

ØITEM NO.103

COURT NO.6

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(s). 6282 OF 2003

MALLAPPA

Appellant (s)

VERSUS

H.M. MALLAIAH

Respondent(s)

(With office report)

Date: 27/07/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MR. JUSTICE T.S. THAKUR

For Appellant(s) Mrs.K. Sarada Devi,Adv.

For Respondent(s) Ms. S. Janani,Adv.

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

The Appeal is allowed in terms of the signed order.
No costs.

(Parveen Kr. Chawla)
Court Master

(Indu Satija)
Court Master

[signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6282 OF 2003

Mallappa

..Appellant

versus

H.M. Mallaiah

..Respondent

O R D E R

Heard learned counsel for the parties.

This Appeal has been filed against the impugned
judgment and order dated 2nd September, 1998 passed by the
High Court of Karnataka at Bangalore in R.S.A. No. 1134 of
1996.

The facts have been mentioned in the impugned judgment and hence we are not repeating the same here.

In this case, the plaintiff-respondent had sold the land in question by sale deed dated 29th April, 1974. He alleged that there was subsequently on 6.5.1974 an agreement of reconveyance in fifteen years' time executed between the parties.

The trial Court held that there was an agreement of reconveyance between the parties, but, in appeal, the first appellate Court held that there was no such agreement of reconveyance, vide paras 11 to 13 of the judgment of the first appellate Court. The judgment of the trial Court merges into the judgment of the first appellate Court by applying the doctrine of merger. The last court on facts is the first appellate Court under Section 96, CPC. The

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findings of fact recorded by the first appellate Court should not have been interfered with by the High Court in Second Appeal under Section 100, CPC.

Accordingly, we allow this appeal, set aside the impugned judgment of the High Court and restore that of the first appellate Court. No costs.

.....J.
[MARKANDEY KATJU]

NEW DELHI;
JULY 27, 2010

.....J.
[T.S. THAKUR]