

CASE NO.:
Appeal (civil) 3946 of 2002

PETITIONER:
BHARAT SAH

RESPONDENT:
BIREN KUMAR SAH

DATE OF JUDGMENT: 28/02/2008

BENCH:
H.K. SEMA & MARKANDEY KATJU

JUDGMENT:
JUDGMENT

O R D E R
CIVIL APPEAL NO. 3946 OF 2002

In this appeal, plaintiff suit for declaration of title and delivery of possession was dismissed by the trial Court and upheld by the first appellate Court. In second appeal, the High Court reversed the finding of facts recorded by the trial Court and affirmed by the first appellate Court. The High Court has framed the following purported substantial questions of law:

"(a) Whether the courts below in rejecting the case of sale as propounded by the plaintiff merely on the ground that according to the appellant the land was already sold on 24.11.1971, were right?

(b) Whether the courts below were right in refusing the registered sale deed dated 15.07.1983 as an additional evidence by order dated 24.04.1987 and the prayer had been allowed on 02.07.1985?"

In our view, the two questions, which are framed by the High Court as substantial questions of law, does not appear to
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be so. In fact, they are questions of fact. Both the questions of fact framed by the High Court have been elaborately dealt with by the trial Court and affirmed by the first appellate Court. So far, with regard to the alleged registered sale deed dated 24.11.1971 is concerned, both the trial Court and the first appellate court have dealt with elaborately after examining the evidence on record and documents and have come to the conclusion that the plaintiff has failed to establish the registered sale deed dated 24.11.1971 as genuine documents.

Since we are of the view that the aforesaid two questions framed by the High Court are not substantial questions of law but questions of fact which have been elaborately dealt with by the trial Court and by the first appellate Court, the High Court, in second appeal, was not justified in interfering with the findings of fact recorded by the two courts.

For the reasons afore-stated, the order of the High Court is set aside. This appeal is allowed. No costs.