

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.5528 OF 2008
(Arising out of S.L.P. (C) No.14265/2007)

Smt. Murtaza Jahan ...Appellant
@ Mussarrat Jhan Begum

Versus

Mohan Chandra Tamta & Ors. ...Respondents

O R D E R

Leave granted.

One of the grounds raised in this appeal is that although the name of the appellant is Mussarrat Jhan Begum and she is a resident of District Rampur; when Anwar Ali expired during pendency of the Second Appeal he was sought to be substituted by one lady named Murtaza Jahan and her address was shown as resident of District Almora. The appellant, therefore, was not heard by the High Court. The fact that a wrong address was shown, however, is disputed.

The following substantial question of law was formulated by the High Court:

" Whether the plaintiff's suit was barred by limitation or that it could be dismissed on the ground that he was not the owner of a 1/3rd share of the property or that the predecessor in interest of defendant-respondent No.3 was legally authorised to induct defendant-respondent No.1 as a tenant."

The High Court, however, by reason of the impugned judgment opined that as the mortgage was redeemed in the year 1954, the suit could be filed within thirty years thereafter. The very fact that an alternative relief of redemption of mortgage has been prayed for, it prima-facie

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appears that there was no basis for arriving at the said finding. The High Court could have gone into the matter at some details and considered the materials on record so as

to enable it to hold that the property was redeemed in the year 1954. It did not do so.

The High Court, furthermore, applied Article 65 of the Limitation Act, 1963, inter alia, on the premise that the plaintiff-respondent was dispossessed in February, 1964 whereas the suit was filed in the year 1969.

We fail to understand as to how and on what basis the findings of fact arrived at by the First Appellate Court were interfered with.

We are, therefore, of the opinion that the impugned judgment should be set aside and the matter be remitted to the High Court for consideration of the Second Appeal afresh. It would, however, be open to the High Court to formulate such substantial questions of law which in its opinion arise for consideration and proceed to hear out the same in the presence of the appellant herein. The parties may appear before the High Court on 20.10.2008.

A copy of this order may be sent to the Registrar, High Court of Uttarakhand so that the Second Appeal bearing No. 670/2001 be listed before an appropriate Bench on that date.

The High Court is requested to dispose of the appeal as expeditiously as possible and preferably within a period of six months from the date of communication of this order.

The appeal is allowed with the aforementioned observations.

.....J.
[S.B. SINHA]

.....J
[CYRIAC JOSEPH]

New Delhi,
September 1, 2008.