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C.A.No. 3319 OF 1998
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3319 OF 1998

CHIKKARAMEGOWDA (DEAD) BY LRS. APPELLANTS

VERSUS

B.S. VENKATASUBBARAO (DEAD) BY LRS. & ORS. RESPONDENTS

O R D E R

This appeal is by the defendant No.1 assailing the impugned judgment passed in the second appeal. The suit filed by the plaintiffs for declaration of title and permanent injunction was decreed by the Trial Court. In the first appeal filed by the defendant No.1 the judgment passed by the Trial Court was reversed. The plaintiffs filed the second appeal before the High Court which was allowed.

The learned counsel for the appellants urged that the impugned order cannot be sustained because the High Court while dealing with the second appeal filed under Section 100 of the Code of Civil Procedure, was required

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to consider if any substantial question or questions of law arose for consideration between the parties and if such question or questions of law arose, that ought to have been formulated and then disposed of the second appeal. The learned counsel also made few more submissions to contend that the finding recorded by the First Appellate Court can be sustained.

In opposition, the learned counsel for the respondents-plaintiffs submitted that the evidence placed on record justified the decree passed by the Trial Court in their favour. He was not in a position to dispute that the High Court did not formulate any substantial question of law before disposing of the second appeal.

Having considered the submissions made on behalf of the parties, we are satisfied that the impugned judgment cannot be sustained on a short ground that the High Court committed a serious error in disposing of the second appeal without considering if any substantial question of law arose for consideration. In this view, the appeal is entitled to succeed. Accordingly, the appeal is allowed, the impugned judgment is set aside and the second appeal is remitted to the High Court to formulate the substantial

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question or questions of law, if arise for consideration and then, proceed to dispose of the appeal in accordance with law. All the contentions of the parties are left open to be urged before the High Court. The learned counsel for the appellant submitted that the second appeal in respect of some of the respondents stood abated. We give liberty to the appellant to make an appropriate application in that regard before the High Court. We also give liberty to the respondents to file necessary counter to that application.

.....J.
(SHIVARAJ V. PATIL)

.....J.
New Delhi, (D.M. DHARMADHIKARI)
December 10, 2003.

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. 3319/1998

CHIKKARAMEGOWDA (DEAD) BY LRS.

APPELLANTS

VERSUS

B.S. VENKATASUBBARAO (DEAD) BY LRS. & ORS. RESPONDENTS
(With Appln.(s) for exemption from filing O.T. and permission
to submit addl. documents and with office report)

Date : 10/12/2003 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. S.N. Bhat, Adv.

For Respondent (s)
Mr. P.R. Ramasesh, Adv.

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

Heard learned counsel for the parties for parties for 10 minutes.
The appeal is allowed in terms of the signed order.

Sarita (Shelly Sengupta)
Court Master

(Signed order is placed on the file)