

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. 2578 of 1998

RAME GOWDA (DEAD) BY L.RS. Appellant (s)

VERSUS

CHOWDAIAH CHARAIAN (DEAD) BY L.RS. Respondent (s)

(With office report)

Date : 27/11/2003 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL  
HON'BLE MR. JUSTICE D.M. DHARMADHIKARIFor Appellant (s)Mr. S.K. Kulkarni,Adv.  
Mr. M. Gireesh Kumar,Adv.  
Mr. Ankur S. Kulkarni,Adv.  
Ms. Sangeeta Kumar,Adv.

For Respondent (s)Mr. Rajesh Mahale,Adv.

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

Heard the learned counsel for the parties from 12.45 p.m. to 12.55 p.m.

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. 2578 OF 1998

Rame Gowda (Dead) By L.Rs. ...Appellant(s)

Versus

O R D E R

The judgement passed by the High Court in a second appeal is under challenge in this appeal by the plaintiff. The suit filed by the plaintiff for declaration and possession was decreed by the trial court and the same was affirmed by the first appellate court in the appeal filed by the defendant. Thus, against the concurrent findings of fact recorded by both the courts below, the defendant took up the matter in second appeal before the High Court. The High Court, by the impugned judgement, set aside the judgement of the trial court as affirmed by the first appellate court and in the result, dismissed the suit.

The learned counsel for the appellants contended that the High Court committed a serious error in reversing the concurrent findings of fact exercising jurisdiction under Section 100 of the Code of Civil Procedure, 1908. He added that, as can be seen from the impugned judgement, no substantial question of law was considered and decided by the High Court in upsetting the concurrent findings of fact.

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The learned counsel representing the respondents urged that on the facts found and established in the case, conclusions of the High Court could be sustained but he was not in a position to contradict that the High Court failed to consider the substantial question of law that arose for consideration between the parties in the second appeal.

Having perused the impugned judgement and considered the submissions made on either side, we do not wish to express one way or the other on the merits of the contentions raised on behalf of the parties in the view we propose to take. The High Court disposed of the second appeal without discussing the substantial question of law that arose for consideration between the parties. In this view of the matter, we set aside the impugned judgement and remit the second appeal to the High Court to dispose it of afresh on merits after formulating substantial question(s) of law that arise for consideration between the parties.

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

The civil appeal is, accordingly, allowed.

No costs.

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

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

New Delhi,  
November 27, 2003.