

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(s). 31 OF 2016
(Arising out of S.L.P. (C) Nos. 25500 of 2008)

ANAND BIHARI & ANR.

APPELLANT(S)

VERSUS

USHA MISHRA & ANR.

RESPONDENT(S)

O R D E R

Leave granted.

Heard the learned counsel for the parties.

The appellants herein questioned the correctness of the judgment dated 29.01.2008 passed by the High Court of Madhya Pradesh, Bench at Gwalior, in Second Appeal No. 579 of 1999 wherein the judgments and decrees passed by the trial court and the first appellate court are affirmed with certain modification by answering the substantial question of law framed by the High Court in exercise of its appellate jurisdiction.

Having regard to the peculiar facts and circumstances of the case, particularly that during the pendency of the Original Suit proceedings initiated by both the parties upon the suit schedule property, respondent No. 1 herein has constructed a Nursing Home, which is an undisputed fact and is evident from the photographs produced by the appellants herein at page Nos. 202 of the Special Leave Petition Paper Book and further the High Court while recording concurrent

findings on the contentious issues at paragraphs 88 and 90 of the judgment rendered by the First Civil Judge in the Original Suit, it has concurred with the finding of fact stating that during the period of operation of the interim injunction in the pending suit proceedings, respondent No. 1 has constructed the building upon the suit schedule property. The appellants herein are aggrieved of the correctness of the said concurrent finding filed this appeal by special leave, urging various legal contentions.

We do not deem it expedient to advert to the rival contentions, having regard to the concurrent finding of fact recorded by the High Court on the relevant contentious issues and it has concurred with the finding of fact with the trial court and the first appellate court. We do not propose to go into the correctness of the same. Respondent No. 1, during the period of the operation of temporary injunction against her, she has unlawfully constructed the said building. The appellants herein have also allowed the construction by not taking necessary steps at appropriate time by initiating appropriate proceedings against respondent No. 1. More so, it is brought to our notice by both the learned counsel for the parties that the construction of the said building is complete,

therefore, the High Court in the Second Appeal has awarded the compensation to the appellants herein at Rs. 1,00,000/-. Aggrieved of the same, the appellants seek for demolition of the structure of the said building and delivery of possession.

Regard being had to the undisputed fact that a huge building of Nursing Home has already been constructed and the same is being in operation of the respondent, also considering the conduct of the parties that the appellants herein have allowed the construction of the building to take place by not taking necessary steps at an appropriate time by initiating appropriate proceedings, therefore, it would be just and proper for this Court to modify the judgment and decree in this case by directing respondent No. 1 to pay the market value of the property to the appellants. In this regard the learned senior counsel appearing on behalf of the appellants has placed strong reliance upon the market value of the urban land fixed under the relevant provisions of the Stamp Act, the guidelines are framed by the Office of the Collector (District Registrar), Bhind, M.P. fixing the guidance value of both residential and commercial property of the area in question. The learned senior counsel for the appellants insisted to take the market value @ Rs. 33,000 per sq.

mt. as the schedule property is the commercial property. We do not find this argument persuasive for the reason that as on the date of sale of the property in question it was a residential plot. Therefore, it would be just and proper for the appellants herein to take the market value @ Rs. 15,000/- per sq. mt. Having regard to the area i.e. 120 sq. mts. (approx.) x 15000 it would be Rs. 18 lacs. In our opinion, it would be just and proper for this Court to fix the market value of the property on which the building is constructed upon to Rs. 25 lacs.

Having regard to the aforesaid reasons, we modify the impugned judgment and decree by directing respondent No. 1 herein to pay a sum of Rs. 25 lacs to the appellants herein within four months from today.

Needless to mention that immediately after the payment of the aforesaid amount of Rs. 25 lacs by respondent No. 1 towards the encroached portion, which is schedule property, the appellants will execute the conveyance deed in favour of respondent No. 1 at her cost. If respondent No. 1 does not comply with the abovesaid directions, the appellants are entitled to execute the decree for demolition of the building as suit schedule property on the encroached portion.

The appeal is allowed in the aforesaid terms. The impugned judgment stands modified to the extent indicated hereinabove. There shall be no order as to costs.

.....J.
(V. GOPALA GOWDA)

.....J.
(UDAY UMESH LALIT)

NEW DELHI,
JANUARY 5, 2016

ITEM NO.209

COURT NO.10

SECTION IVA

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

Petition(s) for Special Leave to Appeal (C) No(s). 25500/2008

(Arising out of impugned final judgment and order dated 29/01/2008
in SA No. 579/1999 passed by the High Court of M.P. at Gwalior)

ANAND BIHARI & ANR.

Petitioner(s)

VERSUS

USHA MISHRA & ANR.

Respondent(s)

(With appln.(s) for permission to file additional documents,
exemption from filing O.T., permission to file supplementary
additional counter affidavit and interim relief and office report)
(For Final Disposal)

Date : 05/01/2016 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE V. GOPALA GOWDA
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Petitioner(s) Mr. A.K. Chitale, Sr. Adv.
Mr. Sumit Kumar Sharma, Adv.
Mr. Niraj Sharma, Adv.

For Respondent(s) Mr. Anand Sanjay M. Nuli, Adv.
for Mr. Rajesh, Adv.

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

Leave granted.

The appeal is allowed in terms of the signed order.
There shall be no order as to costs.

(S. K. RAKHEJA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)