

SURESH CHANDRA & ANR. â- | APPELLANT (S)
VERSUS
SHRI PRAKASH CHANDRA & ORS. â- | RESPONDENT (S)

O R D E R

- 1) Leave granted.
- 2) The relevant facts which are necessary for the purpose of deciding this appeal are narrated hereunder:
- 3) On 23.07.1988, a suit was filed by the plaintiffs for specific performance of contract alleging that an agreement was executed by one Budhar Mal on 24.06.1985 and 27.10.1985. Written statement was duly filed in the suit by three defendants.
- 4) On 01.03.1994, plaintiffs/respondent Nos. 1 and 2 filed amended plaint and, thereafter, the appellants herein filed their written statement wherein co-defendants and present respondents 4 to 6, who were already a party in the matter had earlier filed their written statement on 10.08.1989.
- 5) The plaintiffs contended before the Court that the present appellants herein, could have filed only for amended paragraphs and no fresh objections could have been filed by them. Such contention of the plaintiffs was accepted by the trial Court and the trial Court did not allow the present appellants to take the pleas which were not there at the time

of filing of the written statement by the other defendants and struck off the same.

6) Hence, a revision petition was filed by the appellants in view of the amended Code of Civil Procedure and the same was dismissed. Being aggrieved, a writ petition came to be filed before the High Court.

7) The High Court, after considering the said facts, dismissed the writ petition and observed as follows:-

â- SIn these circumstances, to say the least, the present application is only an afterthought, and is only calculated to set at naught, the order dated 28..05.1997, which has merged in the order of this Court dated 08.07.2005, passed in Civil Writ Petition No. 238/2005, which cannot be permitted, during the pendency of the suit.â- \235

8) Hence, the Special Leave Petition.

9) Heard learned counsel appearing for the parties.

10) We have considered the impugned decision of the High Court and it appears to us that the appellants rights cannot be taken away in view of the fact that the written statement was filed by the other defendants. In our opinion, the appellants herein cannot be estopped by pleading of all other co-defendants.

11) In our considered view, the rights of the appellants under the provisions of C.P.C. cannot be interfered with. Hence, the High Court wrongly decided the matter in taking away the substantive rights of the appellants which would also be in violation of principles of natural justice.

2

12) Therefore, the decision of the High Court cannot be sustainable in the eyes of law and the same is set aside.

13) The appeal is allowed.

.....J
(PINAKI CHANDRA GHOSE)

.....J
(ROHINTON FALI NARIMAN)

NEW DELHI;

January 13, 2017.

ITEM NO.39

COURT NO.6

SECTION XV

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 (C) No(s). 9492/2006
 (Arising out of impugned final judgment and order dated 10/03/2006
 in SBCWP No. 78/2006 passed by the High Court of Rajasthan at
 Jodhpur)

SURESH CHANDRA & ANR.

Petitioner(s)

VERSUS

PRAKASH CHANDRA & ORS.

Respondent(s)

(With interim relief and office report)

Date : 13/01/2017 This petition was called on for hearing today.

CORAM :

HON&#39;BLE MR. JUSTICE PINAKI CHANDRA GHOSE

HON&#39;BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Petitioner(s) Mr. Pallav Shishodia, Sr. Adv.

Mr. Bal Kishan L., Adv.

Ms. Ishita Jakhmola, Adv.

Mr. Praveen Chaturvedi, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(JYOTI GUPTA) (SNEH LATA SHARMA)

SR. P.A. COURT MASTER

[Signed order is placed on the file]