

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. 2105 OF 1999

B.S.SHANTAPPA & ORS

Appellant

(s)

VERSUS

T.S. SAROJAMMA & ORS

Respondent

(s)

(With appln(s) for exemption from filing O.T.,permission to place
addl. documents on record and office report)

Date: 16/12/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE A.K.MATHUR

For Appellant(s)

Mr. Shantha Kumar V. Mahale, Adv.

Mr. Rajesh Mahale, Adv.

Mr. S.Manjunath, Adv.

Mr. R.C. Kohli,Adv.

For Respondent(s)

Mr. G.V. Chandrasekhar, Adv.

Mr. P.P. Singh, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Civil Appeal is allowed with no order as to costs in terms of the signed order.

(Parveen Kr. Chawla)

(Kanwal Singh)

Court Master

Court Master

[Signed Order is placed on the file]

1

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2105 OF 1999

B.S.SHANTAPPA & OTHERS
(S)

.. APPELLANT

VERSUS

T.S.SAROJAMMA & OTHERS
T(S)

.. RESPONDEN

O R D E R

This appeal by grant of leave is directed against the judgment of a Single

Judge of the Karnataka High Court at Bangalore in R.S.A. No.712 of 1995 wherein the High Court has set aside the findings recorded by the Courts of fact without even advertng to the facts of the case.

At the time when the second appeal was admitted in the High Court, no question of law was framed. The learned Single Judge relying upon an earlier decision in veerabhadrappa & Others vs. Virupaxappa Totappa Bilegal reported in ILR 1998 Karnataka 2508 came to the conclusion that whenever

2

occupancy right is given to a member of the family it would enure to the benefit of the entire family members. This finding is recorded even before framing the questions of law. After recording this finding learned Judge framed two questions of law. There also without even referring to a single fact on the record, learned Judge came to the conclusion that the respondents were entitled to share the land which was allegedly allocated to appellant No.1 as occupancy tenant in his individual capacity. Learned Single Judge has not given any reasons whatsoever for setting aside the judgment of the first appellate court. The Court of appeal must record reasons for setting aside the judgment under appeal and for coming to a conclusion other than the court below.

Since in the impugned judgment reasons have not been recorded for taking

a view other than the view taken by the court below it cannot be sustained.

Accordingly, the judgment under appeal is set aside and the case is remitted back to the High Court for a fresh decision in accordance with law.

Nothing stated herein be taken as an expression of opinion and the

3

High Court would be at liberty to decide the matter afresh either on the questions of law, already framed, or after reframing the questions of law.

Registry is directed to transmit the original record forthwith.

The appeal is allowed with no order as to costs.

.....J.

[ASHOK BHAN]

NEW DELHI;

.....J.

DECEMBER 16, 2004.

[A.K. MATHUR]