

SUPREME COURT OF INDIA

Bhakuadas

Vs.

Nankibai

C.A.No. 7102 of 2001

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

18.03.2009

ORDER

1. Heard learned counsel for the parties.

2. The Trial Court decreed the suit for declaration of title and recovery of possession filed by the plaintiff-appellants after recording a categorical finding that Mohandas had not married Nankibai (respondent herein) and as such she cannot have any right in the joint property. The Lower Appellate Court agreed with the aforesaid conclusions of the Trial Court and dismissed the appeal preferred by Nankibai. However, the High Court allowed the Second Appeal and set aside the judgments and decrees of the two courts by observing that they lost the sight of the fact that Nankibai was living with Mohandas and this was sufficient to show that she was married to him.

3. We have been taken through the judgments of the Courts below and the High Court. In our view, the finding of fact recorded by the Trial Court, which was confirmed by the Lower Appellate Court that marriage of Nankibai with Mohandas has not been proved, was based on a correct appreciation of the evidence produced by the parties and the High Court was not justified in upsetting the said finding in Second Appeal without even coming to the conclusion that the concurrent finding of fact recorded by the courts below was perverse. We are further of the view that High Court's finding on the issue of marriage of Nankibai with Mohandas is based on surmises. The mere fact that Nankibai was living with Mohandas, cannot, by any stretch of imagination, lead to a conclusion that they were married.

4. Accordingly, the appeal is allowed, impugned order rendered by the High Court is set aside and the same passed by the Lower Appellate Court is restored.

No costs.

