

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3404 OF 2011

RAJESHWAR MAHTO (D) & ORS.

Appellant(s)

VERSUS

KESHAV MAHTO & ORS.

Respondent(s)

O R D E R

Appellant Nos. 1 and 2 instituted Original Suit claiming to be the owner of 20.5 dismil of land. The Suit was filed seeking decree of declaration. A decree of prohibitory injunction was also sought. The Suit was filed against respondent Nos. 2 and 3 in this appeal. An order of *status quo* was obtained prohibiting the alienation of the given property. It would appear that the defendants (respondent Nos. 2 and 3) alienated the property consisting of one *katha* of land in favour of respondent No. 1 in this appeal. Though partly, the trial court decreed the Suit. In other words, it granted a decree of declaration and injunction in respect of the plaint schedule property except property consisting of one *katha* which stood alienated in favour of respondent No. 1.

In an appeal carried against the said judgment, the First Appellate Court allowed the appeal filed by the

plaintiffs (appellant Nos. 1 and 2) and decreed the suit in its entirety. Against the same, appeals were carried both by respondent No. 1 as also respondent Nos. 2 and 3. Respondent Nos. 2 and 3, it would appear withdrew their appeals. Respondent No. 1, however, persevered with the appeal. It may also be noted that, in fact, respondent No.1 instituted Suit against respondent Nos. 2 and 3 for returning of the money on the basis that respondent Nos. 2 and 3 had assured him of the title in regard to one *katha* of land and in view of the judgment of the first Appellate Court, the Suit was laid for returning the purchase price. The appeal filed by the first respondent came to be allowed, again partly, by the impugned judgment. By the impugned judgment, we notice the following:

“.....In such a situation, the suit of the Plaintiffs to the extent of land transferred in favour of defendant no. 5 could not be decreed and had to be dismissed as was done by the trial court being hit by proviso to Section 34 of the Specific Relief Act.

The question as framed is answered accordingly in favour of defendant no. 5 (Appellant).

In the result, this appeal is allowed to the extent as indicated above.”

We have heard Shri Anish Dayal, learned senior counsel appearing for appellant Nos. 3 and 4 and Shri S. B. Upadhyay, learned senior counsel for respondent No. 1.

It is against the said judgment that the present appeal was filed. It is, thereafter, certain facts need to be noticed.

Shri Dayal points out that the first appellant has passed away in June 2013. He further pointed out that respondent No. 4 is his legal representative. As far as appellant No. 2 (plaintiff No. 2) is concerned, Ms. Anitha Shenoy, the Advocate, who was appearing on behalf of appellants Nos. 1 to 4, came to be designated as Senior Advocate. Thereupon, notice was issued for making alternative arrangement. Appellant No. 2 has remained unserved.

Learned senior counsel appearing for appellant Nos. 3 and 4 would point out that appellant Nos. 3 and 4 have purchased the parcel of land which is part of the plaint schedule property from appellant Nos. 1 and 2 (plaintiff Nos. 1 and 2) on 08.05.1999. More importantly, he would point out that the property purchased by appellant Nos. 3 and 4 is not the property which was sold by the defendants (respondent Nos. 2 and 3) in favour of respondent No.1. In other words, the dispute essentially before the High Court by virtue of the appeal persevered in by the first respondent related only to one *Katha* of land. The property purchased by appellant Nos. 3 and 4 is different from the said property. Shri S. B. Upadhyay, learned senior counsel appearing on behalf of respondent No.1, would also agree that the property purchased by his client (respondent No. 1) from Respondent Nos. 2 and 3 (defendants in suit) is

different from the property which is purchased by appellant Nos. 3 and 4.

We had already noticed the fact that the High Court, by the impugned judgment, has not set aside the entirety of the First Appellate Court's decree. In other words, the High Court has only allowed the appeal and frowned upon the decree to the extent of the Suit being decreed to the extent of land transferred in favour of defendant Nos. 5 who is none other than respondent No. 1 in this appeal.

Having found this aspect as regards appellant Nos. 3 and 4, what remains is as to the course to be adopted in regard to the appeal *qua* appellant Nos. 1 and 2.

We have already noticed that appellant No. 1 passed away in 2013. No efforts have been taken by respondent No.4, who is allegedly the legal representative of appellant No. 1. We notice that respondent No. 4 has already been served. As far as appellant No. 2 is concerned, upon designation of Smt. Anitha Shenoy, the Advocate on Record, though notice was issued for making alternative arrangements, appellant No. 2 remains unserved. In such circumstances, though the question which is raised relates to the legality of refusing the declaratory relief, namely having regard to the events during the course of the Suit viz., the alienation and transfer of possession in favour of a party, whether the Suit could still be maintainable, we do not think we should go into this aspect in view of the fact

that the persons who are actually affected by the impugned decree are not persons before us prosecuting the appeal. In such circumstances, the appeal is essentially dismissed for default of appellant Nos. 1 and 2. The fact is that there is nobody to take forward the litigation who has anything to do with the impugned decree. The appeal is dismissed subject to the observations which we have made *qua* appellant Nos. 3 and 4.

....., J.
[K.M. JOSEPH]

....., J.
[PAMIDIGHANTAM SRI NARASIMHA]

New Delhi;
October 26, 2021.

ITEM NO.102

COURT NO.10

SECTION XVI

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. 3404/2011

RAJESHWAR MAHTO (D) & ORS.

Appellant(s)

VERSUS

KESHAV MAHTO & ORS.

Respondent(s)

(With I.A. NO. 124083/2018 - APPLICATION UNDER ORDER XXII RULE 2 OF THE CPC READ WITH ORDER V RULE 2(3) OF SCR, 2013 FOR HEARING THE APPEAL WITH THE SURVIVING APPELLANTS and IA No. 83586/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 26-10-2021 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.M. JOSEPH

HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Appellant(s)

Mr. Anish Dayal, Sr. Adv.
Mr. Bipin Bihari Singh, Adv.
Ms. Anwasha, Adv.
Mr. Rohit K. Singh, AOR
Mr. Rakesh Kumar Singh, Adv.

For Respondent(s)

Mr. S. B. Upadhyay, Sr. Adv.
Mr. Pawan R. Upadhyay, Adv.
Ms. Sharmila Upadhyay, AOR
Ms. Anisha Upadhyay, Adv.
Mr. Sarvjit Pratap Singh, Adv.
Mr. Gaurav Prakash Pathak, Adv.
Mr. Nishant Kumar, 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.
Pending applications stand disposed of.

(NIDHI AHUJA)
AR-cum-PS

(RENU KAPOOR)
BRANCH OFFICER

[Signed order is placed on the file.]