

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7288 OF 2019
(Arising out of SLP (C)No. 3442 of 2017)

CHAMALI DEAD THROUGH LRS. & ORS. Appellant(s)

VERSUS

JAI NARAIN DEAD THROUGH LRS. & ORS. Respondent(s)

WITH

CIVIL APPEAL NO. 7289/2019
(Arising out of SLP (C)No. 3439 of 2017)

CIVIL APPEAL NO. 7290/2019
(Arising out of SLP (C)No. 3247 of 2017)

O R D E R

Leave granted.

These cross appeals take exception to the judgment and order dated 10.02.2016, of the High Court of Punjab and Haryana at Chandigarh in R.S.A. No. 3125 of 1985 (O & M), whereby the Second Appeal was allowed setting aside the Appellate Court judgment in Civil Appeal No. 60 of 2013 passed by the District Judge, Gurgaon.

At the time of admission of Second Appeal, the Court had framed two questions vide order dated 11.11.2013, which read thus:-

"i) Whether the alleged decree in favour of the plaintiffs secured in the presence of their father defeat the right of the defendant, who claimed a right to the property as a heir to the father by treating the property as falling to the estate of father remaining undisposed?

ii) Whether the property was joint family property in which the defendant had a share and the father could not have therefore lawfully consented to a decree being passed in favour of the plaintiff without the defendant being made a party to the suit?

However, the judgment under challenge makes no attempt to adjudicate those two questions already framed by the Court. Moreover, the principle on which the final order has been passed by the High Court is also unintelligible.

Suffice it to observe that the First Appellate Court had dealt with the legal position about the efficacy of the decree qua the family members who are not parties to the suit and which was the ground for challenge at their instance being non binding on them. The First Appellate Court had accepted their challenge. However, no reason whatsoever has been assigned by the High Court for overturning that conclusion reached by the First Appellate Court except to say that those persons did not challenge the decree. This observation, in our opinion, is not consistent with the settled legal position in Gram Panchayat of Village Naulakha Vs. Ujagar Singh & Ors.¹.

Resultantly, we set aside the impugned judgment and relegate the parties before the High Court for afresh consideration of Second Appeal on its own merits in accordance with law. We hope and trust that the High Court will consider the arguments of both sides in reference to substantial questions of law framed on the earlier occasion. All contentions available to the parties in that regard are left open.

We once again make it clear that all contentions available to both sides will have to be considered on their own merits and in accordance with law uninfluenced by any observation in the

impugned judgment, which is set aside in terms of this order.

The appeals are disposed of accordingly.

The parties to appear before the High Court on 15.10.2019. We request the High Court to expeditiously dispose of the Second Appeal.

Pending applications, if any, stand disposed of.

.....J
(A.M. KHANWILKAR)

.....J
(DINESH MAHESHWARI)

New Delhi
September 16, 2019

REVISÉ
 ITEM NO.36 COURT NO.8 SECTION IV

S U P R E M E C O U R T O F I N D I A
 RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 3442/2017

CHAMALI DEAD THROUGH LRS. & ORS. Appellant(s)

VERSUS

JAI NARAIN DEAD THROUGH LRS. Respondent(s)

(IA No. 30/2016 - APPLICATION FOR SUBSTITUTION
 IA No. 31/2016 - CONDONATION OF DELAY IN FILING SUBSTITUTION
 APPLN.)

WITH

SLP (C) No. 3439/2017

SLP (C) No. 3247/2017

(IA.NOS.3-4 (APPLICATION FOR SUBSTITUTION TO BRING ON RECORD LRS OF
 DECEASED RESPONDENT NOS.3 AND 4)

IA.NOS.5-6 (APPLICATION FOR C/DELAY IN FILING SUBSTITUTION
 APPLICATION)

IA.NOS.7-8 (APPLICATION FOR EXEMPTION FROM FILING O.T.)

IA.NOS.9-10 (APPLICATION FOR EXEMPTION FROM FILING ORIGINAL DEATH
 CERTIFICATE)

IA No. 5/2017 - CONDONATION OF DELAY IN FILING SUBSTITUTION APPLN.

IA No. 7/2017 - EXEMPTION FROM FILING O.T.)

Date : 16-09-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Appellant(s)

Mr. Gagan Gupta, AOR

Mr. Krishnan Venugopal, Sr. Adv.

Ms. Diksha Rai, AOR

Mr. Manav Verma, Adv.

Mr. Ishan Bisht, Adv.

Ms. Palak Mahajan, Adv.

Ms. Neelam Kalri, Adv.

Mrs. Rani Chhabra, AOR

Ms. Lekha G.v., AOR

For Respondent(s)

Ms. Diksha Rai, AOR

Mr. Gagan Gupta, AOR

Mr. Gaurav Aggarwal, Adv.

Ms. Lekha G.v., AOR

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

Leave granted.

The applications for substitution is allowed after condoning the delay.

The Civil Appeals are disposed of in terms of the signed order.

Pending applications, if any, stand disposed of.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)