

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 647 OF 2020
(@ S.L.P. (CIVIL) NO. 2271 OF 2018)

BHIMSEN (DEAD) THR. LRS. AND ANR. ... Appellant(s)

VERSUS

TRIJUGI NARAYAN ... Respondent(s)

O R D E R

Leave granted.

A suit for possession was filed by the Respondent herein, seeking possession of the property which was auctioned for recovery of sales tax arrears.

The brief facts of the case are as under:-

M/s Santosh Kumar Sunil Kumar failed to deposit its tax arrears as demanded by the Sales Tax Department and certain properties including the suit property was auctioned in the recovery proceedings. The appellant herein is the auction purchaser of the property. Respondent herein is the father of Santosh Kumar, partner of the firm. He filed a suit for possession on the ground that he is the owner of the property; the property is not belonging to partnership firm; since he is the third party to the partnership firm and the tax dues, his property could not have been attached and auctioned.

The Trial Court dismissed the suit and such order of dismissal was affirmed by the First Appellate Court. However, the High Court

decreed the suit and held that the Respondent is the owner of the property and that it could not have been auctioned.

It is not in dispute that the property in question was auctioned for recovery of tax dues of the partnership firm. It is the specific case of the respondent that he was not a partner of the firm and, therefore, his property could not have been auctioned on the very ground. He filed petition before the concerned authority for cancelling the suction sale immediately after auction. The authority, by order dated 28.03.1978, held that the Respondent was also partner of the firm and, therefore, conduct of auction is just and property. The said order of the authority dated 28.03.1978 in Recovery Case No. 156 of 1971-72 has attained finality. If it is so, it is not open for the Respondent No. 1/plaintiff to file a suit once again for the very relief. In view of the same, the proceedings before the Civil Court based on the plaint of the Respondent No. 1 are bad in the eye of law. Consequently the impugned order, which runs contrary to the order dated 28.03.1978, is liable to be set aside.

Accordingly, the impugned order stands set aside. The appeal is allowed.

....., J.
(Mohan M. Shantanagoudar)

....., J.
(R. Subash Reddy)

New Delhi
January 24, 2020.

ITEM NO.43

COURT NO.12

SECTION IV-A

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). 2271/2018

(Arising out of impugned final judgment and order dated 13-07-2017
in SA No. 911/1998 passed by the High Court Of Chhatisgarh At
Bilaspur)

BHIMSEN (DEAD) THR LRS. & ORS.

Petitioner(s)

VERSUS

TRIJUGI NARAYAN

Respondent(s)

(IA No. 53187/2018 - EXEMPTION FROM FILING O.T.)

Date : 24-01-2020 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR
HON'BLE MR. JUSTICE R. SUBHASH REDDY

For Petitioner(s) Mr. Anand Shankar Jha, AOR
Mr. Mohd. Ali, Adv.
Mr. Arpit Gupta, Adv.

For Respondent(s) Mr. Navin Prakash, AOR

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.

Pending applications, if any, stand disposed of accordingly.

(GULSHAN KUMAR ARORA)
COURT MASTER

(R.S. NARAYANAN)
COURT MASTER

(Signed order is placed on the file)