

A BHAGWANDAS FATECHAND DASWANI AND ORS.

v.

H.P.A. INTERNATIONAL AND ORS.

JANUARY 13, 2000

B [V.N. KHARE AND N. SANTOSH HEGDE, JJ.]

*Code of Civil Procedure, 1908 : Order XX Rule 1.*

*Judgment—Long delay in delivery—Effect of.*

C Respondent No. 2 entered into agreement with respondent No. 1 for transfer of property—Thereafter respondent No. 2 transferred the rights in favour of appellants—Suit for specific performance filed by respondent No. 1 decreed by trial court—Appeal before High Court—Judgment delivered by High Court after five years of conclusion of hearing of appeal—Appeal before D Supreme Court—Question whether long delay in delivery of judgment is sufficient to set aside the impugned judgment left open—However, long delay in judgment gives rise to unnecessary speculation in the mind of parties—Appellants may have apprehension that arguments raised at bar have not been reflected while dictating judgment—Impugned judgment set aside—Matter E remitted to High Court for decision afresh on merits.

*Kunwar Singh & Ors. v. Sri Thakurji Maharaj, [1995] Supp. 4 SCC 125, referred to.*

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7386 of 1994.

From the Judgment and Order dated 24.1.94 of the Madras High Court in O.S.A. No. 202 of 1988.

G Soli J. Sorabjee, Attorney General, H.N. Salve, S. Ganesh, P.H. Parekh, Amit Dhingra, Jayesh Dolia, Harish, Y. Shankar, Sameer Parekh, V. Balachandran, Raju Ramachandran, Joseph Pookkat, R.A. Perumal, N.C. Ramesh and N.S. Varadachari for the appellants.

H K. Parasaran, V. Balachandran S. Aravindh, Santhil Jagadeesan, V. Rama Subramaniam and T.K. Shredri for the Respondents.

The following Order of the Court was delivered :

A

The defendant-appellants, who are the subsequent purchasers, are in appeal. This appeal is directed against the judgment of Madras High Court dated 24th January, 1994 whereby the decree for specific performance of the agreement passed by the trial court was affirmed.

B

On 26th June, 1977 respondent No. 2 entered into an agreement with first respondent herein, for transfer of his life interest in the property in dispute. On 29.12.79, respondent No. 2 transferred the rights in favour of the defendant-appellants who are the subsequent purchasers for consideration of Rs. 4.40 lakhs. Under such circumstances, plaintiff-respondent No. 1 brought a suit for specific performance, which was decreed by the trial court and the appeal preferred to the High Court was dismissed. It is in this way the defendant-appellants are before us.

C

Learned Attorney General appearing for the appellants urged that, before the High Court, the hearing of the appeal was concluded on 22nd March, 1989 but the judgment was delivered on 24th January, 1994 - nearly five years after the hearing was concluded, and this long delay in delivery of judgment by itself is sufficient to set aside the judgment under appeal. Learned Attorney General has also relied upon decision of this Court in the case of *Kunwar Singh and Others v. Sri Thakurji Maharaj*, [1995] Supp. 4 SCC 125. At present, we are not deposed to go into this broad question as urged by the learned Attorney General. However, it is correct to this extent that long delay in delivery of judgment gives rise to unnecessary speculations in the mind of parties to a case. Moreover, the appellants whose appeals have been dismissed by the High Court may have the apprehension that the arguments raised at the bar have not been reflected or appreciated while dictating the judgment - nearly after five years. This is fairly not disputed by learned senior counsel, Shri K. Parasaran, appearing for respondent No. 1. We, therefore, on this short question, set aside the judgment under appeal without expressing any opinion on the merits of the case and remit the case to the High Court for deciding the appeal afresh, on merits. In view of the fact, that the matter has been pending for a considerable period of time, we request the High Court to decide the matter expeditiously, if possible, within six months.

D

E

F

G

Before we part with the case, we would like to observe that when this appeal was filed in this Court, the interim relief prayed for by the appel-

H

A lants was refused. As a consequence, respondent No. 2 executed a sale deed in favour of respondent No. 1, and respondent No. 1 came in possession of the property and since then, he continues to be in possession. Under such circumstances, respondent No. 1 being the lawful owner, so long the decree remains intact, is entitled to continue in possession over the property in dispute. Learned Attorney General urged that, in case respondent No. 1 is to continue in possession over the property, the interest of the appellants may also to be protected. It is then, learned counsel for the parties made an agreed statement that during the pendency of the appeal before the High Court respondent No. 1 shall not create any third party right in respect of the property in dispute and further shall deposit the rent/income received from that property in the High Court after deducting the maintenance charges and tax liabilities which shall be subject to the decision of the appeal in the High Court. We order accordingly.

The appeal is allowed. There shall be no order as to costs. All the IAs are disposed of accordingly.

T.N.A.

Appeal allowed.