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SLP(C)No. 1961-1962 OF 1999

ITEM No.203

Court No. 1

SECTION IVA
A/N MATTER

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 (Civil) No.1961-1962/1999

(From the judgement and order dated 26/06/1998 in SA 338/88
and order dated 26/08/98 in MCC No.605/98 of the High Court
of M.P. at Jabalpur)

NARESH CHANDRA

Petitioner (s)

VERSUS

JAGDISH PRASAD (DEAD) BY LRS.& ANR

Respondent (s)

(With Appln(s). for bringing LRs. of deceased respondent No. 1)
(For Final Disposal)

Date : 20/04/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE R.C. LAHOTI
HON'BLE MR. JUSTICE BRIJESH KUMAR

For Petitioner (s) Mr. Sakesh Kumar, adv.
Mr. Satish K. Agnihotri, adv.

For Respondent (s)

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

.....L.....I.....T.....T.....T.....T.....T.....T.....J
.SP2

Leave granted.

The appeals are disposed of in terms of the signed
order.

.SP1

(Neena Verma)
Court Master

(Meena Trikha)
Asstt.Registrar

Signed order is placed on the file.

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.PL52

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.2912-2913 OF 2001@@
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(@ Special Leave Petition (C) Nos.1961-1962/1999)

Naresh Chandra Appellant

Versus

Jagdish Prasad (Dead) by L.Rs. & Anr. Respondents

O R D E R@@
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.....L.....I.....T.....T.....T.....T.....T.....T.....J
.SP2

Respondents have been served but despite service, are not present. No objections have either been filed.

Leave granted.

Appellant's suit for declaration of ownership of two mango trees on the disputed land was decreed by the Trial Court on 24th March, 1984. Aggrieved, respondent filed a first appeal which was allowed by the first appellate court on 5th July, 1988. The appellant thereafter filed a second appeal in the High Court. It came to be dismissed for default and for non prosecution on 26th June, 1998. The appellant approached the High Court again for restoration of ...2/-

: 2 :

the appeal assigning various reasons. A perusal of the record reveals that the counsel who was to appear for the appellant was an outside counsel and though his name was in the cause list, but, information to him was not conveyed. It was urged before the High Court, during the hearing of restoration application that there had been a practice of the court to intimate the counsel about the date of hearing in cases 'where the counsel is from outside'. The court did record that submission but opined that the 'practice might have been earlier' but is not in vogue now. We have carefully gone through the record. In our opinion, the appellant had been able to make out a sufficient cause for restoration of his appeal. The High Court was not justified in rejecting the application for restoration vide order dated 26th August, 1998. We, accordingly, set aside the order dated 26th August, 1998 as well as the order dated 26th June, 1998 dismissing the second appeal for non-prosecution. We restore the second appeal to its original number and remand it to the High Court for its fresh disposal in accordance with law. We request the High Court to dispose of the appeal expeditiously after notice to the parties. We wish to emphasise that nothing said ...3/-

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hereinabove shall be construed as any expression of opinion by us on merits of the second appeal.

Respondent No.1 died on 10th October, 1998 and in the appeal before us, he was impleaded through his legal representatives. The application to bring his L.Rs. on record is allowed.

The appeals are disposed of in the above terms.

.SP1

.....CJI.

.....J.
(R.C. LAHOTI)

New Delhi,
April 20, 2001.

.....J.
(BRIJESH KUMAR)