

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).11059 OF 2017

[@Special Leave Petition (C) NO(S)34406 of 2010]

KESHAV & ORS.

Petitioner(s)

VERSUS

GIAN CHAND & ORS.

Respondent(s)

O R D E R

Heard the learned counsel for the parties.

Leave granted.

The appeal has been preferred by the defendant aggrieved by the reversal of the judgment and decree of the two courts below by the High Court. Plaintiffs-respondents filed the suit with respect to the disputed land on the basis of a Gift Deed dated 23.12.1985, executed by Smt. Hardei, which was registered on 1.1.1986 and possession of the land was delivered by her to the plaintiffs. As such, they became the owners of the land.

Defendant No. 1, in connivance with Defendant Nos. 2 to 6, obtained the mutation in their names in the revenue records. The defendants have no right, title or interest, as the suit was filed for declaration of title and for issuance of permanent injunction and set aside the order of mutation. The defendants contested the suit relied on the factum of gift and that their names have been rightly mutated. The suit was not maintainable. Suit was barred by limitation. Alternatively, plea of adverse possession was

also taken.

The Trial Court after elaborate consideration of the evidence and for the reasons employed in detail, dismissed the suit, which had been affirmed by the First Appellate Court. However, during the course of second appeal, the High Court has framed the following substantial question of law.

"Whether the courts below have mis-read and mis-interpreted the documentary as well as oral evidence resulting in gross mis-carriage of justice?"

The High Court has given the finding that the possession had not been handed over at the time of Gift Deed. The High Court has not considered the evidence and also the reasoning employed by the Trial Court and First Appellate Court and has reversed the judgment and decree.

After hearing the learned counsel for the parties, we are of the considered opinion that the findings on facts recorded by Trial Court and First Appellate Court are entitled to be interfered with only if they are perverse or some gross illegality has been committed in arriving at the findings. The High Court has reversed the judgment and decree of the two courts below without coming to the close quarters of the reasoning employed by them while reversing the judgment and decree. It was necessary for the High Court not only to assess the evidence but also to deal with

reasons employed by the two courts below and accord specific reason for dissent while decreeing the suit and only in case findings were found to be perverse, only then reversal of findings could have been made. Apart from that, we find that substantial question which was framed was also not proper. In case the High Court wanted to go into the question of Gift Deed, it ought to have framed proper substantial question of law in that regard. The substantial question of law framed was vague. Thus, we have no hesitation to set aside the judgment and order passed by the High Court.

We, therefore, remit the matter back to the High Court. Let appeal be heard afresh and decided after framing appropriate substantial question of law and hearing the parties afresh. It is made clear that we have not commented on the merits of the case.

The appeal is allowed to the aforesaid extent.

No costs.

Mr. S. Mahendran, learned counsel had also assisted this Court as Amicus Curiae. Let appropriate Certificate be issued to him.

.....J
(ARUN MISHRA)

.....J
(MOHAN M. SHANTANAGOUDAR)

NEW DELHI;
AUGUST 28, 2017

ITEM NO.3

COURT NO.10

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).34406/2010

(Arising out of impugned final judgment and order dated 14-06-2010 in RSA No. 236/1999 passed by the High Court Of Himachal Pradesh At Shimla)

KESHAV & ORS.

Petitioner(s)

VERSUS

GIAN CHAND & ORS.

Respondent(s)

(MEDIATION REPORT HAS BEEN RECEIVED)

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

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Petitioner(s) Mr. Ravi Bakshi, Adv.
Mr. Sudhir Mathur, Adv.
Mr. Yash Pal Dhingra, AOR
Mr. S. Mahendran, AOR

For Respondent(s) Mr. E. C. Agrawala, AOR
Ms. Meenakshi Kalra, 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.

Mr. S. Mahendran, learned counsel had also assisted
this Court as Amicus Curiae. Let appropriate Certificate be
issued to him.

(B. PARVATHI)
COURT MASTER (SH)

(TAPAN KUMAR CHAKRABORTY)
BRANCH OFFICER

(Signed order is placed on the file)