

SUPREME COURT OF INDIA

Laxmi Ram (Dead) By Lrs.

Vs.

Bietshwar

C.A.No.5348 of 2008

(B.N. Agrawal and G.S. Singhvi JJ.)

29.08.2008

ORDER

1. Application for substitution is allowed.
2. Leave granted.
3. Heard learned counsel for the parties.
4. By the impugned order, High Court has dismissed the second appeal on the ground that no substantial question of law was involved therein.
5. Having heard the parties and perused the records, we are of the view that High Court was not justified in observing that no substantial question of law is involved in the appeal. In our view, the following substantial questions of law do arise in the second appeal:

“(2) Whether the findings of the trial court on issue No.(VII) that Pokhani inherited the property as her husband Bifan Ram was the last male holder in the branch of Rucha Ram is based on error of record in appreciating averments made in paragraph 18 of the written statement which read with the averment made in paragraph 10 of the written statement makes out a clear case that Bifan Ram predeceased his father Rucha Ram, therefore inadvertently using the words that Bifan was the last male heirs becomes meaningless read with the further continuous statement in the same sentence that Bifan Ram was the last male heirs in the branch of Late Rucha Ram @ Rupa Ram who predeceased his father and thereafter Rucha Ram also died and thereafter entire property reverted back to the branch of Ramdhyan Ram? (3) Whether the findings on issue No.(vii) is vitiated in law for being influenced by an error of record and mis- appreciation and non-appreciation of evidences on the records as to who was the last male holder?”

6. The High Court should have framed the afore-mentioned substantial questions of law and decided the same.

7. In view of this, the appeal is allowed, impugned order is set aside and the second appeal is remanded to the High Court. Upon such remand, the High Court shall first frame the above-noted two substantial questions of law and decide the second appeal afresh in accordance with law.

8. It is needless to say that in case the High Court is of the view that any other substantial question of law is involved in the appeal, such question may also be framed and decided after giving opportunity of hearing to the parties.