

SUPREME COURT OF INDIA

Seba Banerjee & Ors.

Vs.

Nirmala Das @ Nirmala Bala Das

C.A.No.7934-7935 of 2001

(H.K.Sema and Markandey Katju, JJ.)

06.02.2008

ORDER

1. Heard learned counsel for the parties at length. The plaintiffs' suit for declaration of easementary right by way of necessity, prescription and grant has been dismissed by the trial court. The order of the trial court has been affirmed in appeal by the first appellate Court. However, by the impugned order the High Court sitting in the second appeal reversed the concurrent finding of facts recorded by the two courts below and decreed the plaintiffs' suit albeit without framing substantial question of law. We have noticed in the judgment of the High Court that the High Court itself has recorded that the concurrent finding of two courts below with reason cannot be upset in second appeal. Having recorded that, the High Court turned around and decreed the suit by re-appreciating the evidence on the record and facts. This is not permissible.

2. In the result the judgment and decree of the High Court in second appeal is set aside and the orders of the trial court and first appellate court are restored. The appeal are allowed. No costs.