

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).9695 OF 2014

SELVA RANI & ORS.

APPELLANT(S)

VERSUS

R. KRISHNAMMAL & ORS.

RESPONDENT(S)

O R D E R

1. The appellants before this Court are the legal heirs of the defendant No.1 in the suit, which was filed by the second wife and children of one Ganesha Moorthi.

2. According to the respondents-plaintiffs, the property was the ancestral property which came to their husband/father Ganesha Moorthi from one Kandasamy Pillai (father of the Ganesha Moorthi) and therefore they had a right to a share in the property. The defendants contested the claim by asserting that the property was self-acquired and they were the beneficiaries of a Will executed by the aforesaid Ganesha Moorthi.

3. It may be mentioned that the defendant Nos. 1 to 3 in the suit are the children of the aforesaid Ganesha Moorthi through his first wife, who is no more.

4. The trial Court decreed the suit holding the property to be ancestral/joint family property. Yet it chose to go into the validity of the Will. The Will was held to be invalid. Aggrieved, the defendants moved an appeal, which was allowed. The First Appellate Court, however, did not go into the question whether the property was self acquired or ancestral but decided the appeal only on the issue relating to the validity of the Will. The said decree passed by the First Appellate Court was upheld in second appeal without, again, going into the question whether the property was ancestral or self-acquired.

5. On a review being filed by the plaintiffs, the High Court recalled its order and remanded the matter to the First Appellate Court for a decision on the above question i.e. whether the property was ancestral or

self-acquired. In this regard the substantial question of law that was framed by the High Court in the Second Appeal, which is extracted below, was specifically noticed :

"Whether the first appellate Court is justified in not discussing all the issues, which are discussed by the trial Court ?"

6. The question of the validity of the Will could arise only if the property is held to be self-acquired. The finding of the trial Court on this score is otherwise. The First Appellate Court and the High Court did not go into the said question but decided the appeal against the plaintiffs only by holding the Will to be invalid. The question with regard to the status of the property i.e. self-acquired or ancestral is required to be decided in the first instance, namely, before the question of the validity of the Will is gone into. We will, therefore, find no fault with the order of the High Court in remanding the matter to the First Appellate Court for a *de novo* decision on the said question.

7. Though it was contended on behalf of the appellants-defendants that the exercise of the review power in the present case was not justified, we disagree. Not only an error is apparent but we also find that the eventual conclusion of a High Court is to be correct. The present would, therefore, not be a fit case for interference in exercise of our jurisdiction under Article 136 of the Constitution. We, therefore, maintain the order of the High Court passed in the review application and dispose of the appeal upholding the order dated 03.08.2012 impugned in the present appeal.

....., J.
(RANJAN GOGOI)

....., J.
(PRAFULLA C. PANT)

NEW DELHI
SEPTEMBER 29, 2016

ITEM NO.104

COURT NO.6

SECTION XII

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 No(s). 9695/2014

SELVA RANI & ORS.

Appellant(s)

VERSUS

R. KRISHNAMMAL & ORS.

Respondent(s)

(with appln. (s) for vacating stay and office report)

Date : 29/09/2016 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Appellant(s) Mr. V. Prabhakar, Adv.
Ms. Jyoti Parashar, Adv.
For Mr. R. Chandrachud, Adv.

For Respondent(s) Mr. Guru Krishna Kumar, Sr. Adv.
Mr. G. Balaji, Adv.

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

The appeal is disposed of in terms of the
signed order.

(Neetu Khajuria)
Court Master

(Asha Soni)
Court Master

(Signed order is placed on the file.)