

ITEM NO.102

COURT NO.8

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). 7362 OF 2003

JAGANNATH (DEAD) THRU LRS. & ORS.

Appellant (s)

VERSUS

SUNDARBAI (DEAD) THROUGH LR. & ANR

Respondent(s)

(With appln(s) for directions and office report)

Date: 06/05/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
 HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN

For Appellant(s) Mr. Akshat Shrivastava, Adv.
 Mr. P.P. Singh, Adv.
 Mr. Anand K. Shrivastava, Adv.

For Respondent(s) Mr. B.S. Banthia, Adv.
 Mr. Vinay Garg, Adv.
 Ms. Deepam Garg, Adv.
 Ms. Jyoti Sharma, Adv.

Ex-Parte

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

Impleadment applications are allowed.

The appeal is dismissed in terms of the
 signed order.

(KALYANI GUPTA)
 SR. P.A.

(VINOD KULVI)
 COURT MASTER

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IN THE SUPREME COURT OF INDIA
 CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7362

OF 2002

JAGANNATH (D) THRU LRS. & ORS.

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APPELLANTS

VERSUS

O R D E R

1. Impleadment applications are allowed.

2. The plaintiff, who is now represented by his legal heirs, filed a suit before the trial court through his next friend and guardian Champalal on 30th December, 1960, praying that the Sale Deed dated 25th July, 1956, executed by defendant No. 2 Sundar Bai, his mother, a pardanasheen lady, during his minority in favour of defendant No.1 Jagannath be set aside as the sale had been effected without legal necessity and under the undue influence of defendant No. 1. On notice, defendant No. 2 i.e. the plaintiff's mother

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supported the claim of the plaintiff and suit was contested only by defendant No. 1 who is the vendee.

In his written statement, it was pointed out that sale deed had been executed for valid consideration on account of legal necessity and to discharge an antecedent debt and that the suit had been filed by the plaintiff in collusion with his mother. The suit

was decreed by the trial court and it was held that the sale was without legal necessity and that defendant no.

1 had exercised undue influence on defendant No. 2 as

she was a pardanasheen lady.

The matter was thereafter

taken in appeal by defendant No. 1 which was dismissed, though some of the observations with regard to the undue influence were set aside. The defendant

still aggrieved filed a Second Appeal before the High

Court. The High Court framed the following substantial

questions of law:-

"1. Whether the finding to the effect that the sale-deed executed in favour of the defendants was without legal necessity and was not for any benefit of the minor, is contrary to the documentary and other evidence produced in the case and is liable to be set aside?

2. Whether Sundar Bai had one half share in the suit property and at least to that share the defendants became entitled under the sale-deed?

3. Whether in view of the act that the plaintiff had not made any claim with regard to the mesne profits

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for the period prior to the institution of the suit, his claim for future mesne profits could not be decreed?"

At the time of arguments, it was conceded before the High Court that question No. 3 was not required to be answered in the light of the Full Bench decision of the High Court of Madhya Pradesh in Amar Singh v. Chandra Shekhar Rao reported in AIR 1984 M.P. 1. The High Court nevertheless confirmed the judgments of the courts below on the other two questions of law and dismissed the appeal. The present matter is before us after the grant of special leave.

3. We find on a bare perusal of question Nos. 1 and 2 that have been raised before the High Court that they are not substantial questions of law and are based on an appreciation of the evidence. The High Court, has in its judgment, dealt with the evidence to justify the conclusion that the sale was without any legal necessity and one of the reasons that weighed with the High Court was that the husband of defendant No. 2, Sundar Bai was the owner of 110 bighas of agricultural land while the sale had been effected for a paltry sum of Rs. 605/- which clearly revealed that there was no

legal necessity more particularly as some other pieces
of land had already been sold by Sundar Bai earlier.

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4. Learned counsel for the appellant has, however,
submitted that even assuming that question No.1 had
been correctly answered, the defendant appellant was
entitled to one half share in the suit property as the
said property belonged to Sundar Bai alone. This
matter has also been dealt with by the High Court in
para 10 of the judgment with a positive finding that
the land that had been sold to the defendant-appellant
belonged to the minor and nobody else. We are,
therefore, of the opinion that no interference is
called for in this appeal under Article 136 of the
Constitution of India. Dismissed.

.....J
[HARJIT SINGH BEDI]

.....J
[K.S. RADHAKRISHNAN]

NEW DELHI
MAY 06, 2010.

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