

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

CIVIL APPEAL NOS. 4150-4151 OF 1999

Jagannath  
)

Appellant (s)

Versus

Arulappa & Anr.  
)

Respondent (s)

(With appln(s) for exemption from filing O.T., permission to submit additional document(s) and office report )

Date: 01/02/2005 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN  
HON'BLE MR. JUSTICE A.K. MATHUR

For Appellant(s) Mr. A.T.M. Sampath, Adv.  
Mr. Narasimhan, Adv.  
Mr. T.S. Shanthi, Adv.

For Respondent(s) Mr. Ranjit Kumar, Sr. Adv.  
Mr. Dayan Krishnan, Adv.  
Mr. Nikhil Nayyar, Adv.  
Mr. Gautam Narayan, Adv.

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

The appeals are allowed in terms of the signed order.

(J.S. Rawat)  
Court Master

(Kanwal Singh)  
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4150-4151 OF 1999

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O R D E R

These appeals are directed against the final judgment and decree of a Single Judge of the High Court of Karnataka at Bangalore in R.F.A. Nos. 40 and 188 of 1989 which have been disposed of by the common judgment dated 16.12.1998. By the impugned judgment, the High Court has reversed the well reasoned judgment of the Trial Court without setting aside the findings recorded by the Trial Court.

A Court of First Appeal can re-appreciate the entire evidence and come to a different conclusion. In the present case, we find that the High Court has not adverted to many of the findings which had been recorded by the Trial Court. For instance, while dismissing the the Suits filed by the respondents, the Trial Court had recorded a finding on Issue No.5 that the defendant-appellant had taken actual possession of the suit properties in Execution Petition No.137/80 arising out of O.S. No.224/78. Without reversing this finding, the High Court simply allowed the appeals and decreed the suits filed by the plaintiffs-respondents in toto. Similarly, there are other issues on which findings recorded by the Trial Court have not been set aside by the High Court.

The points involved in the appeals before the High Court required a

deeper consideration of the findings recorded by the Trial Court as well as the evidence and the pleadings on record.

We are not satisfied with the judgment rendered by the High Court. Accordingly, we set aside the same and remand the case to the High Court for a fresh decision in accordance with law. All contentions are left open to the parties to be raised in the appeals before the High Court.

Since these appeals arise from the two suits being O.S. Nos. 10260 and 10261 instituted in the year 1980, we would request the High Court to take up the appeal for hearing and dispose them off as expeditiously as possible.

The parties are at liberty to move an application before the learned Chief Justice of the High Court for fixation of an early date of hearing.

The Registry is directed to transmit the record of the case to the High Court forthwith to enable it to proceed with the matter.

The appeals are allowed accordingly.

J.

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(ASHOK BHAN)

New Delhi;  
J.  
February 01, 2005.

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(A.K. MATHUR)