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C.A.No. 6100 OF 1997
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ITEM NO.105 COURT No.6 SECTION IV

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.6100/1997@@
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Balmik Appellant (s)

VERSUS

Ramnaresh Singh & Ors. Respondent (s)

(With appln. for exem. from filing O.T. and office report)

Date : 19/07/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.N. KHARE
HON'BLE MRS.JUSTICE RUMA PAL

For Appellant (s) Mr. Dinesh Dwivedi, Sr.Adv.
Mr. Gopal Singh,Adv.
Mr. Vivek Singh, Adv.

For Respondent Nos. Mr. Shiv Sagar Tiwari,Adv.
1-6

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

The appeal is allowed. There shall be no order
as to costs.

.SP1

(Alka Dudeja)
Court Master

(S. Krishnan)
Court Master

Signed order is placed on the file.

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CIVIL APPELLATE JURISDICTION

Civil Appeal No.6100/1997@@
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Balmik

Appellant (s)

VERSUS

Ramnaresh Singh & Ors.

Respondent (s)

O R D E R@@
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This appeal is directed against the judgment of the High Court of Madhya Pradesh affirming the judgment of the first appellate court whereby the decree of the trial court was set aside and the suit was dismissed.

The facts giving rise to this appeal are these: It is the case of defendant-respondents 1-6 that Ramadhar - respondent No. 7 executed a usufructuary mortgage in their favour as far back in the year 1957 and in pursuance thereof delivered the possession of the said property to them. It is also alleged that subsequently on 29.5.59, Ramadhar himself as well as on behalf of his brother, who was then a minor, executed sale deed in respect of the said property for a consideration of Rs.665/-. It is not disputed that the said sale deed was not registered. Subsequently, respondent No. 7 transferred the aforesaid property in favour of the plaintiff-appellant herein by a registered sale deed for a consideration of Rs.1,200/-. It appears that after the sale deed was executed, there arose a dispute in regard to possession of the property, and proceeding under Section 145 of Code of Criminal Procedure was taken between the parties. Thereafter defendant-respondents 1-6 filed a suit for specific performance of agreement for sale dated 29.5.59, which subsequently was registered as Suit No. 52A/72. The trial court decided other issues in favour of the plaintiff but dismissed the suit on the ground of limitation. No appeal thereafter was preferred against the said decree. After some time the plaintiff-appellant herein filed a suit for possession of the property in dispute. In the said suit, defendant-respondents 1-6 filed written statement wherein they defended their possession on the basis of unregistered sale deed dated 29.5.59. Respondent No. 7, owner of the property, also filed a separate written statement. Several issues were framed in the said suit and one of the issues was as to whether the sale deed dated 29.5.59 was executed by Ramadhar or not. The trial court was of the view that the signature of Ramadhar on the sale deed is fraudulent. In that view of the matter the very basis of the defendant-respondent's case was knocked out. Consequently, the suit was decreed. Aggrieved defendant-respondents 1-6 preferred an appeal before the first appellate court. The first appellate court without considering the question as to whether the signature of Ramadhar on the unregistered sale deed dated 29.5.59 was genuine or not, allowed the appeal of the respondents and set aside the decree of the trial court. The plaintiff thereafter preferred second appeal before

the High Court, which was dismissed. It is against the said judgment, the plaintiff-appellant is in appeal before us.

Learned counsel took us through the judgment of the trial court as well as the appellate court and argued that the trial court after having recorded finding that the signature of Ramadhar, one of the owners of the property, on the sale deed, was fraudulent, decreed the suit but the said aspect of the matter was neither considered by the first appellate court nor by the second appellate court. It was also urged that the property being a joint family property, unless there was a legal necessity, the same could not have been sold on behalf of the minor and this aspect of the matter was also neither considered by the first appellate court nor the second appellate court. We find substance in the argument of learned counsel for the appellant. We have ourselves gone into the judgment of the courts below, but do not find that either the first appellate court or the second appellate court have gone into the question of genuineness of the signature of Ramadhar on the unregistered sale deed dated 29.5.59 and also on the question of legal necessity to sell the property by respondent No. 7. The defendants can defend their possession under Section 53A of the Transfer of Property Act only if it is found that there was a valid agreement between the parties. Under such circumstances, the first appellate court, under law, was required to consider whether the unregistered sale deed dated 29.5.59 was executed by respondent No. 7. In case defendant Nos. 1-6 prove that signature on the unregistered sale deed is of Ramadhar and further the transfer was for the legal necessity of the family, there is, no doubt, that in such a situation the defendants can defend their possession. Since said questions were not considered by the first appellate court, this appeal deserves to be allowed. We, therefore, set aside the judgment of the first appellate court as well as the second appellate court and remand the matter to the first appellate court to decide the appeal afresh, on merits. The appeal is allowed. There shall be no order as to costs.

Since the matter is pending for a considerable long time, the first appellate court may consider for its expeditious disposal.

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.SP1

.....J.
(V.N. KHARE)

.....J.
(RUMA PAL)

NEW DELHI
JULY 19, 2001.