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C.A.No. 5378 OF 1998

ITEM No.108

Court No. 9

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. 5378 of 1998

CHIKKAMOGEGOWDA (DEAD) BY L.RS. Appellant (s)

VERSUS

H.K. KALAI AH & ORS.Respondent (s)

(With office report)

Date : 04/02/2004 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. Naveen R. Nath,Adv.
Ms. Hetu Arora,Adv.
Mr. S. Ravindra Bhat,Adv.

For Respondent (s)Ms. K. Sarada Devi,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. 5378 OF 1998

Chikkamogegowda (Dead) By L.Rs.

...Appellant(s)

Versus

O R D E R

In this appeal, filed by the defendant, the judgement passed in the second appeal by the High Court is under challenge. The plaintiff filed a suit for permanent injunction. The trial court decreed the suit. The first appellate court reversed it. In the second appeal filed by the plaintiff, the High Court reversed the judgement passed by the first appellate court and granted decree in favour of the plaintiff with some modification. A perusal of the impugned judgement shows that the High Court did not either formulate or consider any substantial question(s) of law, if arose for consideration between the parties.

The learned counsel for the parties could not dispute that the High Court did not formulate or consider whether any substantial question(s) of law that arose for consideration between the parties, as required under Section 100 of the Code of Civil Procedure, 1908. Although, an attempt was made by the learned counsel for the appellants to contend that, on merits, the appellants have a good case;

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equally, the learned counsel for the respondents submitted that the respondents have a better case on merits. In the view we propose to take, we do not think it is necessary to express one way or the other on the merits of the respective contentions.

This Court has repeatedly stated that in a second appeal, the High Court has essentially to formulate substantial question(s) of law, if arise for consideration between the parties and then to dispose of the second appeal on merits. As already noticed above, no substantial question(s) of law was formulated or considered and decided. On this short ground alone, this appeal is entitled to succeed. Accordingly, the civil appeal is allowed, the impugned judgement is set aside and the second appeal is remitted to the High Court for consideration as to whether any substantial question(s) of law arise for consideration between the parties and then to dispose of the second appeal on merits.

We, however, make it clear that all the contentions of the parties are left open to be urged before the High Court.

At this stage, the learned counsel for the appellants pointed out that the suit was filed in the year 1983 and the second appeal may be disposed of expeditiously. We expect that the High Court would dispose of the second appeal, after remand, as expeditiously as possible.

The interim order, as to possession, granted in this appeal shall continue to operate till the disposal of the second appeal by the High Court.

No costs.

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

.....J.
[D.M. DHARMADHIKARI]

New Delhi,
February 04, 2004.