

Maniar Ismail Sab and Others

Vs

Maniar Fakruddin and Others

Civil Appeal No. 1693 of 1987

(CJI R. S. Pathak, M. H. Kania JJ)

27.04.1989

JUDGMENT

PATHAK, C.J. –

1. We have heard learned counsel for the parties and we are of opinion that this appeal should be allowed.

2. The High Court had before it a second appeal under Section 100 of the Code of Civil Procedure and the appeal could have been entertained only if a question of law arose in the case. A perusal of the impugned judgment of the High Court shows that the High Court appraised the evidence on the record and interfered with the findings of fact reached by the two courts below on the basis of evidence before them that the property in dispute was part of the land assigned under d Ex. P-3 and that the plaintiffs' case that Abdul Sab had constructed the two shops in question had not been established. The High Court has interfere with these findings of fact in the view that the two courts below had made out a new case by concluding that there was no partition between Abdul Sab and Mohammad Sab and they were tenants in common in respect of the suit property. What the High Court has done is to reverse the findings of fact upon considerations which proceed entirely upon facts. This the High Court was not competent to do in a second appeal under Section 100 of the Code of Civil Procedure. Accordingly, the appeal is allowed, the impugned and decree of the High Court are set aside and the judgment and decree of the first appellate court are restored. In the circumstances there is no order as to costs.

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