

ITEM NO.13

COURT NO.10

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 (C) No(s). 5696/2007  
(Arising out of impugned final judgment and order dated 24/02/1999  
in FA No. 6/1993 passed by the High Court Of M.P. at Jabalpur)

VIJAY SOOD & ORS.

Petitioner(s)

VERSUS

KAMLADEVI & ORS. Respondent(s)  
(with appln. (s) for c/delay in filing SLP and  
clarification/direction and exemption from filing O.T. and office  
report)(FOR FINAL DISPOSAL)

WITH

SLP(C) No. 36519-36520/2009  
(With Office Report)

Date : 15/07/2014 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI  
HON'BLE MR. JUSTICE M.Y. EQBAL

For Petitioner(s)

SLP(C)5696/07 & rr in  
SLP(C) 36519-20/09

Mr. Nidhesh Gupta, Sr. Adv.  
Ms. Pragati Neekhara, Adv.  
Mr. Abhishek Kumar Jha, Adv.

SLP(C) 36519-20/09 & rr Mr.  
in SLP(C)5696/07

Mr. Sushil Kumar Jain, Sr.Adv.  
Mr. Puneet Jain, Adv.  
Ms. Khushbu Jain, Adv.  
Ms. Chhaya Kirti, Adv.  
Ms. Ankita Gupta, Adv.  
Ms. Pratibha Jain, Adv.

For Respondent(s)

Mr. Sarad Kumar Singhania, Adv.  
Mr. Niraj Sharma, Adv.

Signature Not Verified

Digitally signed by  
Vinod Lakhina  
Date: 2014.07.19  
11:00:32 IST  
Reason:

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

SPECIAL LEAVE PETITION (CIVIL) NO.5696 OF 2007

Delay condoned.

Leave granted.

The appeal is dismissed in terms of the

signed order. No costs.

SPECIAL LEAVE PETITION (CIVIL) NO.36519-36520 OF  
2009

In view of the order passed in Civil  
Appeal arising out of Special Leave Petition  
(Civil) No.5696 of 2007, no separate order is  
required in the Special Leave Petition (Civil)  
Nos.36519-36520 of 2009. Accordingly, the  
Special Leave Petitions are disposed of.  
However, the learned trial Court is directed to  
decide the suit pending before it expeditiously.

[VINOD LAKHINA]  
COURT MASTER

[SNEH LATA SHARMA]  
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]  
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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6548 OF 2014

[Arising out of Special Leave Petition (Civil)  
No.5696 of 2007]

VIJAY SOOD & ORS.

...APPELLANTS

VERSUS

KAMLADEVI & ORS.

...RESPONDENTS

WITH  
SLP(C) NO.36519-36520 OF 2009  
[KANAK DEVI VS. VIJAY SOOD & ORS.]

ORDER

SPECIAL LEAVE PETITION (CIVIL) NO.5696 OF 2007

Delay condoned.

Leave granted.

The decree of dismissal of the suit having  
been affirmed by the High Court of Madhya

Pradesh, Jabalpur, Bench at Gwalior in Regular First Appeal No. 6 of 1993, the legal heirs of original plaintiff - Jainarayan have filed this appeal.

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The suit of the plaintiff was for declaration of title and injunction. Title was claimed on the basis of a partition, which was recorded in writing by means of a deed exhibited as Exhibit P-2. According to the plaintiff, his father Durgaprasad, he himself and his brother Satyanarayan, the first defendant, had executed the aforesaid partition deed As, by a public notice, the fifth defendant had made his intentions of purchasing the suit property from the first defendant, the suit was filed claiming the reliefs already noticed.

The defendant No.1 - Satyanarayan denied the partition claiming half share in the property which, according to him, was ancestral property. The defendant No.1's further case was that it is his half share which was sold by him to the fifth defendant.

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Learned VIIIth Additional District Judge to the District Judge, Gwalior dismissed the suit by holding that the execution of Exhibit P-2 was not proved by the plaintiff. In this regard, the learned trial Court refused to accept the document introduced by the defendant No.1 as Exhibit D-7 for comparison of the signature of Durgaprasad (father of plaintiff and defendant

No.1) appearing in the said Exhibit D-7 with the signature of Durgaprasad appearing in Exhibit P-2. Thereafter, the learned trial Court came to the conclusion that the plaintiff had failed to prove the signatures of Durgaprasad on Exhibit P-2. It is on the aforesaid basis that the suit was dismissed.

Aggrieved, the plaintiff filed Regular First Appeal No. 6 of 1993 before the High Court. The High Court took into account the signatures of Durgaprasad appearing in Exhibit D-7 and relying on the report of the Handwriting Expert and also on a visual comparison of the signatures

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of the Durgaprasad appearing in the two documents i.e. Exhibit P-2 and Exhibit D-7 came to the conclusion that the signatures on Exhibit P-2 are not of Durgaprasad. The High Court also took

note of the fact that while in Exhibit P-2 it is mentioned that two sons-in-law of Durgaprasad had signed as witnesses, the document does not bear their signatures. Another additional fact that

was taken note of by the High Court is that on the basis of Exhibit P-2, mutation entry in the municipal record was not effected by the plaintiff and the name of Durgaprasad continues to appear in the said municipal records. The

High Court however held that the defendant No.5 being the purchaser of the property unless a suit for partition is filed and the property is partitioned, the said defendant cannot remain in possession. Accordingly, the defendant No.5 was directed to hand over possession to the plaintiff

pending the decision in the suit that may be filed by him for partition. Such a suit, in fact, has been filed by the defendant No.5 which is presently pending.

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Mr. Nidhesh Gupta, learned Senior Counsel appearing for the appellants has urged that when Exhibit D-7 was rejected by the learned trial Court, the High Court has committed an apparent error in relying on the said document for the purposes of comparison of the signatures of Durgaprasad appearing therein with the signatures appearing in Exhibit P-2. Learned counsel has also urged that the High Court did not consider the oral evidence adduced by the plaintiff's witnesses to the effect that Exhibit P-2 merely recorded an oral partition of the suit property arrived at earlier.

A reading of the order of the learned trial Court indicates that the fault that was found with Exhibit D-7 was not with regard to the signatures of Durgaprasad but with regard to the fact that he could not have been a witness to the said document as recorded and that his signatures therein appears to be a subsequent one. If that be so, it was open for the High Court to rely on

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the document for the limited purpose of comparison of the signatures of Durgaprasad appearing therein with the signatures appearing in Exhibit P-2. The non-consideration of the oral evidence of the plaintiff's witnesses, if

any, in our considered view, is of no consequence inasmuch as admittedly Exhibit P-2 records what was orally agreed and in between an oral agreement and the written document, it is the written document which has to prevail. That apart, the other two aspects of the case considered by the High Court, namely, the absence of signatures of the two sons-in-law of Durgaprasad in Exhibit P-2 and the continuance of the name of Durgaprasad in the municipal records are too significant to be ignored.

For the aforesaid reasons, we are of the view that the order of the High Court does not suffer from any illegality which would require correction in the present appeal. Consequently, the appeal is dismissed. No costs.

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SPECIAL LEAVE PETITION (CIVIL) NO.36519-36520 OF 2009

In view of the order passed in Civil Appeal arising out of Special Leave Petition (Civil) No.5696 of 2007, no separate order is required in the Special Leave Petition (Civil) Nos.36519-36520 of 2009. Accordingly, the Special Leave Petitions are disposed of. However, the learned trial Court is directed to decide the suit pending before it expeditiously.

.....,J.  
(RANJAN GOGOI)

.....,J.  
(M.Y. EQBAL)

NEW DELHI  
JULY 15, 2014