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**(2000) 02 SC CK 0088**

**In the Supreme Court Of India**

**Case No : Civil Appeal No. 3848 of 1988**

Kaluram

APPELLANT

Vs

Shrinathdas and Others

RESPONDENT

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**Date of Decision : 09-02-2000**

**Acts Referred:**

**Citation :** (2000) 5 JT 490 : (2000) 3 MLJ 168 : (2000) 3 SCC 576

**Hon'ble Judges :** M. B. Shah, J;B. N. Kirpal, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

B.N. Kirpal, J.—This is an appeal by special leave from the judgment of the High Court who reversed the concurrent finding of fact arrived at by the trial court and the lower appellate Court and held that the appellant has not been able to prove its title to the suit land.

2. The case of the appellant was that his father had purchased land bearing Khata No. 42 in Survey No. 1019 measuring 16 biswas in village Chhapikheda in the year 1954. When the Gram Panchayat claimed rent from the appellant's father he filed a civil suit No. 7-A/65 in the court of Civil Judge Khilhipur for declaration of his title and injunction against the Gram Panchayat. In the said suit Chunilal, the father of the appellant, claimed title to the land in question whereas the case of the Gram Panchayat was that the land had been leased to Chunilal at Rs. 2.50 per month in the year 1961. During the pendency of the suit Chunilal died in September 1967 and the appellant who claimed title to the land was impleaded as the party in the said suit.

3. The trial court on the basis of the evidence led before it decreed the suit for permanent injunction and declared the appellant as being the owner of the land in question. The Gram Panchayat then filed Appeal No. 36-A/68 but vide judgment dated 4th March, 1971, the Additional District Judge, Rajgarh affirmed the decree of the trial court.

4. In the year 1962 it is alleged that Prabhulal respondent No. 3 herein encroached upon the land in question and started construction. When notice was given by the appellant for removal of the encroachment the said Prabhulal transferred the land to respondent Nos. 1 and 2. When encroachment was not removed the appellant filed a civil suit No. 37-A/71 in the court of Civil Judge, Class II Khilchipur for determination of title and possession.

5. The aforesaid civil suit was decreed in favour of the appellant by the trial court on 5th March, 1974. The appeal filed by respondent Nos. 1 and 2 against the said decision met with no success and the Additional District Judge dismissed the appeal on 7th April, 1975.

6. Respondents then filed a second appeal to the High Court. The High Court went into the evidence which had been led before the trial court and after examining the evidence came to the conclusion that the appellant had not been able to establish his title to the land in question.

7. In our opinion the High Court's judgment cannot be upheld for two reasons : firstly, the High Court has not formulated any question of law when it entertained the second appeal from the judgment of the Additional District Judge. That apart no question of law arise in the present case. The question was to see the owner of the land in dispute. The concurrent finding of facts arrived at by the trial court and the lower appellate court was that the land did not belong to the Gram Panchayat but it was owned by the appellant herein. The High Court, therefore, had no jurisdiction, in view of the evidence of the trial court, to come to the conclusion that the appellant had not been established his title to the land in question.

8. Even on merits we find that as far as respondent is concerned, in his evidence DW 1, he has stated that the land belonged to the Gram Panchayat which was being occupied by him. Respondent Nos. 1 and 2, therefore, did not claim any title to the land and their case was that the land belonged to the Gram Panchayat. In the earlier litigation between the Gram Panchayat and the appellant the final decision was that the land belonged to the appellant and not to the Gram Panchayat. It is true the respondent was not impleaded as a party in the earlier suit but it was not necessary to do so because no relief was claimed against the respondents herein and all that the appellant wanted to do was to establish his title to the land in question. When the court of competent jurisdiction having found that the Gram Panchayat was not the owner of the land in question and the said land, in fact, belonged to the appellant herein the High Court fell in error in holding that the appellant herein had not been able to establish a title superior to that of the appellant. The judgment of the High Court is, therefore, liable to be set aside.

9. For the aforesaid reasons the appeal is allowed and the judgment of the High Court is set aside and the decree passed by the trial court and that of the lower appellate court is confirmed, No costs.