

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2022
(@ Special Leave Petition (C) No.3303/2019)

DR. R.D. SHARMA(DEAD) THR LRS & ORS. ...APPELLANTS

VERSUS

SMT. RAMESHWARI DEVI (D) THR. HER LRS. & ORS.RESPONDENTS

O R D E R

Leave granted.

Feeling aggrieved and dissatisfied with the impugned judgment and order dated 31-05-2018 passed by the High Court of Judicature at Allahabad in Second Appeal No.705/2003 by which the High Court has allowed the said second appeal preferred by the original plaintiffs and has quashed and set aside the decree passed by the learned Trial Court, confirmed by the First Appellate Court, the original defendant has preferred the present appeal.

We have heard learned counsel appearing on behalf of the respective parties.

From the impugned judgment and order passed by the High Court and the reasoning given by the High Court, we are of the opinion that the reasoning given by the High Court while quashing and setting aside the judgment and decree passed by the learned Trial Court, confirmed by the First Appellate Court are unsustainable.

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It is required to be noted that the original plaintiff claimed the right on the basis of the Will executed by deceased father and the suit was filed claiming title on the basis of Will executed as well as revocation of the will. Both the courts below negatived the case on behalf of the plaintiffs that the revocation of Will was by undue influence etc. However, in the second appeal under Section 100 of the CPC, the High Court has reversed the concurrent findings recorded by both the courts below and has set aside the judgment and decree passed by the learned Trial Court, confirmed by the First Appellate Court by shifting the burden upon the defendant to prove that revocation of Will was not by undue influence etc. As per the settled proposition of law the person who alleges that a particular document in the present case, the revocation of Will was by undue influence etc., it was for that person to prove the same. The defendant who asserts right on the basis of the revocation of will was not required to prove that it was not by undue influence. The reasoning given by the High Court is unsustainable.

However, at the same time the impugned judgment and order passed by the High Court is not required to be interfered with and/or affirmed on another ground. It is required to be noted that land in question was a bhumidari land. Under the provisions of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1952, as per section 171 the married daughters would have a higher right than the brother of the deceased /

contd..

bhumidar. Under the circumstances, even otherwise assuming that there was a valid revocation of Will in that case also the rights of married daughters/original plaintiffs could not have been taken away as otherwise also they would have right in the bhumidari land. Under the circumstances, also the defendant, who was the brother of deceased would have no right in the bhumidari land against the interest of the daughter/daughters of the deceased.

In view of the above, though we agree that the reasonings given by the High Court while setting aside the decree passed by the learned Trial Court, confirmed by First Appellate Court are not sustainable on the aforesaid ground the impugned judgment and order passed by the High court is not required to be interfered with. However, it is observed that both the daughters of the deceased would have equal right in the bhumidari land held by the deceased father and the same shall be dwelt with upon the heirs of the respective two sisters equally.

The present appeal is accordingly dismissed with above observations. No costs.

.....J.
[M.R. SHAH]

.....J.
[M.M. SUNDRESH]

NEW DELHI
OCTOBER 20, 2022

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 for Special Leave to Appeal (C) No(s). 3303/2019

(Arising out of impugned final judgment and order dated 31-05-2018 in SA No. 705/2003 passed by the High Court Of Judicature at Allahabad)

DR. R.D. SHARMA (DEAD) THR LRS & ORS.

Petitioner(s)

VERSUS

SMT. RAMESHWARI DEVI (D) THR. HER LRS. & ORS.

Respondent(s)

Date : 20-10-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.R. SHAH

HON'BLE MR. JUSTICE M.M. SUNDRESH

For Petitioner(s) Mr. M. N.Rao, Sr. Adv.
Mr. Dinesh K. Garg, adv.
Mr. Abhishek Garg, Adv.
Mr. Dhananjay Garg, AOR
Mr. Ishaan Tiwari, Adv.
Ms. Aaina Verma, Adv.
Ms. Jaswanthi, Adv.

For Respondent(s) Mr. Jitendra Mohan Sharma, Sr. Adv.
Mr. Tapesh Kumar Singh, AOR
Ms. Smita Dikshit, Adv.

Mr. Sukant Vikram, AOR

UPON hearing the counsel the Court made the following

O R D E R

Delay in filing application for substitution is condoned. Application for substitution of legal heirs of deceased respondent no.3 is allowed and abatement is set aside. Shri Tapesh Kumar Singh, learned counsel accepts notice on behalf of the substituted legal heirs of deceased respondent no.3. Therefore, fresh notice to the legal heirs of deceased respondent no.3 is not required to be issued.

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Leave granted.

The appeal is dismissed in terms of the signed order.

All pending applications including application for impleadment(s) stand disposed of.

(NEETU SACHDEVA)
ASTT. REGISTRAR-cum-PS

(RENU BALA GAMBHIR)
COURT MASTER (NSH)

(signed order is placed on the file)