

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).4998/2007

(From the judgement and order dated 01/12/2006 in SA No.219/2002
of The HIGH COURT OF PATNA)

LAXMI RAM (DEAD) BY L.R. & ORS.

Petitioner(s)

VERSUS

BIETSHWAR & ORS.

Respondent(s)

(With appln(s) for substitution of deceased petitioner and office report)

Date: 29/08/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL
HON'BLE MR. JUSTICE G.S. SINGHVI

For Petitioner(s) Mr. Kundan Bahadur Singh,Adv.
Mr. Kumar Parimal,Adv.
Mr. P.V. Yogeswaran,Adv.

For Respondent(s) Mr. Chandra Shekhar,Adv.
Mr. Sanjay Kumar Tyagi,Adv.
Mr. Saurabh Upadhyay,Adv.
Mr. Atul Kumar,Adv.
Mr. S.K. Verma,Adv.

UPON hearing counsel the Court made the following
ORDER

Application for substitution is allowed.

Leave granted.

Heard learned counsel for the parties.

The civil appeal is allowed.

[T.I. Rajput] [Om Prakash]
A.R.-cum-P.S. Assistant Registrar

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2008
(Arising out of S.L.P. (C) No.4998 of 2007)

Laxmi Ram (Dead) By L.R. and Ors.

...Appellant(s)

Versus

Bietshwar Singh Ors.

...Respondent(s)

O R D E R

Application for substitution is allowed.
Leave granted.
Heard learned counsel for the parties.

By the impugned order, High Court has dismissed the second appeal on the ground that no substantial question of law was involved therein.

Having heard the parties and perused the records, we are of the view that High Court was not justified in observing that no substantial question of law is involved in the appeal. In our view, the following substantial questions of law do arise in the second appeal:

"(2) Whether the findings of the trial court on issue No.(VII) that Pokhani inherited the property as her husband Bifan Ram was the last male holder in the branch of Rucha Ram is based on error of record in appreciating averments made in paragraph 18 of the written statement which read with the averment made in paragraph 10 of the written statement makes out a clear case that Bifan Ram predeceased his father Rucha Ram, therefore inadvertently using the words

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that Bifan was the last male heirs becomes meaningless read with the further continuous statement in the same sentence that Bifan Ram was the last male heirs in the branch of Late Rucha Ram @ Rupa Ram who predeceased his father and thereafter Rucha Ram also died and thereafter entire property reverted back to the branch of Ramdhyan Ram?

(3) Whether the findings on issue No.(vii) is vitiated in law for being influenced by an error of record and mis-appreciation and non-appreciation of evidences on the records as to who was the last male holder?"

The High Court should have framed the afore-mentioned substantial questions of law and decided the same.

In view of this, the appeal is allowed, impugned order is set aside and the second appeal is remanded to the High Court. Upon such remand, the High Court shall first frame the above-noted two substantial questions of law and decide the second appeal afresh in accordance with law.

It is needless to say that in case the High Court is of the view that any other substantial question of law is involved in the appeal, such question may also be framed and decided after giving opportunity of hearing to the parties.

.....J.
[B.N. AGRAWAL]

.....J.
[G.S. SINGHVI]