

"

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(s). 931 OF 2005

GANESH FABRICS & ORS.

Appellant (s)

VERSUS

RAJ KUMAR PODDAR (D) BY LRS. & ORS.

Respondent(s)

O R D E R

Heard learned counsel for the parties.

This appeal has been filed against the impugned judgment dated 17.08.2004 of the Jharkhand High Court.

The facts in detail have been set out in the impugned judgment and hence we are not repeating the same here.

The finding of fact by all the courts below is that the appellants are the co-owners of the property in dispute. However, the High Court has held that he is also a tenant. In our view, this is totally inconsistent. Either a person is an owner or a tenant but he cannot be both of the same property.

It is true that in the case of an undivided property the co-owners can enter into a mutual agreement for exclusive possession of a part of a property, owned by one of the co-owner by paying a certain amount to the other co-owner. That does not make the co-owner a tenant.

Contd.....p/2

This Court in Jahuri Sah & Ors. vs. Dwarka Prasad Jhunjhunwala & Ors., 1966 suppl. SCR 280 has held as follows:

".....Co-owners are legally competent to come to any kind of arrangement for the enjoyment of their undivided property and are free to lay down any terms concerning the enjoyment of the property. There is no principle of law which would exclude them from providing in the agreement that those of them as are in actual occupation and enjoyment of the property shall pay to the other co-owners compensation..."

Hence, in our opinion, the finding of the High Court and the Appellate court that the appellant is a tenant is not correct.

For the reasons given above, this appeal is allowed. The impugned judgment of the High Court and the first appellate court are set aside and that of the trial court is restored. No costs.

However, we direct that the partition suit be heard and decided expeditiously.

.....J.
[MARKANDEY KATJU]

.....J.
[ASOK KUMAR GANGULY]

NEW DELHI
NOVEMBER 11, 2009
ITEM NO.103

COURT NO.8

SECTION XVII

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). 931 OF 2005

GANESH FABRICS & ORS. Appellant (s)

VERSUS

RAJ KUMAR PODDAR (D) BY LRS. & ORS. Respondent(s)

Date: 11/11/2009 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Appellant(s) Mr. Nagendra Rai, Sr. Adv.
Mr. Smarhar Singh, Adv.
Mr. Shantam Sagar, Adv.
Mr. T. Mahipal, Adv.

For Respondent(s) Mr. S.B. Sanyal, Sr. Adv.
Mr. Devashish Bharuka, Adv.
Ms. Jaya Bharuka, Adv.
Mr. R. Chaudhary, Adv.

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

This appeal is allowed in terms of the signed order. The
impugned judgment of the High Court and the first appellate court
are set aside and that of the trial court is restored. No costs.

(O.P. Sharma)
Court Master

(Indu Satija)
Court Master

(Signed order is placed on the file)