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SLP(C)No. 11656 OF 2000
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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3164 /2002@@
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(Arising out of SLP(C) No.11656/2000)

Shankar Sidduba(D) by Lrs. .. Appellants

Vs.

Ratna Bai .. Respondent

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Leave granted.

Respondent-Ratna Bai filed a suit in respect of the land bearing R.S. No.1184/1A situated at B. Bagewadi village claiming that her husband died on 17.6.1976; that, she is the sole heir of her husband; that, her name had been entered in the relevant records in respect of the suit land; that, even after the death of her husband, she had been cultivating the suit land and the appellants without having any right, title or interest over the suit land were obstructing her peaceful possession and enjoyment of the land in question; that, she sought for permanent injunction against the appellants from interfering with her possession and enjoyment of the suit land. The appellants who were defendants in the said suit pleaded that the land was in their possession throughout and the claim that the respondent has been in possession of the land is false; that, even her status as wife of her deceased husband was denied.

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On the basis of the pleadings raised, the following issues were raised in the suit:

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1. Whether Plaintiff proves that she is in lawful possession and enjoyment of the suit land as sole of deceased Mallari, on the date of the suit?
- 1A. Whether Defendant No.1 proves that he has become owner of the suit land by way of adverse possession as pleaded in para 6 of the written statement?
2. Whether Defendant proves that the Plaintiff was legally divorced by deceased Mallari Suryavanshi?
3. Whether Plaintiff proves obstruction by the Defendants?
4. Is Plaintiff entitled to the injunction sought?

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The trial Court recorded the findings as follows:

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1. Negative

1A)Does not arise as Defendant No.1 has been held to be in possession of the suit land on the date of suit for the reasons mentioned in the answer to issue no.1.

2) Affirmative.

3) Negative

4) Negative

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On this basis the trial Court dismissed the suit.

The matter was carried in appeal and the appellate court confirmed the judgment and decree passed by the trial court and dismissed the appeal. On a second appeal, the High Court raised the following questions for consideration:

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1) Whether the Court below were justified in placing the burden on the Appellate-plaintiff to prove that no notice was served on the deceased defendant before certifying the M.E.No.13727.

2)Whether the Court below were justified in giving finding on the validity or otherwise of the M.E.No.13727, without considering the effect of presumptions available to the certified entry in the Register of Mutations, under S. 133 of the Karnataka Land Revenue Act, and the presumption available under S.114 (E) of the Evidence Act?

3) Whether the Courts below were justified in holding that deceased defendant had no notice of the M.E. No.13727 even though the suit survey number had been sub-divided into portions and both the sub-divisions were given separate survey numbers in the years 1969 itself immediately after the certification of the said mutation entry and even though the name of the husband's of the plaintiff-Appellant has been shown as person in possession of the northern 11 Acres and 21 guntas of the land in S.No.1184/1A?

4)Whether the Courts below were justified in not considering the effect of admission of the deceased defendant Shankar in his cross-examination that he has not personally paid the land revenue of the suit land?.

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The High Court allowed the second appeal and set aside the judgment and decree of the Courts below.

When the Courts below had concurrently taken the view on the question of fact particularly who was in possession of the suit land in question, we do not think

the High Court was justified in side-tracking that aspect of the matter and examine other aspects and give a

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finding in favour of the respondent. We set aside the order made by the High Court and restore that of the first appellate Court affirming the decree made by the trial Court dismissing the suit .

The appeal is allowed accordingly.

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[S. RAJENDRA BABU]@@
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[B.N. AGRAWAL] @@
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New Delhi,@@
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April 26, 2002.

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ITEM No.204 Court No. 3 SECTION IVA
A/N MATTER

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.11656/2000
(From the judgement and order dated 24/07/1998 in RSA 1116/92
of The HIGH COURT OF KARNATAKA AT BANGALORE)

SHANKAR SIDDUBA (D) BY LRS. Petitioner (s)

VERSUS

RATNA BAI Respondent(s)

(With prayer for interim relief)
(For Final Disposal)

Date : 26/04/2002 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Petitioner (s) Mr. N.D. B. Raju, adv.
Ms. Bharathi, R. , Adv.

Mr. Guntur Prabhakar, Adv.

For Respondent (s) Mr. Girish Ananthamurthy, Adv.
Mr. P.P. Singh, Adv.

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

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Leave granted.

The appeal is allowed in terms of the signed order.

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(Meenu Sethi)
Court Master

(Om Prakash)
Court Master

Signed order is placed on the file