

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2023
(arising out of Special Leave Petition (Civil) No.1654 of 2017)

AJAY KUMAR SHARMA

Appellant(s)

VERSUS

ASHA DEVI & ORS.

Respondent(s)

O R D E R

Leave granted.

Heard, learned counsel appearing for the appellant and the respondents.

The suit was filed by the respondents before us for declaration, declaring that the suit property belongs to them. The appellant being the defendant took a plea that the said property belongs to him absolutely. The Trial Court dismissed the suit which was confirmed by the Appellate Court. On a further appeal, by the impugned order, the High Court passed a decree treating the suit property as a common property belonging to both the parties and accordingly granted the relief, though not asked for originally by the respondents.

As rightly submitted by learned counsel for the appellant, the High Court has committed an error in passing the impugned order that too by ignoring the scope and ambit of Section 100 of the Code of Civil Procedure, 1908 (in short 'C.P.C'). A decree can be passed under Section 100 of C.P.C. only on a substantial question of law, which if answered in favour of the appellant will

have the effect of reversing the decree of the court below.

Unfortunately, that was not the process adopted by the High Court.

Before the Trial Court pleadings were made by both the parties to the effect that they were the absolute owners of the suit property. A changed stand was taken by the respondent only before the High Court claiming joint ownership. In our considered view, the High Court ought not to have accepted the said plea by granting a different decree than the one originally sought for. We make it clear that the relief can only be granted based upon existence of a substantial question of law.

In such view of the matter, we are inclined to set aside the impugned judgment and the matter is remitted back to the High Court to decide the second appeal after answering the substantial questions of law, if any. No costs.

Appeal is accordingly allowed, in above terms.

....., J.
(M.M. SUNDRESH)

....., J.
(J.B. PARDIWALA)

NEW DELHI;
29TH AUGUST, 2023

ITEM NO.47

COURT NO.14

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (C) No.1654/2017

(Arising out of impugned final judgment and order dated 03-10-2016 in RSA No. 296/2015 passed by the High Court of Delhi at New Delhi)

AJAY KUMAR SHARMA

Petitioner(s)

VERSUS

ASHA DEVI & ORS.

Respondent(s)

Date : 29-08-2023 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Petitioner(s) Mrs. Nanita Sharma, AOR
Mr. Vivek Sharma, Adv.
Mr. Suranjan S Roy, Adv.
Ms. S. Pamchuila Gangte, Adv.

For Respondent(s) Mr. C.M. Sharma, Adv.
Mr. Neeraj Srivastava, Adv.
Ms.(Dr.) Neetu Rathore, Adv.
Mr. Suhail Malik, Adv.
Mr. Ronak Baid, Adv.
Mr. Pranaya Kumar Mohapatra, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order which is placed on the file.

Pending application(s), if any, shall stand disposed of.

(KAVITA PAHUJA)
COURT MASTER (SH)

(RAM SUBHAG SINGH)
COURT MASTER (NSH)