

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

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).18190 OF 2000
(From the Judgment and Order dated 3.3.2000 in LPA 1259/97
of the High Court of Judicature at Patna)

MAHMUD MIAN (D) THR. LRS. & ANR.

Petitioner(s)

VERSUS

SHAMSUDDIN MIAN (D) THR. LRS. & ORS.

Respondent(s)

(With appln(s) for substitution and c/delay in filing substitution appln.
and direction for deletion of the name of petitioner No. 2 alongwith
Annexure P-2 and with prayer for interim relief and office report)
(For Final Disposal)

Date: 04/03/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Petitioner(s)

Mr. M. Qamaruddin, Adv.

Ms. M Qamaruddin, Adv.

Mr. Ambar Qamaruddin, Adv.

Ms. Ritu Bhardwaj, Adv.

For Respondent(s)

Mr. Athar Alam, Adv.

Mr. Sumbul Athar, Adv.

Mr. A K Thakur, Adv.

Mr. Mushtaq Ahmad, Adv.

UPON hearing counsel the Court made the following

O R D E R

I.A. Nos. 1 & 2 : Delay condoned. Prayer for substitution allowed. Legal representatives of deceased respondents Nos. 2, 5 and 22 are permitted to be brought on record. The respondents' plea that the appeal had abated in the High Court itself is kept open. The names of respondents Nos. 20 and 21 are deleted from the array of parties, at the risk of the petitioners.

I.A. No. 3 : Prayer seeking deletion of the name of petitioner No. 2 is allowed as her LRs are already on record.

Leave granted.

The appeal is allowed in terms of the signed order.

No order as to costs.

(D.P. WALIA)

(SHELLY SEN GUPTA)

COURT MASTER

COURT MASTER

(Signed Order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1550 OF 2005

[arising out of SLP(C) No.18190 of 2000]

Mahmud Mian (D) through LRs. & Anr.

... Appellants

vs.

Shamsuddin Mian (D) through LRs. & Ors.

... Respondents

O R D E R

I.A. Nos. 1 & 2 : Delay condoned. Prayer for substitution

allowed. Legal representatives of deceased respondents Nos. 2, 5 and

22 are permitted to be brought on record. The respondents' plea that

the appeal had abated in the High Court itself is kept open. The

names of respondents Nos. 20 and 21 are deleted from the array of

parties, at the risk of the petitioners.

I.A. No. 3 : Prayer seeking deletion of the name of

petitioner No. 2 is allowed as her LRs are already on record.

Leave granted.

After hearing the learned counsel for the parties, we are

satisfied that the impugned judgment of the Division Bench does not

satisfactorily dispose of the appeal. It was a partition suit. On

account of death of one of the parties, the appeal could not have abated in its entirety. This appeal is, therefore, allowed. The impugned judgment dated 3.3.2000 is set aside and the letters patent appeal is remanded to the High Court for hearing and decision afresh on merits.

The learned counsel for the respondents submits that the letters patent appeal before the High Court was not maintainable. That plea does not appear to have been raised before the High Court.

While hearing the appeal on merits, the Division Bench of the High Court shall also examine the question of maintainability of letters patent appeal.

Both the learned counsel for the parties pray that the litigation being about 35 years' old, the appeal may be heard expeditiously. We allow the parties liberty of making that prayer before the High Court.

No order as to costs.

.....CJI

(R.C. LAHOTI)

.....J

(D.M. DHARMADHIKARI)

New Delhi;

March 4, 2005.