

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(s). 1522 OF 1999

NAYAKARA THIPPANNA(D)BYL.RS.

Appellant (s)

VERSUS

CHURI KARIBASAPPA (DEAD) BY LRS.

Respondent(s)

(With office report )

Date: 22/03/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH

HON'BLE MR. JUSTICE ALTAMAS KABIR

For Appellant(s)

Mr. Rajavenkatappa Naik, Adv.

Mr. Vijay Kumar Ravi, Adv.

Mr. Sanjeev Sharda, Adv.

Mr. Vinod Bhaskar, Adv.

Mr.R.K. Gupta, Adv.

Mr. Rameshwar Prasad Goyal, Adv.

For Respondent(s)

Mr. Girish Ananthamurthy, Adv.

Mr. P.P. Singh, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed and the judgment and order of the High Court is set aside and the

matter remitted to the High Court in terms of the signed order.

Status quo as to possession shall be maintained by the parties till the second appeal is

taken up for hearing by the High Court.

No order as to the cost.

(Ajay Kr. Jain)  
(Vijay Dhawan)

Court Master  
Court Master

(Signed order is placed on the fil

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1522 OF 1999

Nayakara Thippanna (D) By Lrs.  
Appellants

....

Versus

Churi Karibasappa (Dead) By Lrs.  
Respondents

....

O R D E R

This appeal is directed against the judgment and order of the High Court of Karnataka at

Bangalore dated November 06, 1997 in Regular Second Appeal No. 311/1990. The High Court has by its

impugned judgment and order set aside the judgment and decree of the First Appellate Court and restored

that of the Trial Court.

It is not disputed before us that the respondent-plaintiff filed a suit for declaration and

injunction in respect of the land Survey No. 145/2-P measuring 6 acres and 7 guntas situate in Village Halkera

now in the District of Davanagere. The declaration sought for was that at the respondent-plaintiff had

purchased the land in question from the appellants-defendants under a sale deed dated 22.7.1956. It was

prayed that his right as the owner thereof may be declared and the appellants-defendants be restrained from

interfering with his possession. It is not necessary for us to notice the defence of the defendant in the suit.

Suffice it to say that the suit was decreed by the Trial Court. Ultimately, the matter came up in appeal before

the lower Appellate Court who by its judgment and order of 14.2.1990 allowed the appeal and dismissed the

suit. Aggrieved thereby the plaintiff preferred Regular Second Appeal before the High Court in which the

impugned judgment and order has been passed.

The High Court by its impugned judgment and order set aside the judgment and decree passed

by the Appellate Court. However, it is admitted before us that the High Court while doing so did not frame any

substantial question of law which fell for its consideration.

In a series of decisions this Court has held that in dealing with an appeal under Section 100

CPC after its amendment in the year 1976, it is essential for the High Court to formulate a substantial question

of law, and it is not permissible to reverse the judgment of the First Appellate Court without doing so. (See :

Ishwar Dass Jain(dead) Through Lrs. Vs. Sohan Lal (Dead) By L.Rs. AIR 2000 SC, 426; Balla Ram (Dead) By

Lrs. and Ors.Vs. Phoola (Dead) By Lrs. and Others (2003) 1 SCC, 378 and Sasikumar and Ors. Vs . Kunnath

Chellappan Nair and Ors. JT 2005 (9) SC, 171)

Admittedly, in the instant case, the High Court while setting aside the judgment of the lower

appellate court did not formulate the substantial question(s) of law which arose for its consideration in the

second appeal. In such matters this Court has consistently followed the practice of remitting the matter to the

High Court for disposal of the second appeal in accordance with law after formulating the substantial question

(s) of law which falls for consideration in the second appeal. Accordingly, this appeal is allowed and the

judgment and order of the High Court is set aside and the matter remitted to the High Court for disposal of the

second appeal in accordance with law.

Status quo as to possession shall be maintained by the parties till the second appeal is taken up

for hearing by the High Court.

The High Court is requested to expedite the hearing of the appeal since the suit is of the year

1976.

No order as to the cost.

.....J.

(B.P. SINGH)

.....J.

(ALTAMAS KABIR)

New Delhi

March 22, 2006