

SHYAM LAL (DEAD) BY LRS. AND ORS.

A

v.

KESHO LAL (DEAD) AND ANR.

APRIL 26, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

B

Constitution of India, 1950: Article 136.

Appeal—Finding of Fact recorded by High Court—Finding based on appreciation of evidence by Courts below—Held no interference was called for.

C

In a suit filed by Respondent I for declaration of ownership as well as possession of a house the High Court ultimately stated that the direction given by the Trial Court with regard to partition of the house should be struck off from the decree as no party to the suit had applied for partition and that if any party was anxious for division he may fill a separate suit for that purpose. Thereafter, Respondent I filed a suit for partition which was decreed by the trial court. The appellate court allowed the damages but dismissed the suit regarding recovery of possession and removal of material. The High Court granted decree in favour of the plaintiff-respondents and recorded a finding that construction at certain places in the house were made subsequent to the judgment rendered by the High Court in earlier proceedings. The defendant-appellants preferred appeal before this Court.

D

E

Dismissing the appeal, this Court

F

HELD : The finding recorded by the High Court that construction at certain places are subsequent to the earlier judgment of High Court is a finding of fact based on appreciation of evidence by all the courts. Thus, it is not a fit case for interference. [835-A]

G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1190 of 1977.

From the Judgment and Order dated 24.7.75 of the Allahabad High Court in S.A. No. 977 of 1972.

H

A V.J. Francies for the Appellants.

The following Order of the Court was delivered :

This appeal arises by Special Leave from the Judgment of the High Court of Allahabad is Second Appeal No. 977/72 dated April 2, 1975.

B Kesho Lal, respondent no. 1, is represented by legal representatives of the appellants. He was allotted in 1948 a site by the Allahabad Improvement Trust in plot No. 184 of G. Toula. Thereon, a building was constructed. Kesho Lal filed Suit No. 69/58 for declaration that he was a sole owner of the said house and for possession from the respondents brother, Shyam Lal and his mother. Ultimately, in those proceedings the High Court by judgment and decree dated May 11, 1966 held thus:

C "The direction given by the trial court is open to several objections. That direction is in the nature of partition of the house. Neither the plaintiff nor the defendants applied to the court for partition of the house. The line X Y appears to have been drawn on the map arbitrarily. The specific shares of the parties were not discussed. It is not stated in the judgment that division of the house is in proportion to the shares of the parties in the joint property. It has been found that the house was built from joint family fund. Parties have been in occupation of different portions of the house. They should have been left in possession of those portion. If any party is left in possession of those portion. If any party is anxious for a division of the house, that party must file a separate suit for partition. For the present, the parties should be left to have joint possession of the house belonging to the family. The direction in question should be struck off from the decree. The appeal partly succeeds, while the cross objection fails."

Thereafter, Kesho Lal filed the suit for partition in the First Additional Munsiff Court at Allahabad. The trial court decreed the suit and on appeal in CA No. 409/70, the appellate court allowed the damages for a sum of Rs. 600 but dismissed the suit regarding recovery of possession and removal of the material. The High Court in the impugned judgment held that the construction at A,B,C,D and E,F,G,H were made subsequent to the judgment rendered by the High Court in earlier proceedings. Accordingly, granted the decree in favour of the plaintiff-respondents. Thus, this appeal by Special Leave.

Shri Francis, learned counsel for the appellant contended that the finding recorded by the High Court that the construction at A, B, C, D and E, F, G, H places are subsequent to the judgment is not correct. It being a finding of fact based on appreciation evidence by all the courts, we do not find that it is a case for our interference. The appeal is accordingly dismissed, but without costs. A

It is suggested by Shri Francis that since the appellants are in possession necessary adjustments may be thought out by the parties. This order of ours does not preclude such adjustment as thought desirable by all, which would avoid needless litigation. B.

T.N.A.

Appeal dismissed. C