

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).7701/2004

(From the judgement and order dated 08/01/2004 in CRP No. 1148/2003 of The HIGH COURT OF KARNATAKA AT BANGALORE)

RUKMINI (D) BY LRS.

Petitioner(s)

VERSUS

A.V. VENKATAMMA (D) BY LRS.

Respondent(s)

(With appln(s) for permission to place addl. documents on record and prayer for interim relief and office

report))

Date: 19/07/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE DALVEER BHANDARI

For Petitioner(s)

Mr.A.K. Ganguli, Sr.Adv.

Mr. Prakash Jain, Adv.

Mr. T. Harish Kumar,Adv.

For Respondent(s)

Ms. Kiran Suri,Adv.

Mr. D.R.Ravishankar, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order. No costs

(Meenu Sethi)
hardwaj)

(Pushap Lata B

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3060/2006

(Arising out of SLP(C) No. 7701/2004)

Rukmini(d) by Lrs. ... Appellants

VERSUS

A.V. Venkatamma(d) by Lrs. ... Respondent

s

O R D E R

Leave granted.

We have perused the report as also the affidavit of Shri Muddurangappa the then Joint Director of Land Records, Bangalore Division, Bangalore and presently working as Joint Director of Land Records (Enquiry & Inspection) in the Office of the Commissioner of Survey Settlement and Land Records in Karnataka, Bangalore.

While passing our order dated 4.3.2005 we had expected that for the purpose of finding out the proper identification of the Suit property, scientific survey shall be conducted in accordance with the known procedure. The deponent of the affidavit merely states

that a survey was conducted under his supervision by the Assistant Director of Land Records, City Survey No.2, Bangalore. He has not disclosed in his affidavit and in the report the manner in which the purported survey was done. No copy of the field book has been annexed. It is not known as to whether fixed points were identified with reference to the cadastral survey

settlement map or revisional survey settlement map. In

his affidavit he merely stated:

"I further submit that the decretal property, measuring 45'X 60' comes within the boundary of revenue sy.no.8 of Jodiranganathapur village and city sy.no. s.2200,2205 and 2206 as shown in the sketch. A road is in existence in the middle of the decretal property which runs from east to west and there is no road on western side running from North to South, as per present field condition. All the above details are furnished in the sketch as well as in the Court Commissioner's Report, which are self-explanatory and also the same have already been submitted to the Assistant Registrar, Hon'ble Supreme Court of India, New Delhi under No. CTS(R) Misc.23/2004-2005/18-4-2005.

In obedience to the directions of the Hon'ble Supreme Court of India, in the order dated 22.4.2006, I submit that prior to making of the above said sketch and the report, Survey of the land in dispute has been got done by the Assistant Director of Land Record, City Survey No.2, Bangalore under my Supervision and the same is attested by me."

We are of the opinion that the purpose for which he had been appointed has not been achieved.

The High Court in its impugned judgment,inter alia, held that the appellant could not have raised an objection purported to be in terms of the order XXI Rule 97 of the Civil Procedure Code. The High Court has failed to notice that such an objection was maintainable under Section 47 of the Civil Procedure Code. The

executing Court having considered the matter on merits, the High Court should have addressed itself not only on the question of law but also on the finding of facts arrived at by the Executing Court.

Keeping in view the facts and circumstances of this case and in particular the fact that the decree has been passed by the Lower Appellate Court in favour of the respondent as far back as in 1965 and with a view to put an end to all controversies, we are of the opinion

that the judgment of the High Court as also of the Executing Court should be set aside and the Executing Court should be directed to appoint a survey knowing Advocate Commissioner to identify the property under execution at the spot.

For the said purpose the functionaries of the Directorate of Survey shall supply all the relevant documents including the settlement maps, records of rights and all other documents to the Executing Court if and when so directed. We hope and trust that the executing court shall make all endeavours to dispose of the matter as expeditiously as possible preferably within six months from the date of communication of this order. The appeal is disposed of. No costs.

.....J.

(S.B.SINHA)

.....J.

(DALVEER BHANDARI)

New Delhi,

July 19, 2006.