

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.14300 /2024
[@ SLP [C] NO.2778/2024]

LUNIYA MUNOT AND COMPANY Appellant(s)

VERSUS

THE STATE OF MAHARASHTRA & ORS. Respondent(s)

O R D E R

Leave granted.

This case has got a chequered history over a property which was alienated partially in the year 1957 pertaining to survey No.46/2 admeasuring 4 Acres and 21 Ares(R). The dispute still continues through various forums. We do not wish to go into the various dates and events involved in this case. What is important to note is that the decree passed in the suit being Civil Suit No.13/1956 filed way back in the year 1956 also included survey No.46/2. The present appellant is a purchaser pendente lite. In the civil suit, it is the plaintiff No.1 and defendant No.1,

being the daughter and the mother who have made an unequivocal statement acknowledging the factum that the property belonging to them had been sold in favour of the defendant Nos.3 and 4. After making the said statement, they also prayed for deletion of their names from the suit. Therefore, the names of defendant Nos.3 and 4 along with the title and their holding for survey No.46/2, along with the lands held by defendant No.1 and the plaintiff No.1 in survey No.46/2 were sought to be excluded.

The Trial Court by inadvertence, granted the decree for this portion also. By doing so, the Trial Court has ignored the clear admission made by the plaintiff No.1 and the defendant No.1.

This was rightly taken note of by the First Appellate Court in its judgment and decree dated 24.09.1963. It is not in dispute that the appeal was filed by a different party, probably on the ground that the defendant Nos.3 and 4 have understood that the first plaintiff and the first defendant are not making any claim. Nonetheless, the First Appellate Court rightly clarified the said position and the judgment of the First Appellate Court has already attained finality.

Thereafter, a series of litigation took place either by way of filing application after application or appeal after appeal, followed by orders passed by

various Courts starting from the executing Court to this very Court. We may also note that the earlier order passed by the execution Court in deleting survey No.46/2 was challenged, the said order has already attained finality.

The High Court, in its subsequent order in Writ Petition No.276/2008, took note of the aforesaid factual scenario and held that the decree dated 24.09.1963 passed by the First Appellate Court has already attained finality.

Once again, proceedings have been initiated by interpretation of the order passed by the High Court in the aforesaid Writ Petition which actually took into consideration the judgment and decree of the First Appellate Court. On a remand made by this Court, once again an order was passed by the learned Single Judge of the High Court. The impugned judgment has been passed non-suiting the appellant on the ground that if he has got any grievance being the subsequent purchaser, he can work out the remedy independently against his vendor and accordingly, the right of the appellant to seek a share, notwithstanding the no objection given by the defendant No.1, was rejected.

We have heard the learned senior counsel appearing for the appellant and learned senior counsel appearing for the respondent at length.

As stated, the issue is rather simple, which is

pertaining to the correct understanding of the judgment and decree of the First Appellate Court dated 24.09.1963. An admission made by a party is the best form of evidence. Insofar as a particular property is concerned, it becomes a fact in issue. It is the very statement made by the plaintiff No. 1 and the defendant No.1 which was taken into consideration by the Trial Court in Civil Suit No.13/1956, though the error was committed in the decree, which was rightly taken note of and corrected by the First Appellate Court. A decree has to be understood based upon the judgment. It cannot be read like a statute. We have no difficulty in appreciating the fact that the parties are trying to take advantage of the mistake committed by the Trial Court way back in the year 1956, though duly taken note of and corrected by the First Appellate Court vide the subsequent judgment dated 24.09.1963. The fact that the appellant is a subsequent purchaser is irrelevant, as we are inclined to hold that for survey No.46/2, neither the original plaintiff nor the defendant No.1 have any semblance of title.

In such view of the matter, the impugned judgment stands set aside.

The appeal stands allowed. The appellant shall be included in the final decree proceedings, and he shall be heard.

Consequently, a direction is issued to the Collector to take appropriate steps to hand over possession in Survey No. 46/2 to the appellant by restoring it from the plaintiff No.1 and defendant No.1, to the extent of his share.

Pending applications, if any, shall stand disposed of.

.....J.
[M.M. SUNDRESH]

.....J.
[ARAVIND KUMAR]

NEW DELHI;
DECEMBER 03, 2024.

ITEM NO.9

COURT NO.11

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 2778/2024

[Arising out of impugned final judgment and order dated 22-12-2023 in WP No. 13928/2019 passed by the High Court of Judicature at Bombay at Aurangabad]

LUNIYA MUNOT AND COMPANY

Petitioner(s)

VERSUS

THE STATE OF MAHARASHTRA & ORS.

Respondent(s)

IA No. 26314/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 55130/2024 - EXEMPTION FROM FILING O.T.

IA No. 31770/2024 - EXEMPTION FROM FILING O.T.

IA No. 55129/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 31769/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

WITH

SLP(C) No. 7892/2024 (IX)

IA No. 78929/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 96459/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

Date : 03-12-2024 These matters were called on for hearing today.

CORAM :

**HON'BLE MR. JUSTICE M.M. SUNDRESH
 HON'BLE MR. JUSTICE ARAVIND KUMAR**

For Petitioner(s) Mr. Gaurav Agrawal, Sr. Adv.

Mr. Siddhesh Shirish Kotwal, AOR

Mr. Paritosh Anil, Adv.

Ms. Ana Upadhyay, Adv.

Ms. Manya Hasija, Adv.

Mr. Tejasvi Gupta, Adv.

Mr. T.illayarasu, Adv.

Mr. Yatharth Gupta, Adv.

Mr. Sudhanshu Choudhary, Sr. Adv.

Mr. Shashibhushan P. Adgaonkar, AOR

Mrs. Pradnya S Adgaonkar, Adv.

Mr. Omkar Deshpande, Adv.

For Respondent(s)

Mr. Ashwin Shete, Adv.
 Mr. Abhay Dadhiwal, Adv.
 Mr. Mahesh Prakash Shinde, Adv.
 Mr. Vatsalya Vigya, AOR

Mr. M. Y. Deshmukh, AOR
 Ms. Manjeet Kirpal, Adv.
 Mr. Aswathaman Dinesh, Adv.
 Mr. Shiv Kumar, Adv.
 Ms. Vaishanavi, Adv.

Mr. Gopal Shankar Narayan, Sr. Adv.
 Mr. Anshuman Ashok, AOR
 Ms. Durga Bhardwaj, Adv.

Ms. Manjeet Kirpal, AOR

Mr. Samrat Krishnarao Shinde, Adv.
 Mr. Siddharth Dharmadhikari, Adv.
 Mr. Aaditya Aniruddha Pande, AOR

**UPON hearing the counsel the Court made the following
 O R D E R**

SLP [C] NO.2778/2024

Leave granted.

The appeal is allowed in terms of the signed order.

Pending applications, if any, shall stand disposed of.

SLP(C) No. 7892/2024

De-tagged.

List on 15.01.2024.

In the meantime, interim order to continue.

**(ASHA SUNDRIYAL)
 ASTT. REGISTRAR-cum-PS**

**(POONAM VAID)
 COURT MASTER (NSH)**

[Signed order in CA @ SLP [C] No.2778/2024 is placed on the file]