

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 6084-6085 OF 2001

VENKATAPPA (D) BY LR.

Appellant (s)

VERSUS

CHANNAMMA & ORS.

Respondent(s)

(With prayer for interim relief)

Date: 25/10/2007 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. MATHUR
HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s)

Mr. G.V. Chandrashekhar, Adv.
Mrs. Anjana Chandrashekhar, Adv.
Mr. P.P. Singh, Adv.

For Respondent(s)

Mr. S.C. Birla, Adv.
Mr. Subrat Birla, Adv.

UPON hearing counsel the Court made the following
ORDER

The appeals are disposed of in terms of the signed order. No order
as to costs.

(Ajay Kr. Jain)
Court Master

(Vijay Dhawan)
Court Master

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6084-6085 OF 2001

Venkatappa (D) By LR.

.... Appellants

Versus

Channamma & Ors.

.... Respondents

ORDER

Heard learned counsel for the parties.

It is not necessary to give the detailed facts because on a limited question we propose to remand this matter back to the High Court. The question before us is that whether there was any evidence to show that the previous auction sale was made after attachment before judgment or that auction sale was held after the decree was passed by the Trial Court with regard to subject matter of present suit in controversy. In case it is found that there was an attachment before judgment then by virtue of Section 64 of the Code of Civil Procedure, that sale will have priority and will be binding between the parties than the subsequent sale between the parties. Though the High court has found fault with the Courts below but there is no finding recorded by the High Court that after perusing the record of the earlier suit whether was attachment before judgment

nor any order sheet has been mentioned in the order of the High Court that the attachment before judgment was with regard to the suit subject matter and covers the decree of the Trial Court. This approach of the High Court was not correct and therefore we deem it just and proper to remit the matter to the High Court to record a finding whether there was attachment before judgment with regard to the subject matter of the suit and if it is so, then the High Court shall record a finding after hearing both the parties. In our opinion, the High Court should have perused the record of the Trial Court, to find out whether there was an order of attachment before judgment, and it was not proper for it to have recorded a categoric finding on the issue without perusing the record and set aside the findings of fact of the two Courts below. Consequently, we set aside the impugned judgment and order of the High Court and remit this matter back to the High Court to record a finding whether there an order of attachment before judgment on the suit subject matter and if it is so, then the High Court shall pass orders in accordance with law.

The appeals are disposed of with the above observations. No order as to costs.

Since, the matter is quite old, we request the High Court to expedite the hearing of the appeals.

(A.K.MATHUR)

.....J.

(MARKANDEY KATJU)

.....J.

New Delhi
October 25, 2007