

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 841/2012

ASHALATA PARASHRAM JADHAV

APPELLANT(S)

VERSUS

AVINASH YASHWANTRAO FAGNEKAR & ANR.

RESPONDENT(S)

O R D E R

Heard learned senior counsel/counsel appearing for the appellant and the respondents.

The dispute in this matter relates to certain property admeasuring 185.8 sq.mtr. within the village of Satara in the district of Aurangabad, Maharashtra. Respondent No.2 (Karbhari Digambar Randhe) had instituted a suit, initially for perpetual injunction but subsequently the plaint was amended to include plea for recovery of possession of the said property as well. The Trial Court decreed the suit. The appellant before us unsuccessfully assailed the judgment and decree before the First Appellate Court as also before the High Court in second appeal. Question is raised is over the manner in which the issues were framed in the First Court. It is submitted that issues as were framed at the initial stage primarily related to lawful or settled possession over the suit property but in the judgment of the Trial Court, the issues were re-framed or resettled and the Court proceeded to decide the title of the property.

Mr. Manoj Swarup, learned senior counsel appearing for the

appellant submits that this procedure was impermissible and his client, who was defendant no.2 in the suit did not have the chance to lead evidence on the question of title. Both the First Appellate Court and the High Court had considered this submission but ultimately sustained the judgment and decree. The High Court rightly held that the Court had the power to decide the case by settling the issue on the basis of evidence that had already come on record. This power of jurisdiction is derived from Order 41 Rule 24 of the Code of Civil Procedure, 1908. It has been held in the judgment of the High Court dismissing the second appeal filed by the appellant:-

"6. I have pointed out above that after re-settlement of the issues, the learned Judge of the trial Court did not introduce a new case which was alien and unknown to the parties. Secondly, the parties specially the respondent No.2/plaintiff was fully aware of the burden which laid on him to prove the appellant had sold the suit plot to the respondent No.1.

7. In view of this, on fact the ratio of this judgment would not apply support the appellant. The Court below on the basis of material on record held that respondent No.2/plaintiff has sufficiently proved his title.

8. Mr. S.V. Adwant the learned advocate appearing for the appellant contended that the contents of the sale deed purportedly executed by his client in favour of respondent No.2 are not proved merely by examining the respondent No.2. I am afraid, this argument is devoid of merit because the respondent No.2 has specifically stated on oath that the appellant not only sold the property to him but she has even executed document to that effect in his favour and that original document was produced by him before Court. This evidence is not only proving factum of

execution of the document but also contents of the document.

9. The reliance on the judgment of Supreme Court in the case of 2010 AIR SCW 1900 LIC of India and another vs. Rampal Singh Bisen, para 31 is misplaced and the ratio of the judgment does not apply to this case because as I said above, the respondent No. 1 through the deposition, not only proved the execution of the document but also the contents of the same. No substantial question of law arises in this appeal. "

We do not find any flaw in this reasoning. There was an element of irregularity in resettling the issue by the Trial Court which was reflected in the judgment itself but because of that reason, we do not think the appellant suffered any prejudice. This was not a fatal flaw. All the evidence was before the Court on the strength of which the suit was adjudicated and we do not find any reason to interfere with the finding of the three Courts below.

Accordingly, the present appeal is dismissed.

Pending application(s), if any, shall stand disposed of.

There shall be no order as to costs.

.....J.
[ANIRUDDHA BOSE]

.....J.
[SUDHANSHU DHULIA]

New Delhi;
February 22, 2023.

ITEM NO.107

COURT NO.11

SECTION IX

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

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Date : 22-02-2023 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ANIRUDDHA BOSE
HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Appellant(s) Mr. Manoj Swarup, Sr.Adv.
Mr. Ankit Swarup, Adv.
Mr. Neelmani Pant, Adv.
Mr. Rohit Kumar Singh, AOR

For Respondent(s) Mr. V. N. Raghupathy, AOR
Mr. Atul Babasaheb Dakh, AOR
Mr. Diganta Gogoi, Adv.

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

The appeal is dismissed in terms of the signed order, which is placed on the file.

Pending application(s), if any, shall stand disposed of.

(NIRMALA NEGI)
COURT MASTER (SH)

(VIDYA NEGI)
ASSISTANT REGISTRAR