

SUPREME COURT OF INDIA

Chebrol Sriramalu

Vs.

Vakalapudi Satyanarayana

C.A.No.5477 OF 2013

(H.L.Dattu and Dipak Misra JJ.)

12.07.2013

ORDER

H.L.Dattu, J.

1. Leave granted.

2. The Plaintiff/ Respondent herein had filed a Suit for Specific Performance of the Agreement of Sale, dated 23.08.1997. The Trial Court by its order dated 20.07.2004 has decreed the suit. Aggrieved by the order of the Trial Court, the Defendant/ Appellant had preferred an appeal before the High Court. The High Court by the impugned judgment and order dated 22.07.2010 has dismissed the appeal. Being aggrieved by the same, the Defendant/ Appellant is before us in this appeal, by Special Leave.

3. Heard Shri Basava Prabhu Patil, learned senior counsel for the Defendant/ Appellant and Shri S.N. Bhat, Learned counsel for the Plaintiff/ Respondent.

4. Shri Patil, learned senior counsel takes us through the evidence deposed by P.W.1 wherein a specific question was put to the Defendant as to whether he was aware that the suit property is an ancestral property or not. In response to the said question, the Defendant/ appellant has stated that the property is a joint family property. In spite of those statements, the Trial Court has not thought it fit to frame an additional issue and decided the *lis* between the parties. In our view, the said issue is wholly relevant and significant for the effective disposal of the suit filed by the Plaintiff/ Respondent.

5. In that view of the matter, we cannot sustain the judgment and order passed by the Trial Court and affirmed by the High Court. Accordingly, while setting aside the impugned judgment and order, we remand the matter back to the Trial Court with a specific direction that the Trial Court would frame the additional issue insofar as the status of the property is concerned after affording opportunity to both the parties to lead their further evidence.

6. We are informed by the learned counsel Shri Patil that the Defendant/appellant is in possession

of the property and his possession shall not be disturbed either by the Plaintiff/respondent or his representatives till the disposal of the Suit.

7. Under these circumstances, we direct that the title of the property in possession of Defendant/appellant shall not be disturbed either by the Plaintiff/respondent or his representatives till the disposal of the Suit.

The appeal is disposed of accordingly. No costs.

Ordered accordingly.