appellants challenging the judgment of the High Court contends that High Court having not considered the matter on merits the matter need to be reconsidered by the High Court on merits. He further submits that under the customary law, the alienation was not permissible. He has also referred to five-Judge Bench judgment, which was under reference at the time when the regular second appeal was decided. The judgment is reported in Mihan and another Vs. Inder and another, (2008) 3 R.C.R.(Civil) 124. Learned counsel for the appellant lastly submitted that the decree was collusive.

We have considered the submissions of counsel for the appellants and perused the record.

The plaintiffs suit was based on the custom that sole proprietor, who has no son, has no right of alienation, hence the decree in favour of the defendant No.2 was unsustainable. The Trial Court has properly framed the issues and has answered the issue on customs, as pleaded, but held that there is an exception to the custom that for person who has special tie and who has rendered service, there can be alienation. Those findings are based on relevant materials and we do not find any ground to interfere with those findings. The said findings were also concurred by the First Appeal.

As far as submission of learned counsel for the appellant that the High Court did not enter into the merits of the case and decided only on the locus. It is true that the High Court noted the aforesaid ground that succession will open after the death of the defendant No.1, hence there is no locus to the plaintiffs to file the suit. Even, if the submission of learned counsel for the appellants is correct that the High Court ought to have consider other issues on the merits but in view of the fact that two Courts i.e. Trial Court and the First Appellate Court has concurrently decided the matter on merits, we do not find any reason to remit to the High Court to reconsider the matter. The appellants, who are plaintiffs, have to stand on their own legs and they have to prove their own case. As found, the decree, passed by

defendant No.1 in favour of defendant No.2, was permissible even on custom. As far as submission regarding decree was collusive, the Trial Court did not accept the said plea and we also do not find any good ground to accept such plea.

We do not find any ground in this appeal. The appeal is, accordingly, dismissed.

.....J.  
(ASHOK BHUSHAN)

.....J.  
(NAVIN SINHA)

New Delhi  
July 24, 2019

ITEM NO.101

COURT NO.12

SECTION IV

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).4688/2009

BHAGWANTI & ORS.

Appellant(s)

VERSUS

ARJAN SINGH (DEAD) THROUGH LRS.

Respondent(s)

Date : 24-07-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN  
HON'BLE MR. JUSTICE NAVIN SINHA

For Appellant(s)

Mr. J.S. Chahal, Adv.  
Mr. A. P. Mohanty, AOR

For Respondent(s)

Mr. P. N. Puri, AOR  
Mrs. Reeta Dewan Puri, Adv.  
Mr. Abhishek Puri, Adv.  
Ms. Seema Chettri, Adv.

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

The appeal is dismissed in terms of the signed order.

Pending application(s), if any, stands disposed of.

(ARJUN BISHT)  
COURT MASTER (SH)

(RENU KAPOOR)  
BRANCH OFFICER

(signed order is placed on the file)