

ITEM NO.21

COURT NO.14

SECTION IV-C

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). 22589/2022

[Arising out of impugned final judgment and order dated 03-03-2022 in SA No. 305/2014 passed by the High Court of Chhatisgarh at Bilaspur]

RAJKUMAR

Petitioner(s)

VERSUS

GEETA BAI (DECD.) THROUGH LRS. & ORS.

Respondent(s)

IA No. 165802/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 165803/2022 - EXEMPTION FROM FILING O.T.

IA No. 170681/2022 - EXEMPTION FROM FILING O.T.

IA No. 170679/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ ANNEXURES

Date : 21-11-2024 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SUDHANSHU DHULIA
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Petitioner(s) Mr. Ashutosh Ghade, AOR
Ms. Sneha Balapure, Adv.

For Respondent(s) Mr. Kushagra Pandey , AOR

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

The petitioner before this Court had filed a suit for declaration of title and permanent injunction, which was decreed by the trial court. Subsequently, the defendants went in appeal and the appeal was allowed by the First Appellate Court, setting aside the decree of the Trial Court against which the petitioner had invoked the jurisdiction of the High Court in Second Appeal.

The Second Appeal was admitted on 07.09.2021 and the following three substantial questions of law were framed :-

"(i) Whether the First Appellate Court is justified in entertaining the application under Order 41 Rule 27 of CPC on 23.08.2010 without hearing the appeal on merits by recording a finding perverse to the record?"

(ii) Whether the First Appellate Court is justified in permitting certified copy of the gift deed marked as Ex-D/10 without an application under Section 65 of the Indian Evidence Act, 1872 by recording a finding perverse to the record ?

(iii) Whether the First Appellate Court is justified in holding that Hemram was empowered to execute a gift deed of suit property in favour of defendant No. 1 on 29.04.1972 by recording a finding perverse to the record?"

Subsequently, when the arguments were made in the Second Appeal on a subsequent date, i.e. on 03.03.2022, the following order was passed by the High Court, which has now been challenged before this Court :-

"During mids of argument, it is transpired that the substantial question Nos. 1 & 2 is not required to be adjudicated by this Court. Only issue No. 3 has to be examined, therefore, list the matter after two weeks for final hearing at motion hearing stage."

In other words, learned counsel for the petitioner would argue that once the Second Appeal was admitted on three substantial questions of law, even if the court was to finally give its determination on only one substantial question of law, reasons should have been given in the order for doing so. All the same, the impugned order does not reflect any such reasons and therefore, this challenge.

Notice was issued by this Court on 25.11.2022. We have heard Mr. Ashutosh Ghade, learned counsel appearing for the petitioner and Mr. Kushagra Pandey, learned counsel appearing for the respondents.

In our view, however, consideration of the case on merits or on the validity of the impugned order is futile for the simple reason that the Second Appeal is pending consideration before the High Court. Learned counsel appearing on the other side has also made a fair submission before this Court that the petitioner would always be at liberty to make his submissions before the High Court for consideration on all the three substantial questions of law, which may or may not be done. We say nothing on this aspect and we leave it to the High Court to formulate the substantial questions of law, if required.

However, we must state that that whatever substantial questions of law on which the decision has to be given, must be formulated by the Court before a decision is given. The defendants would also be at liberty to make a submission that those substantial questions of law does not arise in the matter. These are the fundamental principles in the Second Appeal to be followed.

We say nothing further on this aspect.

In view of above, the Special Leave Petition is disposed of.

Pending interlocutory application(s), if any, is/are disposed of.

(JAYANT KUMAR ARORA)
ASST. REGISTRAR-CUM-PS

(RENU BALA GAMBHIR)
COURT MASTER