

SUPREME COURT OF INDIA

Govindan

Vs.

Subramaniam

(S Majmudar and U Banerjee JJ.)

01.02.1999

ORDER

1. Leave granted.

2. With the consent of learned Counsel for the parties the appeal was taken up for final disposal forthwith.

3. The short question is whether the High Court in the impugned judgment was justified in taking the view that Defendant 2 who was one of the appellants in the second appeal had no locus standi to maintain the same. It was held that Defendant 2 was a purchaser from Respondents 4 to 6, But it is difficult to appreciate as to how it can be said that he had no locus standi to maintain the second appeal and for demonstrating that his vendors had legal title to convey the property to him. Order 41 Rule 4 of the CPC also will apply in such a case. The observation of the High Court that the appellant's vendors have not filed any appeal would therefore not come in the way. It is obvious that once they had sold out the disputed properties to the appellant-Defendant 2 they would not be interested in prosecuting the proceedings any further and the real interest would be of only Defendant 2 - the appellant herein to try to show that his vendors had legal title to convey the property in question. We may not be understood to have expressed any opinion of the merits of the controversy between the parties.

But all that we find is that the High Court while dealing with the legal position has held that the appeal filed by the appellant to be not maintainable. It is pertinent to note that the High Court has framed substantial question of law as mentioned in para 3 of the judgment. It reads as under:

Whether the courts below have properly appreciated and applied the principles under Section 16(3) of the Hindu Marriage Act, 1955, as amended by Act 68 of 1976, to the facts of the present case?

4. This question is not answered at all on the ground that the appellant had no locus standi to file the appeal. Consequently, the impugned judgment and order are set aside. The second appeal is restored to the file of the High Court with a request to redecide the same on the substantial question of law which has been framed and answer the same on merits after hearing the parties. We express no opinion on the said substantial question of law. It is obvious that the same will have to be decided by the High Court in accordance with law. The appeal is accordingly allowed. There would be no order as to costs.