

CASE NO.:
Appeal (civil) 1866 of 2008

PETITIONER:
Niyaz Ahmed

RESPONDENT:
Aslam Hossain and Anr

DATE OF JUDGMENT: 10/03/2008

BENCH:
B.N. AGRAWAL & G.S. SINGHVI

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NO.1866 OF 2008
(Arising out of S.L.P. (C) No.15477 of 2006)

Heard learned counsel for the parties.
Leave granted.

It appears that the Trial Court, by its order dated 13th September, 2005, stayed further proceeding of Title Suit No.48 of 2003 till the disposal of Title Suit No.163 of 2001. Thereafter, on 19th November, 2005, suo motu, the aforesaid order of stay was vacated. When the appellant made a prayer for time to move the High Court challenging the said order, the same was refused and on 1st December, 2005, ex-parte decree was passed, which has been confirmed by the lower appellate court as well as by the High Court. Hence, this appeal by special leave.

In the facts and circumstances of the case, we are of the view that both the suits ought to have been tried together and Trial Court was not justified in passing the order of stay on 13th September, 2005, suo-motu vacating the same on 19th November, 2005, and other consequential orders.

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Accordingly, the appeal is allowed. The aforesaid orders passed by the Trial Court on 13th September, 2005 and 19th November, 2005 and ex-parte decree passed in Title Suit No.48 of 2003 and orders confirming the same passed by the lower appellate court as well as by the High Court are set aside and the matter is remitted to the Trial Court to dispose of both the suits together.

We have been told that Title Suit No.163 of 2001 is pending before the Civil Judge (Senior Division) whereas Title Suit No.48 of 2003 is pending before Civil Judge (Junior Division). The concerned District Judge is directed to club both the suits so that both of them may be tried together.

Let hearing of the suits be expedited.