

ITEM NO.38

COURT NO.16

SECTION XII

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). 8428/2018

(Arising out of impugned final judgment and order dated 12-09-2017 in CRPNP No. 1342/2007 passed by the High Court Of Judicature At Madras At Madurai)

RAHIMAL BATHU &amp; ORS.

Petitioner(s)

VERSUS

ASHIYAL BEEVI

Respondent(s)

IA No. 40704/2018 - EXEMPTION FROM FILING O.T.

Date : 08-08-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA  
HON'BLE MR. JUSTICE MANOJ MISRAFor Petitioner(s) Mr. A. Sirajudeen, Sr. Adv.  
Ms. N. Annapoorani, AOR  
Mr. Iftikhar Ahmed, Adv.

Mrs. Naresh Bakshi, AOR

For Respondent(s) Mr. V Prabhakar, Adv.  
Ms. Jyoti Parashar, Adv.  
Mr. N J Ramchandar, Adv.  
Mr. R Gowrishankar, Adv.  
Mr. S. Rajappa, AORUPON hearing the counsel the Court made the following  
O R D E R

We heard learned counsels for parties and are adjourning the case in order to enable them to examine the position of law and assist the Court.

This is a case where the trial Court passed an order upholding the validity of the Sale Deed and also observing that the gift deed is invalid but did not pass the consequential order, so to say issuing a

decree in favour of the plaintiff.

The plaintiff, therefore, filed a review petition, however, the same was dismissed. The revision against the order of review was entertained by the High Court and by the impugned order, the High Court held as under:

"16. In conclusion, the fair and decreetal orders, dated 20.12.2006, passed in IA No.207 of 2001 in O.S. No.276 of 1992, on the file of the I Additional Sub Court, Tirunelveli, are set aside and the application in IA No.207 of 2001 is allowed and consequently, the Judgment and Decree, dated 21.11.1996, passed in O.S. No.276 of 1992, on the file of the I Additional Sub Court, Tirunelveli, are modified to the effect that the plaintiff is entitled for declaration that the second schedule property belongs to her absolutely and consequently, she is entitled to recover the possession of the same from the defendants. Time for handing over the possession of the property concerned is three months. Further, the plaintiff is entitled to recover the *mesne* profits from the defendants as claimed and the enquiry as regards the *mesne* profits is ordered to be relegated and determined vide separate proceedings under Order XX Rule 12 of the Code of Civil Procedure. Resultantly, the civil revision is allowed with costs."

We put it to the learned counsel appearing for the parties that the High Court could not have modified the decree as the consequence of which would be that the defendant would not be entitled to file a First Appeal against the order of the trial Court. Instead, the High Court could have entertained the revision against the order dismissing the review and ordered that the trial Court did not exercise the review jurisdiction appropriately and, therefore, enable the High Court to entertain a review and pass orders under Order XLVII Rule 8 of the Code of Civil Procedure, 1908. Under such circumstances, it would have been possible for the trial Court to pass a decree based on the observations of the High Court, the consequence of which would be that the defendant will then be entitled to file a First Appeal before the appellate Court.

Before we make an order, it would be appropriate that the learned counsels would examine the legal issues and assist the Court for making a judgment on the principles of law and pass a consequential orders.

Post the matter on 22.08.2023.

(ASHA SUNDRIYAL)  
ASTT. REGISTRAR-cum-PS

(ANJU KAPOOR)  
COURT MASTER (NSH)