

C.A.No. 2540 OF 1999

ITEM No.105

Court No. 7

SECTION IVA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 2540 of 1999

SHIGALAPPA Appellant (s)

VERSUS

MUNIJALAGARAPPA & ORS.Respondent (s)

(With office report)

Date : 07/04/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr. S.N. Bhat,Adv.

For Respondent (s)Mr. A.D.N. Rao,Adv.

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

Heard the learned counsel for the parties for a while.

The civil appeal is allowed.

No costs.

[T.I. Rajput][Shelly Sengupta]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2540 OF 1999

Shigalappa ...Appellant(s)

Versus

O R D E R

The learned counsel for the appellant submitted that the High Court committed a serious error in disposing of the second appeal reversing the finding of fact recorded by the first appellate court and restoring the decree passed by the trial court without formulating any substantial question or questions of law, that arose for consideration between the parties, as mandatorily required under Section 100 of the Code of Civil Procedure, 1908.

A perusal of the impugned judgement shows that the High Court re-appreciated the evidence placed on record and upset the judgement passed by the first appellate court recording a finding of fact. This Court has repeatedly ruled that the High Court, before disposing of a second appeal, has to essentially formulate substantial question or questions of law, if arose for the consideration between the parties. The impugned judgement suffers from the infirmity of not formulating the substantial question or questions of law. On this short ground alone, it can not be sustained.

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In the view we propose to take, we do not wish to express one way or the other on the merits of the respective contentions raised on behalf of the parties.

In the result, the civil appeal is allowed. The impugned judgement passed by the High Court is set aside. The second appeal is remitted to the High Court for formulating substantial question(s) of law and then to dispose of the second appeal.

No costs.

.....J.
[SHIVARAJ V. PATIL]

.....J.
[D.M. DHARMADHIKARI]
New Delhi,
April 07, 2004.