

ITEM NO.29 Court 8 (Video Conferencing) SECTION IV-C

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

Petition(s) for Special Leave to Appeal (C) No(s). 22748/2018

(Arising out of impugned final judgment and order dated 18-09-2017
in SA No. 126/2004 passed by the High Court Of M.p At Gwalior)

NAGAR PALIKA PARISHAD SHIVPURI Petitioner(s)

VERSUS

BABOO KHAN (DECEASED) THR. L.R.S. & ANR. Respondent(s)

Date : 20-09-2021 This petition was called on for hearing today.

CORAM : HON'BLE MS. JUSTICE INDIRA BANERJEE
 HON'BLE MR. JUSTICE J.K. MAHESHWARI

For Petitioner(s) Mr. Sameer Abhyankar, AOR

For Respondent(s)

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

This special leave petition is against the judgment and order dated 18.09.2017 passed by the High Court of Madhya Pradesh dismissing the second appeal No. 126/2004 filed by the petitioner. The relevant part of the order of the High Court is extracted hereinbelow, for convenience :-

"In the present case, the facts are different, inasmuch as the suit was filed by the plaintiff, who is appellant before this court, it is the basic principle that alongwith the suit, the documents, on which the plaintiff was claiming its title over the land i.e. the grant made by the Gwalior State in its favour should have been enclosed with the plaintiff. There is no any grant enclosed with the plaint and more so, no reason was assigned as to why such khasra entries, as have been produced now, could not be

produced before the trial court. The reason that there was frequent change of CMOs is not made out from the Annexure Y and that reason appears too naive to be believed inasmuch as if the plaintiff was not vigilant about its own case, then it cannot be permitted to file documents subsequently in this Second Appeal and that too after 13 years of pendency of Second Appeal to meet out the ground of due diligence as is to be fulfilled by the present appellant in taking documents on record under the provisions of Order 41 Rule 27 of CPC. Since there is absence of due diligence, the appellant may, be free to take action against their delinquent officers but they cannot take advantage of negligence of their officers and insist this court to accept such application. Even otherwise, a perusal of the documents show that the appellant has only filed some khasra entries in which name of the government is mentioned and not that of Nagar Palika Parishad. It is also apparent from these documents that they did not contain any grant as was made by the Gwalior State in favour of Nagar Palika Parishad Shivpuri to show their title on the basis of which suit was initiated. Therefore, in absence of there being any relevancy of the documents to the present controversy, these documents are not worth to be taken on record. Hence, application under Order 41 Rule 27 read with Section 151 of CPC fails and is dismissed."

We find no infirmity in the said judgment and order which calls for interference under Article 136 of the Constitution of India.

Be it noted that a second appeal lies only on the substantial question of law. In the instant case, there is no question of law not to speak of substantial question of law.

Three Courts have concurred.

There is no question of interference by this Court under

Article 136 of the Constitution of India. The special leave petition is, therefore, dismissed.

Pending applications, if any, stand disposed of.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(MATHEW ABRAHAM)
COURT MASTER(NSH)