

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2436 OF 2010

HARI DUTT

Appellant(s)

VERSUS

KAMAL SINGH & ANR.

Respondent(s)

O R D E R

Heard learned counsel for the parties.

This appeal arises from the judgment and order dated 15.06.2009 passed by the High Court of Himachal Pradesh at Shimla in R.S.A. No. 420 of 1998, whereby the Second Appeal preferred by the appellant has been dismissed affirming the decree passed by the First Appellate Court declaring the power of attorney dated 03.09.1986, Ex. DW-5/A and sale deed in favour of appellant dated 01.10.1986, Ex. D-1 as illegal and void being result of fraud and misrepresentation.

The Second Appeal was admitted on the following substantial questions of law:-

"1. Whether the DW-5/A which is a registered document could not be got executed and registered by the plaintiff/respondent in favour of the proforma-respondent merely because the proforma-respondent was in a litigation with him?

2. Whether the power of attorney Ex.DW-5/A and sale deed Ex. D-1 which are registered documents carry the presumption of truth especially when no illegality has been proved by the plaintiff/respondent at the time of the execution and registration of the aforesaid documents?

3. Whether in the absence of any medical certificate/evidence it can be presumed that the plaintiff/respondent was not in a sound disposing mind at the time of the execution of the power of attorney Ex. DW-5/A which is a registered document?"

The High Court after re-appreciating the evidence on record was pleased to uphold the finding of fact recorded by the First Appellate Court and as a result of which answered the three questions formulated by it against the appellant and in favour of the plaintiff.

In the first place, in our considered opinion none of the question formulated by the High Court can be said to be involving substantial question of law within the meaning of Section 100 of Code of Civil Procedure. In any case, the High Court has re-appreciated the evidence on record and affirmed the view taken by the First Appellate Court on the relevant facts. To reassure ourselves, we have perused the pleadings and evidence of the concerned witnesses and have no reason to deviate from the conclusions reached by the First Appellate Court which had commended to the High Court for dismissing the Second Appeal.

As a result, this appeal must fail and the same is dismissed accordingly. No order as to costs.

Pending applications, if any, stand disposed of.

.....J
(A.M. KHANWILKAR)

.....J
(DINESH MAHESHWARI)

New Delhi
August 07, 2019

ITEM NO.101

COURT NO.9

SECTION XIV-A

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

Civil Appeal No(s). 2436/2010

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Date : 07-08-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Appellant(s)

Mr. Rohit Sharma, Adv.
Mr. Rounak Nayak, Adv.
Mr. Atul Aggarwal, Adv.
Mr. Anshul Chowdhary, Adv.
Mr. Abhijat P. Medh, AOR

For Respondent(s)

Mr. E. C. Agrawala, AOR
Ms. Suresh Kumari, Adv.
Mr. Rajesh Srivastava, AORUPON hearing the counsel the Court made the following
O R D E R

The Civil Appeal is dismissed in terms of the signed order.

Pending applications, if any, stand disposed of.

(DEEPAK SINGH)
COURT MASTER (SH)(VIDYA NEGI)
COURT MASTER (NSH)

[Signed order is placed on the file]