

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.72 OF 2009
(Arising out of S.L.P. (C) No.237 of 2008)

Parvatibai and Anr.

...Appellant(s)

Versus

Shivpyari Dwarkadas Lahoti and Ors.

...Respondent(s)

O R D E R

Delay in filing special leave petition is condoned.

Leave granted.

Heard learned counsel for the parties.

This is an appeal for setting aside judgment dated 25.1.2007 rendered by the Single Judge of the Bombay High Court in Second Appeal No.210 of 1986 whereby he reversed the judgments and decrees passed by 3rd Joint Civil Judge (Junior Division), Nanded and Additional District Judge, Nanded respectively and decreed the suit for recovery of possession filed by the plaintiff, Dwarkadas, who is now represented by his legal representatives.

A perusal of the record shows that on the pleadings of the parties, the trial Court framed five issues including whether the plaintiff has surrendered the right of lease of the disputed property and whether defendant No.1 was put in possession thereof. The trial Court considered the oral and documentary evidence produced by the parties and held that the plaintiff had surrendered the lease of eastern half

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portion of the suite plot and that he released the same in favour of defendant Nos.2 and 3 by executing registered lease deed and also delivered possession to them. On that premise, the suit of the plaintiff was dismissed. The appellate Court independently analyzed the pleadings and evaluated the evidence and confirmed the findings recorded by the trial Court. The learned Single Judge framed the following question of law:-

“Whether the permanent lease in question could be terminated or cancelled only on the verbal assertion of the landlord that he was asked to recover possession of the eastern half portion by the deceased plaintiff and that such surrender of lease could be validity recognized?

However, instead of directing his attention to the afore-mentioned question, the learned Single Judge re-appreciated the entire evidence and reversed the concurrent finding of fact recorded by two courts.

It is well settled that in exercise of power under Section 100 of the Code of Civil Procedure, 1908, the High Court can interfere with the finding of fact only if the same is perverse. In the present case, we find that the learned Single Judge did not find any perversity in the findings of fact and conclusions recorded by the lower appellate court which is the final court of fact and yet he reversed the judgments of the courts below by re-appreciating the evidence, which is legally impermissible.

Accordingly, the appeal is allowed, impugned judgment is set aside and the one passed by the lower appellate Court is restored.

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

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

New Delhi,
January 09, 2009.