

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 16927 OF 2017

(Arising out of S.L.P. (C) No. 2601/2017)

PUSHKAR DUTT JOSHI

Petitioner(s)

VERSUS

NIRANJAN LAL JOSHI

Respondent(s)

WITH

CIVIL APPEAL NO. 16928 OF 2017

(Arising out of S.L.P. (C) No. 4316/2017)

O R D E R

- 1) Leave granted.
- 2) Heard the learned counsel appearing for the parties.
- 3) The parties are brothers. The respondent filed a Civil Suit for possession against his brother on 08.05.1996. By an order dated 31.07.2000, the Additional District Judge admitted into evidence two documents, which would decide the rights of the parties, namely, a document dated 18.01.1984 and the Family Settlement dated 07.08.1989. On 21.04.2006, the trial Court dismissed the suit, *inter alia*, on the ground that the document dated 18.01.1984 was not a forged one and as that document recited that the money for purchasing the property in question came from both the brothers, one brother could not be given exclusive possession.
- 4) A First Appeal against the judgment of the Additional District Judge was allowed by the Rajasthan High Court in which it was, *inter alia*, held that the 18.01.1984 document was fabricated, and that the plaintiff's admissions made in an eviction suit that the

property actually belonged to his brother could not be looked at inasmuch as they were made only for the purpose of that eviction suit, and the suit was therefore, decreed and the appeal allowed. A review that was filed against the aforesaid judgment was based, *inter alia*, on an FSL report dated 25.02.2013 by the Rajasthan State Forensic Science Laboratory, Jaipur which report concluded that the document dated 18.01.1984 was indeed genuine. The High Court refused to look into the said report on the ground that it arose after the main matter has been allowed, and that given the restricted powers in the review jurisdiction, there is no error apparent. The review was rejected.

5) Since the case revolves around whether the document dated 18.01.1984 is or is not genuine, we are of the view that the FSL Report should also be taken into account, and the respondent before us should be given an opportunity to file objections in respect of the same.

6) We therefore, set aside the judgment dated 24.01.2013 and the review judgment dated 10.01.2017 and restore the First Appeal to the file. It will be open to both the parties to argue all points that arise in the matter.

7) The appeals are allowed in the afore-stated terms.

..... J.
(ROHINTON FALI NARIMAN)

..... J.
(SANJAY KISHAN KAUL)

New Delhi;
October 23, 2017.

ITEM NO.53

COURT NO.12

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(s) for Special Leave to Appeal (C) No(s). 2601/2017

(Arising out of impugned final judgment and order dated 10-01-2017 in SBCRP No. 20/2013 10-01-2017 in SBCFA No. 316/2006 passed by the High Court Of Judicature For Rajasthan At Jaipur)

PUSHKAR DUTT JOSHI

Petitioner(s)

VERSUS

NIRANJAN LAL JOSHI

Respondent(s)

WITH

SLP(C) No. 4316/2017 (XV)

Date : 23-10-2017 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Petitioner(s) Mr. R. Anand Padmanabhan, Adv.
Romil Pathak, Adv.
Ananya Mukharjee, Adv.
Shashi Bhushan Kumar, AOR

For Respondent(s) Mr. T.S. Chaudhary, Adv.
Mr. Gopal Singh Chauhan, Adv.
Mr. Harish Tandon, Adv.
Mr. Abhishek Tandon, Adv.
Mr. Deepak Goel, AOR

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

Leave granted.

The appeals are allowed in terms of the signed order.

Pending applications, if any, stand disposed of.

(R. NATARAJAN)
COURT MASTER

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed order is placed on the file)