

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 11058 OF 2017

(Arising out of S.L.P. (Civil) No.31984 of 2015)

MADHAVI .. APPELLANT(S)

Versus

CHOBE RAM & ORS. .. RESPONDENT(S)

O R D E R

1. Leave granted.
2. It appears that a suit was filed by the appellant in which the appellant prayed for possession of a house which was to be constructed by the respondents of which possession was never given and for *mesne profit* thereof. The trial court dismissed the suit. However, the first appellate court, after referring to an affidavit dated 17th May, 1995 came to the conclusion that the said affidavit was proved in accordance with law and, therefore, taken on record in which in an other proceeding the defendant has made an admission that the plaintiff is the owner of the suit property. In these circumstances, the first appellate court allowed the appeal. The High Court in Second Appeal framed the following question of law:

"1.Whether document/affidavit Ext.PW-7/A could not have been read in evidence by the learned first appellate Court as the same was not pleaded and proved in accordance with law which vitiated the findings arrived at by the learned first appellate Court?"

3. The High Court then went to hold that the trial court

was correct and not the first appellate court inasmuch as the affidavit was not pleaded in the plaint.

4. The High Court in Second Appeal is obviously in error. Inasmuch the plaint never refers to evidence but is only concerned with stating material facts. The learned Single Judge has allowed the Second Appeal on a ground which is not statable in law. We have perused the affidavit ourselves which clearly admits that the complainant is the owner of the property and he filed the affidavit, in compromise, in an other litigation between the defendant and a third party.

5. However, the learned counsel for the respondents has argued that the appellant before us is the purchaser who has not appeared in the courts below. It is obvious that the purchaser of the property is directly aggrieved by the said judgment. We, therefore, do not countenance such a plea. As the High Court is wholly incorrect in setting aside the well-reasoned first appellate court's order, the said order is set aside.

6. The appeal is allowed accordingly.

.....J.
[ROHINTON FALI NARIMAN]

.....J.
[SANJAY KISHAN KAUL]

NEW DELHI,
AUGUST 28, 2017.

ITEM NO.49

COURT NO.12

SECTION XIV

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). 31984/2015

(Arising out of impugned final judgment and order dated 06-05-2015 in RSA No. 347/2003 passed by the High Court of Himachal Pradesh at Shimla)

MADHAVI

Petitioner(s)

VERSUS

CHOBE RAM & ORS.

Respondent(s)

Date : 28-08-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Petitioner(s) Mr. S.S. Shamsbery, Adv.
Ms. Babita Yadav, Adv.
Mr. Amit Sharma, Adv.
Mr. R. C. Kohli, AOR

For Respondent(s) Mr. Onkar Prasad, Adv.
Mr. Anurag Pandey, AOR
Mr. R.S. Dalal, Adv.

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

Leave granted.

The appeal is allowed in terms of the signed order.

(USHA RANI BHARDWAJ)
AR CUM PS

(SAROJ KUMARI GAUR)
BRANCH OFFICER

Signed order is placed on the file.