

ITEM NO.41

COURT NO.6

SECTION IVB

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 (Civil) No(s).16465/2011

(From the judgement and order dated 17/02/2011 in RSA No.1779/2010  
of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

MURTI &amp; ANR

Petitioner(s)

VERSUS

RANBEER &amp; ANR

Respondent(s)

(With appln(s) for permission to place addl. documents on record  
and with office report)

Date: 25/11/2011            This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s)            Dr.Ramesh Kr.Haritash, Adv.  
   Mr.Syed Rehan, Adv.  
   Mr.Anil Karanwal, Adv.  
   Dr. Kailash Chand, A.O.R.(Not Present)

For Respondent(s)            Mr.Anil Kumar Goyat, Adv.  
   Mr. S.K. Sabharwal,Adv.  
  
   Ms.S.B.Khan, Adv.  
   Mr. Aftab Ali Khan, A.O.R.(Not Present)

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

This petition is directed against judgment dated  
17.02.2011 of the learned Single Judge of the Punjab and Haryana  
High Court whereby he allowed the second appeal filed by respondent  
No.1 and reversed the judgment and decree passed the lower  
appellate Court which had partly accepted the appeal preferred  
against the decree passed by the trial Court in the suit            for  
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partition filed by the petitioners.

A perusal of the record shows that Suit No.148-C of 1989 filed  
by the respondents for declaration of title qua the property in  
dispute was decreed by the trial Court on 5.4.1989 because in the  
written statement filed by them, the defendants (petitioners  
herein) had admitted the claim of the respondents.

After about six years, the petitioners filed Civil Suit

No.251-C of 2005 for partition and claimed 1/4th share each in the suit property. They also prayed for setting aside decree dated 5.4.1989. On being noticed by the Court, respondent No.1 filed counter claim.

After considering the pleadings of the parties and evidence produced by them, the trial Court decreed the suit of the petitioners on the premise that the consent decree had not been registered. Simultaneously, the counter claim filed by respondent No.1 was dismissed.

The lower appellate Court partly allowed the appeal preferred by respondent No.1 and modified the decree of the trial Court in the following terms:

"The suit of plaintiff is decreed only to the extent that the decree dated 05.04.1989 Ex.P3 is illegal, null and void and not binding on the plaintiffs. The counter claim of the defendant No.1 appellant is decreed that is the plaintiff No.2 is entitled to 1/16th share in the suit land. Whereas the plaintiff No.1, defendant No.1 and 2 are entitled to 5/16th share in the suit land. Decree sheet be prepared accordingly."

Respondent No.1 challenged the appellate decree in RSA No.1779/2009. The learned Single Judge referred to the findings recorded by the trial Court and the lower appellate Court, the

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judgment of this Court in Somdev v. Rati Ram (2006) 10 SCC 788 and held that the consent decree passed on the basis of family settlement did not require compulsory registration and the Courts below committed grave error in declaring that the consent decree was not binding on the petitioners.

We have heard learned counsel for the parties and in our view, the learned Single Judge rightly held that the consent decree dated 5.4.1989 passed in Suit No.148-C of 1989 did not require registration and the same was binding on the petitioners.

Although, the petitioners have not produced copies of the plaint and written statement of Suit No. 148-C of 1989, from the tenor of order dated 5.4.1989, it is clear that the trial Court had decided the same on the basis of unequivocal admission by the petitioners of the claim of respondent Nos. 1 and 2, who had pleaded that there was family settlement regarding the suit

property. This being the position, the trial Court committed serious error by entertaining the petitioners' challenge to the consent decree and that too by ignoring that the suit was filed after a time gap of 6 years and was barred by time.

With the above observations, the special leave petition is dismissed.

(Satish K.Yadav)  
Court Master

(Phoolan Wati Arora)  
Court Master