

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.5116 OF 2002

Sundaraneedi Satyanarayana and Anr. ...Appellant(s)

Versus

Arigala Venkataratnam and Ors. ...Respondent(s)

O R D E R

The suit filed by the plaintiff (respondent No.1 herein) for partition of the plaint schedule property into five equal shares and to allot one share to him after ejecting the defendants and to award future profits on his share was decreed by the Trial Court vide judgement dated 21.10.1974. The appeal filed by the defendants (appellants herein) was allowed by the Appellate Court on 31.12.1986, the judgment and the decree of the Trial Court was reversed and the suit filed by plaintiff-respondent No.1 was dismissed. The respondent No.1 challenged the appellate judgment by filing second appeal under Section 100 CPC. The High Court did not frame any substantial question of law and the learned Single Judge held that there are no valid grounds to interfere with the findings of fact recorded by the Lower Appellate Court. Notwithstanding this, he considered the question whether the sale deed executed by the first defendant after the plaintiff issued a notice demanding partition is valid and binding on the plaintiff and held that defendant had no power to alienate the joint family property so as to bind the plaintiff after the disruption of the family which resulted from the notice issued by the plaintiff on 25.7.1963.

...2/-

A reading of the impugned judgment shows that the question relating to validity of the sale deed executed by defendant No.1 after issuance of notice by the plaintiff demanding partition was not specifically raised before the Trial Court. The Trial Court framed as many as 12 issues including the one whether the agreement of sale executed by defendant No.1 is binding in favour of 5th Defendant is binding on the plaintiff but no question was framed whether the agreement of sale was invalid on the ground that it was executed after issue of notice by the plaintiff demanding partition. Even then, the High Court considered the aforesaid question and answered the same in favour of respondent No.1 by treating it as a pure question of law.

In our opinion, the question considered by the High Court was a mixed question of fact and law and the same could not have been allowed to be raised in the first time of the second appeal, and the learned Single Judge committed a serious error by adjudicated upon that question and setting aside the well reasoned judgment recorded by the Appellate Court.

In the result, the appeal is allowed, impugned judgment of the High Court is set aside and the decree passed by the Lower Appellate Court is restored.

No costs.

[B.N. AGRAWAL]

.....J.

[G.S. SINGHVI]

.....J.

New Delhi,
April 01, 2009.

