

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 7934-7935 OF 2001

SEBA BANERJEE & ORS.

Appellant (s)

VERSUS

NIRMALA DAS @ NIRMALA BALA DAS(D) & ORS.

Respondent(s)

(With appln(s) for permission to file additional documents)

Date: 06/02/2008 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s)

Mr. S.B. Sanyal, Sr.Adv.
Mr. Parijat Sinha,Adv.
Mr. Soumitra Ghose Choudhary, Adv.
Mr. S.C. Ghosh,Adv.
Ms.Reshmi Rea Sinha, Adv.
Mr. Snehasish Mukherjee, Adv.
Mr. Debapriya Samanta, Adv.

For Respondent(s)

Mr. Manoj Swarup ,Adv

Mr. Raj Kumar Gupta, Adv.
Mr. Sheo Kumar Gupta, Adv.
Mr. R. Mishra, Adv.
Mr. Arun Yadav, Adv.
Mr. Mukesh Kumar Singh, Adv.
Mr. A.N. Bardiya,Adv.

UPON hearing counsel the Court made the following
ORDER

Heard the learned counsel for the parties at length.

The appeal is allowed in terms of the signed order.

No costs.

(PAWAN KUMAR)
COURT MASTER

(ANAND SINGH)
COURT MASTER

(signed order is placed on the file)
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.7934-7935 OF 2001

SEBA BANERJEE & ORS.

... APPELLANTS

VERSUS

NIRMALA DAS @ NIRMALA BALA DAS(D) & ORS.
RESPONDENTS

...

ORDER

Heard learned counsel for the parties at length.

The plaintiffs' suit for declaration of easementary right by way of necessity, prescription and grant has been dismissed by the trial court. The order of the trial court has been affirmed in appeal by the first appellate Court. However, by the impugned order the High Court sitting in the second appeal reversed the concurrent finding of facts recorded by the two courts below and decreed the plaintiffs' suit albeit without framing substantial question of law.

We have noticed in the judgment of the High Court that the High Court itself has recorded that the concurrent finding of two courts below with reason cannot be upset in second appeal. Having recorded that, the High Court turned around and decreed the suit by re-appreciating the evidence on the record and facts. This is not permissible.

In the result the judgment and decree of the High Court in second appeal is set aside and the orders of the trial court and first appellate court are restored.

The appeal are allowed. No costs.

.....J.
(H.K. SEMA)

.....J.
(MARKANDEY KATJU)

NEW DELHI,
FEBRUARY 06, 2008.