

H
C.A.No. 1752-1753 OF 1999

ITEM No.103

Court No. 8

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal Nos. 1752-1753 of 1999

MAHADEO S. JADHAV (DEAD) THR. L.RS. Appellant (s)

VERSUS

SHRIPAT YESHWANT KULKARNI & ANR.Respondent (s)

(With office report)

Date : 06/04/2004 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr. U.U. Lalit,Adv.
Mr. Ravindra Keshavrao Adsure,Adv.

For Respondent (s)Mr. Shridhar Y. Chitale,Adv.
No.1:Mr. A.P. Medh,Adv.

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

Heard the learned counsel for the parties from 11.20 a.m. to 11.40 a.m.

The civil appeals are allowed.

No costs.

[T.I. Rajput][Shelly Sengupta]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1752-1753 OF 1999

Mahadeo S. Jadhav (Dead) Thr. L.Rs. ...Appellant(s)

Versus

Shripat Yeshwant Kulkarni & Anr. ...Respondent(s)

O R D E R

The tenant is in appeal questioning the validity and correctness of the judgement dated 12th September, 1997 and order made in review application dated 21st September, 1998 by the High Court reversing the order passed by the Maharashtra Revenue Tribunal dated 2nd February, 1984. Before the High Court, the appellant remained unrepresented. The High Court, after narrating the facts of the case, allowed the writ petition holding that the claim of the minor landlord could not be defeated on a technical ground that notice was not issued by proper person to the tenant. The question, whether the tenant was in default for three years, namely, 1959-60, 1960-61 and 1961-62 was not considered.

The learned counsel for the appellants urged several contentions before us. The learned counsel for the first respondent made submissions supporting the impugned judgement.

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- 2 -

In our view, having regard to the concurrent findings of fact recorded by the Tehsildar, Sub-divisional Officer and the Maharashtra Revenue Tribunal, the High Court ought to have examined the merits of the contentions having regard to the facts of the case and the evidence placed on record, including the question of law that arose for consideration between the parties, whether issuing of notice by the natural brother of the landlord after adoption of the landlord was merely a technicality or it affected the very validity of the notice. Unfortunately, the appellant remained unrepresented. Thus, looking to all aspects, we are of the view that the High Court has to consider the writ petition afresh on merits dealing with all the contentions raised by the parties. In this view, the impugned judgement and the order made in the review application are set aside. The writ petition is remitted to the High Court for disposal afresh in accordance with law, in the light of what is stated above.

The civil appeals are, accordingly, allowed.

No costs.

.....J.
[SHIVARAJ V. PATIL]

.....J.
[D.M. DHARMADHIKARI]

New Delhi,
April 06, 2004.