

SUPREME COURT OF INDIA

S.M. Seeni Ibrahim Sahib

Vs.

S.M. Sultan Ibrahim

(S.B. Majmudar and Y.K. Sabharwal JJ.)

03.03.2000

ORDER

S.B. MAJMUDAR, J.

1. Delay in filing the counter affidavit is condoned.
2. Leave granted.
3. By consent of learned senior Counsel for the parties these appeals are heard finally and are being disposed of by this order.
4. The short question is whether the application being I.A. No. 1010 of 1998 in O.S. No. 662 of 1998 moved on 11th November 1998 before the trial court challenging the compromise decree on the grounds mentioned therein, requires to be reconsidered on merits after hearing the parties concerned. It is contended that Appellant No. 2, who is the wife of Appellant No. 1 who is allegedly mentally unsound, had entered into a compromise with the Respondent which was contrary to law. She, therefore, claims to be the guardian of Appellant No. 1 and moved the trial court for setting aside the said decree. The learned trial judge, without following the appropriate procedure as laid down by proviso to Order 23 Rule 3, CPC (C.P.C.) set aside the decree. In the revision filed by the Respondent-decree holder the High Court rightly held by the impugned judgment and even on consent by learned Senior Counsel for the Appellant that the procedure adopted by the trial court was not correct. The Revision Application was, therefore, allowed.
5. However, in our view, a further order was required to be passed by the High Court directing the proceedings to be remanded to the trial court for fresh decision on merits accordingly to the provisions of Order 23 Rule 3 as also Order 32 Rule 15, C.P.C. As that was not done, only on this short ground these appeals are partly allowed. The final/consequential direction which was required to be issued by the High Court is hereby issued now to the effect that the proceedings will stand remanded to the trial court with a direction to re-decide the aforesaid application moved by Appellant No. 2-wife purporting to be the guardian of Appellant No. 1, who is alleged to be mentally unsound and to decide the question whether the impugned Consent Decree was legal or not.
6. We make it clear that we make no observations on the controversy between the parties, The Civil Appeals are partly allowed accordingly. No costs.

