

G. N. Devan

Vs

Habihunnissa and Another

Civil Appeal No. 1628 of 1987

(Ranganath Misra, M. M. Dutt JJ)

06.08.1987

ORDER

1. Special leave granted.

2. The appellant and the respondents herein are neighbours. Each party purchased 31 cents of land from the common vendor out of a large plot by separate registered sale deeds dated March 4, 1973. The common vendor has already disposed of the entire land under five different sale deeds including the two involved in this litigation. The original vendor and the other three sets of transferees are not parties to this litigation.

3. Plaintiff came to court for possession of a strip of land measuring 42 x 72 with a total extent of 324 sq. ft. His allegation was that this property forming part of his 31 decimals had been encroached upon by the defendants. The trial court decreed the suit but the first appellate court vacated the decree and dismissed the suit and the High Court in second appeal sustained the appellate decree.

4. Both the sale deeds have been accepted as genuine. As already noticed the sale deeds are of the same day and plaintiff's sale deed was registered first. Ordinarily the sale deed which was registered first has to prevail in the matter of conveyance of title over others. The real dispute seems to be that at the spot there is a shortfall of 324 sq. ft. out of 62 decimals. The defendants had denied the plea of encroachment by asserting that they were in possession of 31 decimals as per the sale deed.

5. We have heard learned counsel for the parties and are of the view that the only way in which this litigation involving a small strip of land can be disposed safeguarding the interest of both the parties is to ask them to suffer the shortfall in equal proportion. We accordingly direct that the plaintiff shall be entitled to recover 162 sq. ft. out of the alleged encroachment and the defendants shall be entitled to keep the remaining 162 sq. ft. as a part of their land. The appeal is allowed in part. The judgments of the three courts are set aside and what has been said above is substituted as the decree in the suit. Parties shall bear their own costs throughout. In the event of parties failing to amicably adjust the possession of the property in the manner indicated, the learned trial judge by appointing a Commissioner at the cost of the plaintiff shall give effect to this direction, when moved by either party.

</html