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Virsa Singh Kamboh Vs Darshan Singh Datta and Another

Court: Supreme Court of India

Date of Decision: Jan. 27, 1994

Citation: (1994) 2 SCC 466 Supp

Hon'ble Judges: P. B. Sawant, J; J. S. Verma, J; Faizan Uddin, J

Bench: Full Bench

Final Decision: Disposed Of

Judgement

@JUDGMENTTAG-ORDER

1. MR K.K. Mohan, learned counsel for the respondents in all fairness has pointed out that the decision of the Constitution bench in Atam Prakash

v. State of Haryana has settled that the right of pre-emption claimed by the plaintiff- respondents on the ground of kinship is no longer sustainable.

Learned counsel, however, submitted that the decree for possession having been executed and the plaintiff-respondents having obtained

possession on 15/12/1984 prior to the decision of the Constitution bench in Atam Prakash v. State of Haryana, particularly when leave to file this

appeal itself was granted after delivery of the possession to the respondent, the observations of the Constitution bench at the end of the decision in

Atam Prakash v. State of Haryana are available to protect the decree in plaintiff''s favour. The observations in Atam Prakash v. State of Haryana

at the end of the decision, which are relied upon by the learned counsel are as under :

WE are told that in some cases suits are pending in various courts and, where decrees have been passed, appeals are pending in appellate courts.

Such suits and appeals will now be disposed of in accordance with the declaration granted by us. We are told that there are a few cases where

suits have been decreed and the decrees have become final, no appeals having been filed against those decrees. The decrees will be binding inter

partes and the declaration granted by us will be of no avail to the parties thereto.

2. IN our opinion, the words ""where suits have been decreed and the decrees have become final, no appeals having been filed against those

decrees"" appearing in the above abstract do not refer to cases like the present since the decree of the court below had not attained finality being

under challenge in the appeal which was pending at the time of the decision of the Constitution bench. The mere fact that possession had been

delivered in execution of the decree, which fact also appears to be disputed, does not, therefore, have the effect of bringing this case within the

category of cases where the decree had attained finality because of there being no challenge in appeal thereto on the date of the decision of the

Constitution bench. We are, therefore, unable to accept the submission that notwithstanding the decision of the Constitution bench in Atom

Prakash v. State of Haryana, the observations made at the end of that decision have the effect of attaching finality to the decree under challenge in

these appeals on the date of the decision in Atam Prakash v. State of Haryana. This being so, these appeals have to be allowed.

3. CONSEQUENTLY, the appeals are allowed. The judgment and decrees of courts below are set aside resulting in dismissal of the suit of the

plaintiff- respondents. The parties shall bear their own costs throughout.