

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 136-137/2018  
(Arising out of SLP(C) Nos. 13467-68/2011)

Ghan Shyam Das

Appellant

VERSUS

Chand Behari & Ors.

Respondents

O R D E R

Delay condoned.

Leave granted.

The present appeals assail the judgement and order dated 20.2.2008 passed by the High Court of Judicature for Rajasthan at Jaipur, which has held as follows:-

"13. So far as the other portion of the house is concerned, by a separate judgement in S.B. Civil First Appeal No. 144/1986, the appeal of the defendant No. 1 has already been allowed and the judgement and decree of the trial Court has been reversed and suit of the plaintiffs has been dismissed. So far as the appeal is concerned, after appreciating the evidence on record in that case, this Court has found that the plaintiffs had waived their right by their conduct and they had failed to prove their case. However, so far as the present case is concerned, the defendants have resorted to falsehood, created false documentary evidence in the form of consent given by the plaintiffs i.e. the letter Ex. A/4 and the subsequent conduct regarding execution of gift deed after filing of the suit. In the present case, considering the evidence on record, it can be said that the plaintiffs had financial resources available with them and it cannot be said that they ever waived their right in connection with the purchase of the house in question. As against that, the evidence of the defendants is not at all believable and

trustworthy. Even otherwise, by subsequent transaction the right of the plaintiffs cannot be denied. Considering the said aspect, the trial Court has rightly passed the decree in favour of the plaintiffs."

The present appeals also challenge the order dated 8.3.2011, whereby the judgement and order aforementioned was reviewed, and dismissed by the High Court.

Today, in a special leave petition arising from the same property where the issue of right of pre-emption was considered, we have declined to interfere. There cannot be two different kinds of orders by this Court.

In view of the aforesaid, the present appeals have to be allowed. The judgement and order dated 20.2.2008 passed by the High Court as reviewed by it vide order dated 8.3.2011, confirming the judgement and decree of the trial Court, dated 11.4.2001, deserves to be set aside, and accordingly we so direct.

Resultantly, the appeals stand allowed with no order as to costs.

.....CJI.  
[Dipak Misra]

.....J.  
[A.M. Khanwilkar]

.....J.  
[Dr. D.Y. Chandrachud]

New Delhi;  
January 10, 2018.

ITEM NO.38

COURT NO.1

SECTION XV

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

Petition for Special Leave to Appeal (C) No. 29811/2009

(Arising out of impugned final judgment and order dated 20-02-2008 in SBCRA No. 144/1986 passed by the High Court Of Judicature For Rajasthan At Jaipur)

CHAND BIHARI & ORS.

Petitioners

VERSUS

GHANSHYAM & ANR.

Respondents

(FOR CONDONATION OF DELAY IN FILING ON IA 1/2008)

WITH

SLP(C) No. 13467-13468/2011 (XV)

(FOR STAY APPLICATION ON IA 2/2011 and FOR CONDONATION OF DELAY IN FILING ON IA 1/2011)

Date : 10-01-2018 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE A.M. KHANWILKAR  
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioners

SLP 29811/2009

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Ms. Heena Khan, Adv.  
Mr. Vishwajeet Singh, Adv.  
Mr. T. Gopal, Adv.  
Ms. Wimbie S., Adv.  
Ms. Vaiduriti Mishra, Adv.

SLP 13467-68/2011

Mr. Puneet Jain, Adv.  
Ms. Christi Jain, Adv.  
Mr. Abhinav Gupta, Adv.  
Ms. Ankita Gupta, Adv.  
Ms. Priyal Jain, Adv.  
Mr. Harsh Jain, Adv.  
Ms. Pratibha Jain, AOR

For Respondents

SLP 13467-68/2011

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SLP 29811/2009

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Mr. Abhinav Gupta, Adv.  
Ms. Ankita Gupta, Adv.  
Ms. Priyal Jain, Adv.  
Mr. Harsh Jain, Adv.  
Ms. Pratibha Jain, AOR

Mr. Sarad Kumar Singhanian, AOR

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

SLP (C) No. 29811/2009

Heard learned counsel for the petitioner.

Delay condoned.

The special leave petition is dismissed.

Pending interlocutory applications, if any, stand disposed of.

SLP(C) No. 13467-13468/2011

Delay condoned.

Leave granted.

The appeals are allowed in terms of the signed order.

Pending interlocutory applications, if any, stand disposed of.

(Deepak Guglani)  
Court Master

(H.S. Parasher)  
Assistant Registrar

(Signed order is placed on the file)