

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4585 OF 2008

(Arising out of S.L.P. (C) No.15637 of 2007)

Birmati

... Appellant(s)

Versus

Naseeb Singh

... Respondent(s)

ORDER

Leave granted.

Heard learned counsel for the parties

By an order dated 7.4.2004, the trial Court dismissed the application filed by the appellant for sending agreement dated 28.9.1999 and her signature and thumb impression for comparison at Government Laboratory, Madhuban/Hyderabad/Calcutta on the sole ground that a similar prayer had been rejected earlier. That order was confirmed by the High Court by dismissing the civil revision preferred by the respondent. Hence, this appeal by special leave.

The only question to be examined in the present appeal is whether earlier rejection of the appellant's prayer for comparison of her signature and thumb impression through Forensic Science Laboratory operated as res judicata and the trial Court and the High Court were justified in declining similar prayer made by her.

Learned counsel for the appellant invited our attention to order dated 16.3.2004 passed by the trial Court to show that the prayer for getting the signatures and thumb

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impressions of the appellant compared through Forensic Science Laboratory was rejected at that stage. This clearly means that the appellant could make similar prayer at a later stage. This is precisely what was done on her behalf. However, without correctly appreciating the import of order dated 16.3.2004, the trial Court rejected her prayer on a wholly untenable ground that the said order operated as res judicata. In our considered view, the order dated 7.4.2004 passed by the trial Court suffered from jurisdictional error and the High Court failed to exercise jurisdiction vested in it under Section 115 of the Code of Civil Procedure.

Accordingly, the appeal is allowed, the impugned orders are set aside and the prayer made by the appellant for sending agreement dated 28.9.1999 and her signature and thumb impression for comparison to the Government Laboratory at Madhuban is allowed.

Let hearing of the suit be expedited.

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

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

New Delhi,
July 21, 2008.