

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO(S). 2681-2682/2010

SHER SINGH & ORS.

APPELLANT(S)

VERSUS

MAMO DEVI & ORS.

RESPONDENT(S)

ORDER

These appeals are preferred at the instance of the appellants/defendants assailing the judgment and order passed by the High Court impugned dated 20th November, 2008 in Second Appeal Nos. 1802/1980 and 1803/1980.

The litigation has crossed by this time almost half a century from its initiation. The suit was filed at the instance of the respondent(s)/plaintiff(s) for possession of the alleged subject land belongs to his father-in-law .

The suit in the first instance was decreed by the trial Judge on 12th April, 1977 and the trial Court returned its findings:

- (i) Property is in abadi, so none have title deed;

- (ii) Suit property is part of house of respondents/plaintiffs and it cannot belong to the appellants/defendants as their houses are at some distance;
- (iii) Abutting property to the suit property belongs to respondents/plaintiffs and the appellants/defendants cannot have property in its location;
- (iv) Filing of criminal complaint in 1968 proves that appellants/defendants had forced entry in 1968;
- (v) Opening of two windows and parnala of house of respondents/plaintiffs to the disputed site is established from Local Commissioner's Report dated 1st August, 1975; and
- (vi) Suit property in dispute belongs to the respondents/plaintiffs and the appellants/defendants have taken forcible possession.

The subsequent suit filed by the respondents/plaintiffs No.403 of 1976 praying to restrain the appellants/defendants from obstructing inflow of water from parnala, air and light from windows or demolishing the windows and parnala, came to be decreed relying on the judgment and decree dated 12th April, 1977 in Suit No.437 of 1974.

On appeal being preferred by the appellants/defendants, the findings returned by the learned trial Judge came to be interfered by

the Court of Appeal under its judgment and decree dated 1st March, 1980, but on second appeal being preferred by the respondents/plaintiffs, the High Court restored the findings returned by the learned trial Judge under its judgment and decree dated 22nd September, 2004 but that came to be challenged in Special Leave to Appeal and the matter was remitted back to the High Court pursuant to the order of this Court dated 15th December, 2006, the High Court after re-visiting the material on record restored the finding returned by the learned trial Judge under its judgment impugned dated 20th November, 2008.

We have heard learned counsel for the parties and find no reason to interfere in the finding of fact which has been affirmed by the High Court while confirming the decree passed by the trial Court under the impugned judgment.

At the same time, we would like to observe that the concerned Panchayat to whom the subject property belongs was not impleaded as a party to the proceedings and thus what has been observed by the High Court in second appeal may not be binding on the Panchayat and they have an independent right to take appropriate steps permissible under law in reference to the subject property in question.

Consequently, the appeals fail and are dismissed.

Pending application(s), if any, shall stand disposed of.

.....**J**
(AJAY RASTOGI)

.....**J**
(BELA M. TRIVEDI)

NEW DELHI;
APRIL 26, 2022.

ITEM NO.103

COURT NO.13

SECTION IV

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

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(ORIGINAL RECORD AVAILABLE)

(IA No. 173459/2019 - EXEMPTION FROM FILING O.T., IA No. 173457/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 26-04-2022 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE AJAY RASTOGI
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Appellant(s) Mr. Brijender Chahar, Sr. Adv.
Mr. Shashi Bhushan, Adv.
Mrs. Jyoti Chahar, Adv.
Mr. Karan Chahar, Adv.
Ms. Pooja Chahar, Adv.
Mr. Vinay Garg, AOR

For Respondent(s) Mr. Neelmani Pant, Adv.
Ms. Vidisha Swarup, Adv.
Mrs. Rachna Gupta, AOR

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

Appeals stand dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(POOJA SHARMA)
COURT MASTER (SH)

(BEENA JOLLY)
COURT MASTER (NSH)

(Signed order is placed on the file.)