

SUPREME COURT OF INDIA

Ram Naresh

Vs.

Ramavtar

C.A.No.4768 of 2008

(S.B. Sinha and Cyriac Joseph JJ.)

01.08.2008

ORDER

1. Leave granted.

2. Heard the learned counsel for the parties.

3. This appeal is directed against the judgment and order dated 5.7.2007 passed by learned Single Judge of the High Court of Madhya Pradesh at Jabalpur in Second Appeal No. 126/1987 allowing the second appeal filed by the respondents herein from a judgment and decree dated 2.1.1987 passed by the District Judge, Panna, allowing an appeal preferred by the appellant from a judgment and decree passed by the learned Civil Judge, Class II, Panna, dated 3.5.1983.

4. In view of the order proposed to be passed by us, it is not necessary to state the fact of the matter in details. Suffice it to say that the contention of the parties centred round proof of execution of a Will by one Mst. Katra Wali, on or about 31.10.1972.

5. A contention has also been raised by the respondents that the appellant had committed fraud on the testatrix. Opining that the said Will is an outcome of the fraud on the part of the appellant, the said suit was dismissed by the learned Trial Judge. However, the first appeal preferred thereagainst was allowed.

6. The High Court while entertaining the second appeal at the instance of the respondents, formulated the following substantial question of law:

“Whether the lower appellant Court was justified in law in reversing the judgment and decree of the trial Court.”

7. The High Court in its judgment impugned before us, inter alia, arrived at the following findings:

“Nowhere in their evidence it has come that the testator put her thumb impression in their presence and they put their signature and thumb impression in presence of the testator.”

8. Having heard the learned counsel for the parties, we are of the opinion that, apart from the fact that the purported substantial question of law framed does not satisfy the test laid down under Section 100 of the *Code of Civil Procedure*, the High Court appears to have committed a manifest error in its approach in entering into the merit of the matter.

9. Learned counsel appearing on behalf of the respondents, when questioned, submitted that a large number of substantial questions of law had been raised before the High Court which, however, had not been formulated.

10. Be that as it may, in view of our finding aforementioned that the question formulated ex facie was not a substantial question of law within the meaning of the provisions of subsection (4) of Section 100 of the Code of Civil Procedure, the impugned judgment cannot be sustained. It is set aside accordingly and the matter is remitted to the High Court for consideration of the matter afresh.

11. The High Court may formulate such substantial question of law as in its opinion arises in the matter.

12. The High Court is requested to consider the desirability of hearing out the matter as expeditiously as possible.

The appeal is allowed. No costs.