

â"

ITEM NO.7

COURT NO.3

SECTION IVA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).22353/2008

(From the judgement and order dated 19/06/2008 in RSA No.1107/2005 of The HIGH COURT OF KARNATAKA AT BANGALORE)

MALATI BAI

Petitioner(s)

VERSUS

SHRIKANT & ANR.

Respondent(s)

(With prayer for interim relief and office report)  
(For final disposal)

Date: 02/04/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR JUSTICE KURIAN JOSEPH

For Petitioner(s) Mr.R.S.Hegde, Adv.

For Respondent(s) Mr.Girish Ananthamurthy, Adv.

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

This petition is directed against judgment dated 19.06.2008 of the learned Single Judge of the Karnataka High Court whereby Regular Second Appeal No.1107 of 2005 filed by the petitioner was dismissed and the judgment and decree passed by the Principal Civil Judge (Senior Division), Hubli in R.A.No.109 of 2003 restraining the petitioner from interfering with the respondents' possession over the suit property were upheld.

Respondents filed a suit (OS No.2/2002) for permanent injunction against the petitioner. They pleaded that the petitioner had executed release deed dated 4.5.1994; that they were in possession of the scheduled premises and that the petitioner was trying to dispossess them.

In the written statement filed by her, the petitioner not only controverted the averments contained in the plaint but also filed a counter claim for grant of a declaration that release deed dated 4.5.1994 is null and void and not binding on her.

After considering the pleadings of the parties and evidence produced by them, the trial Court dismissed the suit. The counter claim filed by the petitioner was also dismissed.

On appeal, Principal Civil Judge (Senior Division), Hubli reversed the findings recorded by the trial Court, decreed the suit and restrained the petitioner from interfering with respondents' possession over the suit land.

While admitting the second appeal, the learned Single Judge of the High Court framed the following substantial question of law:

"Whether the findings of the I appellate Court reversing the Judgment and decree passed by the trial Court and decreeing the suit of the plaintiff for permanent injunction despite the finding given by the I appellate Court that documents produced by the defendant showed that he continued in possession till May 2001 when the suit was filed on 1.1.2002 is perverse and arbitrary, being contrary to the material on record?" Call for LCR."

However, after hearing the parties, the learned Single Judge dismissed the second appeal on the ground that the petitioner had not challenged the finding recorded by the trial Court on the validity of the

release deed. The learned Single Judge expressed his agreement with the conclusion recorded by the lower appellate Court that the respondents were in possession of the suit property.

We have heard Shri R.S.Hegde, learned counsel for the petitioner and carefully perused the record. It is not in dispute that the petitioner had filed counter claim seeking declaration of invalidity qua the release deed - Exhibit P-3. It is also not in dispute that the issue framed by the trial Court on the validity of Exhibit P-3 was decided against her and that she did not challenge the same by filing an appeal or cross objection. Therefore, the learned Single Judge did not commit any error by refusing to interfere with the decree passed by the lower appellate Court.

With the above observations, the special leave petition is dismissed.

(Satish K.Yadav)  
Court Master

(Phoolan Wati Arora)  
Court Master