

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 393 OF 2009
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 10432 OF 2005)

Bhuri Bai and OthersAppellant(s)

- Versus -

Ramnarayan and OthersRespondent(s)

J U D G M E N T

GANGULY, J.

1. Leave granted.
2. The judgment and order of the High Court of Madhya Pradesh dated 4.2.2005 in S.A. No. 572 of 2003 has been impugned in this appeal. The parties are descendants of common ancestor Pusau, who partitioned his property including the suit land during his life time.

The suit which was filed by the appellants herein in Civil Suit No. 103A of 1997 was for declaration of title and permanent injunction in respect of Plot No.

138/6 and 207/1 situated at village Katangi and also for permanent injunction restraining the respondents-defendants from interfering in their possession.

3. Admittedly, it appears from the record that the appellants herein have disposed of plot No. 207/1. The suit is only confined in respect of Plot No. 138/6.

4. It is the concurrent finding of both the courts below that the aforesaid plot was never allotted to the appellants herein in the course of partition.

5. Whether the aforesaid plot was allotted in partition in favour of the appellants herein is a pure question of fact. The appellants wanted to rely on certain documents of partition in order to contend that the aforesaid plot was allotted in their favour. The concurrent finding of both the courts is that the said claim is based on interpolation in the deed of partition. This is also concurrently found by both the courts below that the appellants herein were never in possession of the said plot. On the other hand, the finding of both the courts below is that the respondents-defendants were in possession of the said plot. All these questions are pure questions of fact.

6. The High Court after considering these issues involved in this case rightly held that, no substantial question of law is involved and the finding which is sought to be impugned in the second appeal is based on question of fact and appreciation of evidence, and they do not call for any interference under Section 100 of Civil Procedure Code.

7. We are in entire agreement with the same finding of the High Court and in our view, there is no merit in this appeal and the same is accordingly dismissed. No order as to costs.

.....J.
(Dr. ARIJIT PASAYAT)

New Delhi;
January 23, 2009

.....J.
(ASOK KUMAR GANGULY)