

(2015) 03 SC CK 0154

In the Supreme Court Of India

Case No : Civil Appeal No. 3305 of 2015 (Arising out of Special Leave Petition (Civil) No. 34832 of 2014), Civil Appeal No. 3304 of 2015 (Arising out of Special Leave Petition (Civil) No. 10271 of 2015) and (CC 21588 of 2014)

Swami Ram Niwas Sanehi

APPELLANT

Vs

Swami Ram Vinod and Others

RESPONDENT

Date of Decision : 16-03-2015

Acts Referred:

Citation : (2015) 5 ALD 133 : (2015) 3 AWC 2896 : (2015) 4 SCALE 652

Hon'ble Judges : Anil R. Dave, J; Shiva Kirti Singh, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Anil R. Dave, J.

CIVIL APPEAL No. 3305 of 2015 [@SLP (C) No. 34832 of 2014] 1. Leave granted.

2. Heard Mr. K.V. Vishwanathan, learned senior Counsel appearing for the Appellant, Dr. Sushil Balwada, learned Counsel appearing for Respondent No. 1 and Mr. H.D. Thanvi, learned Counsel appearing for Respondent No. 2.

3. Being aggrieved by the judgment dated 25th September, 2014, delivered by the High Court of Uttarakhand at Nainital in Second Appeal No. 62 of 2006, this appeal has been filed by original Defendant No. 1.

4. The short question with which we are concerned at this stage is whether Will dated 8th December, 1993 or Will dated 14th December, 1993, executed by late Swami Ram Kishore is valid.

5. Several contentions had been raised by the learned Counsel appearing for the Appellant, but the most important one was with regard to execution of a Will. Late Swami Ram Kishore had executed two Wills. One was executed on 8th December, 1993, whereas the second was executed on 14th December, 1993.

6. The trial Court held that execution of Will dated 8th December, 1993, under which the Plaintiff was claiming his right, could not be established and therefore, the suit praying for permanent injunction was dismissed.

7. Being aggrieved by the dismissal of the suit, the Plaintiff, present Respondent No. 1, had filed the First Appeal, which had been allowed and thereby the suit was decreed.

8. Being aggrieved by the judgment delivered in the First Appeal, original Defendant No. 1 filed Second Appeal No. 62 of 2006 in the High Court of Uttarakhand at Nainital, which has been dismissed by the impugned judgment dated 25.9.2014.

9. What is most important is that while deciding the Second Appeal, the High Court has observed that Will dated 14th December, 1993 was not genuine and one of the most important reasons stated was that the original Will dated 14th December, 1993 had not been exhibited.

10. According to the learned Counsel appearing for the Appellant, the aforesaid observation, on the basis of which the Second Appeal was decided by the High Court, was factually incorrect and therefore, the Second Appeal ought not to have been dismissed. Several other contentions had also been raised for challenging the validity of the judgment delivered by the High Court in the Second Appeal.

11. The learned Counsel appearing for the Respondents could not dispute the fact that the original Will dated 14th December, 1993 was, in fact, exhibited before the trial Court.

12. As stated hereinabove, upon perusal of the record annexed to the memo of appeal, we find that, in fact, original Will dated 14th December, 1993 had been exhibited. The trial Court has observed that the original Will dated 14th December, 1993 had been exhibited and we also find that an application was made by Defendant No. 1 for return of the original Will as the same was required in the probate proceedings.

13. On this short ground that incorrect facts were taken into account while deciding the Second Appeal and on that basis the High Court dismissed the Second Appeal, we do not think it necessary to go into other aspects of the matter. We did not ask the Appellant to file a Review Application because, in our opinion, there are other arguable points also which should have been considered by the High Court and therefore, the High Court is directed to hear the Second Appeal afresh.

14. In the aforesaid circumstances, we set aside the impugned judgment delivered by the High Court in the Second Appeal and remand the matter to the High Court. The appeal shall be heard at an early date, preferably within six months from the date of receipt of intimation of this order to the High Court.

15. The appeal is accordingly disposed of as allowed with no order as to costs.

CIVIL APPEAL No. 3304 of 2015 [@SLP (C) No. 10271 of 2015] (CC 21588 of 2014)

16. Delay condoned.

17. Leave granted.

18. Heard Mr. K.V. Vishwanathan, learned senior Counsel appearing for the Appellant, Dr. Sushil Balwada, learned Counsel appearing for Respondent No. 1 and Mr. H.D. Thanvi, learned Counsel appearing for Respondent No. 2.

19. With the consent of the learned Counsel, this appeal is taken up for hearing today. We have noted that the Civil Appeal No. 3305 of 2015 [@ SLP (C) 34832 of 2014] challenging the judgment delivered in Second Appeal No. 62 of 2006 has been allowed, whereby the said judgment has been set aside and the matter has been remanded to the High Court.

20. Looking at the facts of this case, we are of the view that CLMA No. 8704 of 2014 filed in the second appeal decided on 14.08.2014 should also be heard along with Second Appeal No. 62 of 2006, and therefore, we set aside the order in CLMA No. 8704 of 2014 in Second Appeal No. 62 of 2006.

21. The application filed under Order 41 Rule 27 shall also be heard along with the second appeal being Second Appeal No. 62 of 2006 and shall be decided in accordance with law.

22. The Civil Appeal is disposed of as allowed with no order as to costs.