

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.8774 OF 2010

SANTOSH VERMA (D) THR. LRS.

APPELLANT(S)

VERSUS

D.N. RAJU & ANR.

RESPONDENT(S)

WITH

Civil Appeal No.8782 of 2010

O R D E R

We have heard learned counsel appearing for the parties.

These appeals have arisen from the impugned common judgment and order dated 13.12.2006 passed by the High Court in Second Appeal Nos.212, 213, 214, 217, 218 and 223 of 2005, whereby these second appeals came to be allowed and the judgment and decree under appeals were set aside by the High Court.

For the nature of order that we propose to pass, it is unnecessary to dilate on the factual matrix of the case except to state that nine suits were filed for relief of specific performance by the respondents, against which the matter went up to the High Court by way of second appeals.

While admitting the second appeal vide order dated 03.3.2005, only five substantial questions of law were framed by the High Court, which read thus :

"1. Whether in spite of section 70 of the Evidence Act, the witnesses attesting a document have to be examined to prove the execution of the document, when the executant himself has admitted execution of the same?

2. Whether the execution of Ex.A-1 Agreement and the receipt of the entire consideration and delivery of possession to the Vendees/Plaintiffs is specifically and categorically admitted, whether the dismissal of the suit for specific performance of contract was correct?

3. Whether under Ex.A-1 Agreement the Vendors undertook to obtain the necessary permission under the Urban Land Ceiling Act and the Vendor failed to obtain such permission till the date of filing of the Suit?

4. Whether the Courts below are correct in rejecting the suit on the ground that the plaintiff did not issue the notice and file the suit till 11 years after the execution of the agreement, especially when possession of property was delivered under Exhibit A-1 to the Vendees?

5. Whether it is open to the Principal to avoid performance of obligations under the agreement entered into by her agent nearly 8 years before the revocation thereof?"

Hearing of the appeals proceeded on the basis of the aforesaid substantial questions of law but when the final

judgment was pronounced by the High Court, it transpired that the High Court decided the second appeals by formulating two other substantial questions of law which read thus :

"1. Whether in a suit for specific performance, found to have been filed within the period of limitation; the relief can be denied only on the ground that there was delay in availing the remedy?

2. Whether the principal, who executed a G.P.A., can disown his or her liability, arising out of the transactions, entered through the power of attorney?"

It is common ground that the parties were not put to notice about the re-formulated substantial questions of law before the appeals were finally decided vide the impugned judgment and order.

In this view of the matter, we have no hesitation in setting aside the impugned judgment and order without expressing any opinion on the merits of the controversy in any manner; and we relegate the parties to the High Court for rehearing of the second appeals on the basis of substantial questions of law already formulated vide order dated 03.3.2005 or any other substantial question(s) of law that may arise for its consideration after giving an opportunity to the parties to deal with the same.

In other words, the second appeals will have to be decided on its own merits afresh in accordance with law. We leave all questions open for being considered by the High Court. The parties shall appear before the High Court on 12.11.2018. The High Court may dispose of the remanded appeals expeditiously.

Accordingly, the appeals are allowed and the impugned judgment and order passed by the High Court is set aside. The aforementioned second appeals are restored to the file of the High Court to its original numbers for being decided afresh. No costs.

.....J
[A.M. KHANWILKAR]

.....J
[L. NAGESWARA RAO]

NEW DELHI;
OCTOBER 09, 2018.

