

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 346 OF 2004

LALITA PRASAD & ORS.

.....

APPELLANTS

VERSUS

GYAN SINGH & ORS.

.....

RESPONDENTS

WITH

CIVIL APPEAL NO. 6199 of 2001

ORDER



JUDGMENT

CIVIL APPEAL NO. 346 OF 2009

We have heard the learned counsel for the parties.

The plaint filed by the appellant has been rejected under Order VII Rule 11 of the Code of Civil Procedure on the ground that no cause of action had been made out. The order of the trial court has been

affirmed by the High Court in First Appeal and thereafter by the Division Bench in a Letters Patent Appeal. The courts below have been influenced by the fact that in a litigation inter se qua the properties in question culminating in a special leave petition in this Court which was also dismissed, it had been found that the Quanoon Mal of Gwalior State would be applicable to the land in question and in that view of the matter, the appellants, being the daughter's sons of the deceased, land owner Roop Chand were not entitled to succeed to the property.

Mr. Shiv Pujan Singh, the learned counsel for the appellant has, however, argued that in the plaint itself it had been averred in the alternative that the land in question would be covered by the Ryotwari Act and, therefore, it was incumbent on the trial court and the other courts to have given a finding as to which of the two Acts that had been referred to in the plaint would be applicable to the matter and that this was a matter for trial.

We find from the order of the trial court that the fact that the dispute would be covered by

the Quanoon Mal of Gwalior State was not disputed by the appellants. This appears to be so because in the earlier litigation referred to above, a finding that the Quanoon Mal of Gwalior State would be applicable to the property in dispute had been affirmed right upto this Court. In this view of the matter, we are of the opinion that no interference is called for. Therefore, the appeal is dismissed.

CIVIL APPEAL NO. 6199 of 2001

Application seeking substitution of the legal representatives of the deceased respondent No. 3 is allowed.

In the light of the fact that we have dismissed the connected Appeal viz. Civil Appeal No. 346 of 2004, we allow the appeal, set aside the order of the High Court dated 12th May, 2009 and remit the matter to the High Court to decide the matter afresh.

There will be no order as to costs.

.....J
[HARJIT SINGH BEDI]

.....J
[J.M. PANCHAL]

SEPTEMBER 10, 2009.

SUPREME COURT OF INDIA



JUDGMENT

SUPREME COURT OF INDIA



JUDGMENT