

CORRECTEDIN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTIONCivil Appeal No.3757/2011GOPAL KRISHNA DEOSTHAN, BHANDARA THR. ITS Appellant(s)
WAHIWATDAR AND ANR

VERSUS

SHANTABAI Respondent(s)

WITH

C.A. No. 3761/2011 AND C.A. No. 3767/2011O R D E R

1. The present appeals arise out of the impugned judgment dated 05.07.2010 passed by the High Court of Judicature at Bombay, Nagpur bench, in Second Appeals No. 483-485 of 2009, whereby the High Court dismissed the second appeal filed by the appellants.

2. The present appellants had filed three different suits in 1982 against the respondents herein for a declaration that the sale deeds dated 03.11.1979, executed by one Nagarao Joshi in the favour of the respondents, were null and void. The trial court, vide common judgment dated 05.01.1996, dismissed the suit of the appellants, both on the ground that the appellants were not able to establish their case on the facts, as well as for non-joinder of necessary parties. On first appeal, the District Court framed two additional issues regarding whether there was any legal necessity for the sale of trust property. Vide judgment dated 09.03.2007, the first appellate court allowed the appeals and decreed the suit by declaring that the impugned sale deeds were null and void, on the ground that there was no material on record to indicate that there was any necessity for the sale, without adverting to the findings of the trial court. However, on second appeal the High Court, vide judgment dated 02.04.2008, set aside the order of the first appellate court and remanded the matter to the first appellate

court for fresh consideration, after giving the parties a chance to modify their pleadings and to lead evidence on the newly framed issue, and to record findings on the questions which were decided by the trial court in the first place.

3. On remand, the first appellate court *vide* judgment dated 22.07.2009 dismissed the appeal filed by the appellants, and upheld the trial court's order dated 05.01.1996 dismissing the suits filed by the appellants. On the newly framed issue of legal necessity, the first appellate court held that the respondents-defendants were able to prove that the sale of the trust properties was required for discharging certain government liabilities and loans. In second appeal, the High Court, *vide* impugned judgment dated 05.07.2010, upheld the findings of the first appellate court and dismissed the second appeal filed by the appellants. The appellants have challenged this judgment of the High Court in the present appeals.

4. The appellants have challenged the judgment passed by the Courts below mainly on the ground that the material placed on record was not properly appreciated, and that the findings arrived at were erroneous. On the other hand, the respondents claimed that the concurrent findings by the Courts below did not merit any interference by this Court in exercise of our powers under Article 136 of the Constitution, particularly as no question of law is involved.

5. Heard the learned counsel appearing for the parties and carefully perused the material available on record.

6. Looking to the submissions made by the appellants herein, it merits pointing out that no question of law; much less a substantial one, was either framed by the High Court, or even advanced by the appellants before us. Instead, the learned counsel on behalf of the appellants attempted to assail the findings of the Courts below by re-agitating the concurrent holdings with respect to questions of fact. It is a settled proposition of law that this

Court, in exercise of its powers under Article 136 of the Constitution, does not usually interfere with concurrent findings of fact. Not only are there three concurrent findings on all the issues raised by the appellants herein, we are also of the opinion that there was no infirmity in the appreciation of evidence by the Courts below.

7. As such, we are not inclined to interfere with the impugned judgment dated 05.07.2010 passed by the High Court of Judicature at Bombay, Nagpur Bench, in Second Appeals No. 483-485 of 2009. Accordingly, the Civil Appeals are dismissed. Pending applications, if any, stand disposed of in the afore-stated terms.

.....J
(N.V. RAMANA)

.....J
(R. SUBHASH REDDY)

.....J
(B.R. GAVAI)

NEW DELHI;
17TH OCTOBER, 2019.

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5. Heard the learned counsel appearing for the parties and carefully perused the material available on record.

6. Looking to the submissions made by the appellants herein, it merits pointing out that no question of law; much less a substantial one, was either framed by the High Court, or even advanced by the appellants before us. Instead, the learned counsel on behalf of the appellants attempted to assail the findings of the Courts below by re-agitating the concurrent holdings with respect to questions of fact. It is a settled proposition of law that this

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(N.V. RAMANA)

.....J
(R. SUBHASH REDDY)

.....J
(B.R. GAVAI)

NEW DELHI;
17TH OCTOBER, 2019.

ITEM NO.107

COURT NO.3

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

Civil Appeal No.3757/2011

GOPAL KRISHNA DEOSTHAN, BHANDARA THR. ITS
WAHIWATDAR AND ANR.

Appellant(s)

VERSUS

SHANTABAI

Respondent(s)

WITH

C.A. No. 3761/2011 (IX)

C.A. No. 3767/2011 (IX)

Date : 17-10-2019 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA
HON'BLE MR. JUSTICE R. SUBHASH REDDY
HON'BLE MR. JUSTICE B.R. GAVAI

For Appellant(s)

Ms. Anagha S. Desai, AOR

For Respondent(s)

Mr. Qurratulain, Adv.
Mr. Brij Kishor Sah, Adv.
Mr. Nicholas Chaudhary, Adv.
Mr. Shivaji M. Jadhav, AOR

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

The Civil Appeals are dismissed in terms of the signed order.

(VISHAL ANAND)
COURT MASTER (SH)

(RAJ RANI NEGI)
ASSISTANT REGISTRAR

(Signed Order is placed on the file)