

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 1794 OF 2001

GIRDHARI LAL & ANR.

Appellant (s)

VERSUS

PARTAP CHAND

Respondent(s)

Date: 15/02/2011

This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

For Appellant(s)

Mr. Anil Nag,Adv.

For Respondent(s)

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

The appeal is allowed in terms of the signed
order.

The decree granted by the Trial Court shall stand
restored.

(DEEPAK MANSUKHANI)

Court Master

(The signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 1794 OF 2001

(RENUKA SADANA)

Court Master

GIRDHARI LAL & ANR.

Appellant (s)

VERSUS

PARTAP CHAND

Respondent(s)

O R D E R

The Plaintiffs are the appellants herein. They have filed a suit in the Trial Court seeking declaration that they are the co-tenants along with their brother who is the respondent herein. The Trial Court upon appreciation of evidence available on record found that the father of the appellants had held the scheduled land as a tenant and on his demise, the appellants-plaintiffs had also succeeded to the rights of tenancy along with the respondent who is none other than the brother of the appellants. The decree of the Trial Court was challenged by the respondent in the First Appeal. The First Appellate Court upon re-appreciation of the evidence concurred with the findings and conclusions made by the Trial Court and accordingly dismissed the appeal.

Aggrieved by the same, the respondent preferred Regular Second Appeal in the High Court which reversed the concurrent findings of the courts below. The High Court framed the substantial question of law for its consideration at the time of the admission of the Second Appeal in the following manner:-

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" Whether the said Shri Chuhru ceased to occupy the land in question in the year 1962 and the tenancy rights in his favour stood automatically extinguished and tenancy terminated in accordance with law?"

Be it noted this was not the issue that was the subject matter either in the Trial Court or in the First Appellate Court. Learned Counsel for the appellants Shri Anil Nag contended that it is not a substantial question of law that had arisen for consideration in the Second Appeal but is a mixed question of law and fact. Be it as it may, the High Court having framed that question does not answer the same. All of a sudden, the High Court proceeds to consider as to whether the said Chuhru could be presumed to have died? There is no basis in the pleadings and evidence of the parties in this regard.

Some presumption has been drawn on imaginary facts on the basis of the submissions of the parties. The High Court considered the same to be a substantial question of law. Even that question of law which is considered and discussed in paragraph 13 of the impugned judgment cannot be characterised as a substantial question of law.

In the circumstances, we hold that the High Court committed serious error in interfering with the concurrent finding of the fact arrived at by the courts below without any reason or justification.

It is not the finding of the High Court that the conclusion and findings drawn by the Courts below were perverse in nature. The High Court misdirected itself to the question that had fallen for consideration. Even on merits, we fail to appreciate as to how the

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respondent can claim an exclusive right of tenancy in respect of the lands, admittedly of which their father Chuhru was the tenant. Viewed from any angle, we find it difficult to sustain the impugned judgment. The Judgment is accordingly set aside.

The appeal is allowed.

The decree granted by the Trial Court shall stand restored.

.....J.
(B. Sudershan Reddy)

.....J.
(Surinder Singh Nijjar)

NEW DELHI
FEBRUARY 15, 2011.