

Ramji And Others

Vs

Ramadevi and Others

Civil Appeal No. 927 of 1981

(Ranganath Misra, M. M. Puchhi, S. C. Agarwal JJ)

11.07.1990

ORDER

1. This appeal by special leave is directed against the summary dismissal of the writ petition by the Allahabad High Court on October 22, 1980. The entire dispute is confined to the question as to whether a petition for substitution had been filed in the pending action before the Munsif on December 23, 1974 for bringing on record the legal representatives of Smt. Tulsa. A certified copy of the petition is claimed to have been taken by the appellant and Mr. Pramod Swarup, advocate for the appellant has asserted that the said certified copy was in his custody and was shown to this Court when the special leave was granted. According to him his brief has been lost and he has reconstituted his record; therefore, he is not in a position to produce original certified copy and a photostat copy has now been produced.

2. In case the certified copy of the judgment as claimed was taken there would be material available to establish the fact. Order sheet of the case between July and December 1974 had not been traced. It is the stand of the appellant that petition for substitution has remained undisposed of. The High Court during the pendency of the writ petition by interim direction had required the trial court to dispose of the pending substitution petition but on the plea that same was not available and perhaps had not been filed the direction of the High Court was not implemented. The allegation is that the papers have been lost in the court. It is the paramount duty of the court to ensure that no prejudice is cause to the litigating parties on account of some lapse on its part. We, therefore, are not satisfied that the appellant's claim had been properly dealt with. We set aside the order of the High Court and remit the matter to it with the direction that the High Court while retaining writ petition on its record may direct an inquiry to be instituted either by the District Judge or by the trial court as to the fact of filing of the substitution petition. Both parties should be given full opportunity to place their claims as to the filing of that matter. A lot of time has been lost and Mrs. Rani Chhabra is justified in making the demand that the fruits of the decree have yet not been made available to the respondents, we, therefore, direct the High Court to ensure the disposal on or before December 21, 1990.

3. Status quo as ordered shall continue for two months with liberty to the appellant to apply to the High Court for further directions. No costs.

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