

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

CIVIL APPEAL NO. 8698 OF 2002

GOBIND RAM SHARMA

... APPELLANT(S)

:VERSUS:

PRAMOD KUMAR SINGHANIA AND ORS.

... RESPONDENT(S)

ORDER

This appeal arises out of a judgment and order dated 9.1.2002 passed by the High Court of Judicature at Patna in Second Appeal No. 436/1986 whereby and whereunder the judgment dated 17.3.1986 and the judgment and order dated 8.4.1986 passed by the Trial Court in Title Appeal No.16/99 of 1984-85 affirming the judgment and order dated 19.5.1984 passed by the Trial Court in Title Suit No. 68/1982, was set aside.

The property in suit belonged to one Ram Chandra Singhania. He had four sons, namely, Chhedilal, Madan Lal, Ram Awtar and Haridwar. Madan Lal and Ram Awtar were the original plaintiffs. Indisputably, on or about 25.7.1995, Haridwar – original defendant No.2, purported to have executed a deed of gift in favour of the appellant herein. The original plaintiffs filed a suit, inter alia, for a declaration that the said deed of gift was void. They in support of their plea, inter

alia, raised a contention that there had been a family arrangement in the year 1950 as also in the year 1954. The said suit was dismissed by the learned Trial Judge holding that the deed of gift was legally binding on the plaintiff. The appeal preferred thereagainst was dismissed by the Additional District Judge, Bettiah.

A second appeal was filed before the High Court on 24.7.1986. On or about 21.3.1987, the High Court formulated the following substantial questions of law:

- (i) Whether family arrangement could be discarded only on the ground that the same was not effected by registered document, even though it was the admitted case of the parties?
- (ii) Whether the Court below were correct in giving finding that the plaintiffs appellants have not supported their case of possession by filing even a chit of paper?

In the impugned judgment, however, the learned Judge did not approach the second appeal from the point of view that only the substantial questions of law were required to be answered; for all intent and purport, it reopened the entire suit. It proceeded on the basis as if the parties had adduced evidence beyond their respective pleadings. It entered into the realm of appreciation of evidence.

The discussions contained in the judgment were not kept confined to the substantial questions of law formulated. The High Court, for all intent and purport, failed to keep its jurisdiction confined within the provisions of sub-sections (4) and (5) of Section 100 of the Code of Civil Procedure (CPC). The proviso appended to sub-

section (5) of Section 100 of CPC stipulates that in the event the High Court intends to formulate any other substantial question of law, it may not be precluded from doing so, but therefor, an opportunity of hearing is to be granted to the respondent. As indicated hereinbefore, the High Court reopened all the issues arising between the parties in the suit, without formulating appropriate substantial questions of law.

The discussion in the impugned judgment had thus not been kept confined to the question of law which, in our opinion, was beyond the limited jurisdiction of the High Court which it exercises in terms of Section 100 of CPC.

For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside and the matter is remitted to the High Court for consideration thereof afresh and for formulating substantial question of law, if any, arising therein. The appeal is disposed of accordingly

Keeping in view the fact that the matter is an old one, we would request the High Court to consider the desirability of disposing of the matter as expeditiously as possible.

.....J
(S.B. SINHA)

.....J
(LOKESHWAR SINGH PANTA)

NEW DELHI,
APRIL 24, 2008.