

SUPREME COURT OF INDIA

A.H. Pinto (Dead)

Vs.

V. Chaniyappa

(K.T. Thomas and R.P. Sethi JJ.)

02.08.2000

ORDER

1. Leave granted.

2. In a second appeal the High Court seems to have decided issues in a suit which were not ripe to be decided. The appellant herein is the 31st defendant in the suit who raised various contentions such as the right of the plaintiff to claim partition of the suit property, that plaintiff was not the member of the original mortgagor's family etc. etc. One of the keenly contested issues related to the question of limitation. That issue has been formulated in the following language:

(6) Does the 31st defendant prove that the suit for redemption of mortgage of 1873 is barred by limitation?

3. Two other issues were framed, namely, issue Nos. 9 and 10 which could also be decided are the following:

(9) Does the 31st defendant prove that suit is not valued properly?

(10) Whether the court fee paid, is sufficient?

4. The trial court actually considered the above issues and found regarding issue No. 6 that the suit was barred by limitation. The other two issues were found in favour of the plaintiff. The First Appellate Court confirmed those findings and dismissed the appeal. The scope of the second appeal cannot, therefore, go beyond the said issues. But learned Judge of the High Court after deciding those issues made an observation in paragraph 17 of the impugned judgment that "once it is held that the suit is in time and the redemption has taken place, then the other question of partition automatically follows; the 31st defendant who has purchased equitable redemption from one of the sharers will be entitled to that share along with the plaintiff".

5. It is difficult for us to agree with the aforesaid finding rendered by the learned Judge of the High Court. He should not have embarked upon any other issue beyond issue Nos. 6, 9 and 10 mentioned above. The findings rendered by the learned judge regarding those 3 issues are not disturbed by us. The case is, therefore, to go back to the trial court in regard to the remaining issues, for which we vacate the finding rendered by the Single Judge of the High Court in paragraphs 17 and 18 of the impugned judgment.

6. This appeal is disposed of by directing the suit to go back to the trial court for disposal of the suit by determining the remaining issues.

7. Applications filed here for substitution would be filed in the trial court and the same would be dealt with by the trial court.