

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.3838-3839/2007

SUKHDEEP SINGH (DEAD)  
THR. LRS. & ORS.

Appellant(s)

VERSUS

DHARAM SINGH & ANR.

Respondent(s)

WITH

CIVIL APPEAL NOS.3894-3895/2007

PREM SINGH (DEAD)  
THROUGH LRS.

Appellant(s)

VERSUS

DHARAM SINGH

Respondent(s)

O R D E R

Civil Appeal Nos.3838-3839/2007

We have heard learned senior counsel appearing for the appellants, learned counsel appearing for respondent No.1 and perused the impugned judgment and order dated 14<sup>th</sup> October, 2004 passed by the High Court of Punjab and Haryana at Chandigarh in R.S.A. No.107 of 2002. The High Court, by the impugned judgment, has dismissed the appeal in view of order passed in R.S.A. No.4748 of 2001 of even date.

Learned Senior Counsel appearing for the appellants submitted that the facts in R.S.A. No.4748 of 2001 were entirely different from that in R.S.A. No.107 of 2002, as the date of the alleged agreement to sell in respect of the two cases was different. The nature of relief claimed in the two suits was also different. The orders passed by the

Trial Court were different i.e. on different dates and the appeals filed against the Trial Court judgment were also decided on different dates without referring to the facts of the other case. He, thus, submitted that the High Court instead of dismissing the appeal only on the ground that in view of order passed in R.S.A. No.4748 of 2001 of even date, ought to have examined the matter on merits.

Having perused the record, we are of the view that the High Court was not justified in dismissing the appeal without going into the merits by simply following the order passed in R.S.A. No.4748 of 2001 of even date.

Thus, impugned order dated 14<sup>th</sup> October, 2004 passed in R.S.A. No.107 of 2002 is set aside and the matters are remanded to the High Court for deciding the matters afresh on merits in accordance with law, as expeditiously as possible.

The appeals succeed and are allowed in the above terms.

C.A. Nos.3894-3895/2007 (IV)

Heard learned counsel for the parties and perused the impugned order dated 14<sup>th</sup> October, 2014 in R.S.A. No.4748/2001 passed by the High Court of Punjab & Haryana at Chandigarh.

From the facts stated in the impugned order, it appears that the Sale Deed executed by Defendant No.2 Gurdit Singh on 20.7.1993 in favour of Dharam Singh Defendant No.1 was upheld by the trial Court as also the First Appellate Court by recording a finding that property

transferred under the sale deed was not ancestral property of Gurdit Singh. However, when the Second Appeal was filed before the High Court, a specific plea was raised in the Memo of Appeal that certain documents mentioned in para 2 of the grounds of Appeal have not been considered at all by the Courts below which goes to show that the order passed by the Courts below is not correct. This plea that the property is an ancestral property was also raised before the High Court as would appear clearly from the submissions recorded by the High Court. Instead of deciding as to whether the property in question was ancestral or not, the High Court had gone into the question as to whether there was legal necessity to sell the property or not and the High Court has held there was legal necessity. The Second Appeal was dismissed on this ground alone.

In our considered opinion, the High Court ought to have first decided the question as to whether the property in question was ancestral property or not and only thereafter the question of legal necessity could arise.

The other point raised whether the Suit was barred by Order II Rule 2 of the Code of Civil Procedure was also not considered by the High Court.

We, therefore, are unable to sustain the order passed by the High Court. The same is set aside and the matters are remanded to the High Court for deciding the same afresh expeditiously and in accordance with law.

The Civil Appeals are disposed of with the aforesaid

observations.

The interim order granted by this Court shall continue for a period of two weeks from today.

.....J.  
[R.K. AGRAWAL]

.....J.  
[DR. D.Y. CHANDRACHUD]

NEW DELHI;  
SEPTEMBER 13, 2017.

ITEM NO.103

COURT NO.8

SECTION IV

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal Nos.3838-3839/2007

SUKHDEEP SINGH (DEAD)  
THR. LRS. & ORS.

Appellant(s)

VERSUS

DHARAM SINGH & ANR.  
WITH  
C.A. Nos.3894-3895/2007 (IV)

Respondent(s)

Date : 13-09-2017 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.K. AGRAWAL  
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For petitioner (s) Mr. Nidhesh Gupta, Sr. Adv.  
Mr. Tarun Gupta, Adv.  
Mr. Puneet Varshney, Adv.  
Ms. Vriti Gujral, Adv.  
Mr. S. Janani, AOR

For respondent (s) Mr. R.K. Kapoor, Adv.  
Ms. Rekha Giri, Adv.  
Mr. Rajat Kapoor, Adv.  
Mr. Anis Ahmed Khan, AOR

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

CIVIL APPEAL NOS.3838-3839/2007

The Civil Appeals are allowed in terms of the signed order.  
Pending application, if any, stands disposed of.

CIVIL APPEAL NOS.3894-3895/2007

The Civil Appeals are disposed of in terms of the signed order.

Pending application, if any, stands disposed of.

(ASHA SUNDRIYAL)  
COURT MASTER

(CHANDER BALA)  
COURT MASTER

(SIGNED ORDER IS PLACED ON THE FILE)