

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 1072 OF 2016

(Arising out of S.L.P. (C) Nos. 24720 of 2011)

JATINDER KHANDUJA ... APPELLANT(S)

VERSUS

JAGDISH KHANDUJA ...RESPONDENT(S)

WITH

S.L.P. (C) NO. 24956/2011

O R D E R

Civil Appeal @ S.L.P. (C) No. 24720/2011

Leave granted.

Heard Mr. D.K. Aggarwal, learned senior counsel appearing on behalf of the appellant-defendant and Mr. Ashok K. Mahajan, learned counsel appearing on behalf of the respondent-plaintiff.

The Regular First Appeal is preferred against the judgment and decree dated 25.04.2008 wherein the trial court decreed the suit of the respondent-plaintiff for possession and mesne profit. The correctness of the same is questioned on various grounds including that the said judgment and decree is rendered without giving opportunity to the appellant-defendant to cross-examine the plaintiff's witnesses or adduce evidence. In this regard the learned counsel for the appellant-defendant has pleaded that he could not participate in the proceedings for

cross-examination of the witnesses of the plaintiff and adduce evidence in support of his claim for the reason that he was unwell. The first appellate court while examining the appeal filed by the appellant-defendant confirmed the judgment and decree of the trial court by assigning reasons that the appellant-defendant has not evinced interest in cross-examining the plaintiff's witnesses and adducing his evidence in support of his claim, therefore, there is no error in the impugned judgment and decree passed by the trial court. The correctness of the same is questioned in this appeal, urging various grounds.

We have gone through the impugned judgment. Having regard to the facts and circumstances of the case, particularly the fact that the respondent-plaintiff is pleading his ownership on the basis of the Gift Deed alleged to have been executed by the father on 10.10.1997 in his favour, which is in dispute between the parties, it would be just and proper for this Court to give an opportunity to the appellant-defendant to cross-examine the plaintiff's witnesses and to adduce evidence in justification of his claim. For this purpose, we find that it is necessary to set aside the impugned judgment(s) and order(s) passed by the High Court as also of the trial court and remit the matter back to the trial court for *de novo* consideration with liberty to the

appellant-defendant to cross-examine the plaintiff's witnesses and to adduce evidence in support of his claim. The trial court is directed that the entire process should be done within six months from the date of receipt of a copy of this order.

We order accordingly.

With the aforesaid observations and directions, the appeal is allowed with no order as to costs.

S.L.P. (C) No. 24956/2011

This special leave petition arises out of the Order dated 25.05.2011 passed by the High Court of Delhi in FAO No. 239/2010 and CM Nos. 11322/2010 and 16246/2010 wherein the liberty was granted to the defendant to file a regular first appeal against the judgment and decree dated 25.04.2008.

In view of the Order passed in the lead matter i.e. Civil Appeal arising out of S.L.P. (C) No. 24720/2011, no order need be passed in this special leave petition.

The special leave petition stands disposed of accordingly.

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

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

NEW DELHI,  
FEBRUARY 8, 2016

ITEM NO.43

COURT NO.10

SECTION XIV

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). 24720/2011

(Arising out of impugned final judgment and order dated 08/07/2011 in RFA No. 323/2011 passed by the High Court of Delhi at New Delhi)

JATINDER KHANDUJA

Petitioner(s)

VERSUS

JAGDISH KHANDUJA

Respondent(s)

(With office report)

(For Final Disposal)

WITH

SLP(C) No. 24956/2011

(With Interim Relief and Office Report)

Date : 08/02/2016 These petition were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA

HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Petitioner(s) Mr. D.K. Aggarwal, Sr. Adv.  
Mr. Rajbit Bainsala, Adv.  
Mr. Sudhir Naagar, Adv.

For Respondent(s) Mr. Ashok K. Mahajan, Adv.

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

S. L.P. (C) No(s). 24720/2011

Leave granted.

The appeal is allowed in terms of the signed order.

S.L.P. (C) No. 24956/2011

This special leave petition arises out of the Order dated 25.05.2011 passed by the High Court of Delhi in FAO No. 239/2010 and CM Nos. 11322/2010 and 16246/2010 wherein the liberty was granted to the defendant to file a regular first appeal against the judgment and decree dated 25.04.2008.

In view of the Order passed in the lead matter i.e. Civil Appeal arising out of S.L.P. (C) No. 24720/2011, no order need be passed in this special leave petition.

The special leave petition stands disposed of accordingly.

(S. K. RAKHEJA)  
COURT MASTER

(MALA KUMARI SHARMA)  
COURT MASTER

(Signed order is placed on the file)