

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. 6749 OF 1999

Huvappa Irappa Ballari
pellant (s)

Ap

Versus

Basava & Anr.
ondent (s)

Resp

(With office report)

Date: 17/03/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE A.K. MATHUR

For Appellant(s)

Mr. Mohan V. Katarki, Adv.
Mr. Ashok K. Sharma, Adv.
Mr. Javed M. Rao, Adv.

For Respondent(s)

Mr. M. Gireesh Kumar, Adv. for
Ms. Sangeeta Kumar, 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.

(J.S. Rawat)
garwal)
Court Master
rt Master

(Vijay Ag
Cou

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6749 OF 1999

Huvappa Irappa Ballari

.....Appellant

- Versus -

Basava &Anr.

.....

Respondent

O R D E R

Plaintiffs-respondents, (hereinafter referred to as "the respondents") are the owners of the suit property, i.e., CTS No. 2871/C situated in Ranebennur Town in District Haveri. They filed Civil Suit being O.S. No. 33/95 for declaration of title, possession and mesne-profits in respect of the suit schedule property (for short "the suit property"). According to the respondents, defendant-appellant (hereinafter referred to as "the appellant") was put in possession of the suit property as a licensee; that the appellant had started claiming himself to be the owner of the suit property; that as the appellant failed to vacate the suit premises in spite of termination of licence, the present suit for declaration of title, possession and mesne profits was filed.

The appellant filed his written statement inter alia contending that he was in possession of the suit property in pursuance to the agreement of sale executed in his favour by Mahadevappa Neelakanthappa Airani, younger brother of the respondent in the year 1977. That out of the total sale consideration of Rs.2000/-, a sum of Rs. 1,800/- had already been paid. That he was ready and willing to pay the balance amount of sale consideration of Rs. 200/- subject to the execution of sale deed in his favour by the respondents. Mahadevappa who had executed the agreement of sale and his brother had died intestate leaving behind no children and their share in property was inherited by the respondents and they have become the owners of the suit property.

The trial Court vide its judgment dated 13.6.1989 dismissed the suit aggrieved against which the respondents filed Appeal in the court of District Judge, which was dismissed on 2nd September, 1993.

Being aggrieved, the respondent filed R.S.A. No. 292/94 in the High Court of Karnataka at Bangalore. At the time of the admission of the appeal, the following substantial question of law was framed by the

High Court:-

" Whether the courts below committed an illegality in refusing the decree for possession when they found that the respondent had failed to enforce the agreement of sale within the period allowed by law under Article 54 of the Limitation Act?"

The learned Single Judge set aside the judgments and decree passed by the courts below and allowed the appeal in a perfunctory manner by observing thus:

"It is seen that the agreement of sale is of the year 1972 and no suit was filed till date to enforce the agreement of sale. The possession of the defendant cannot be protected in the eye of law. The defendant is not entitled to resist the suit for possession."

Learned counsel appearing for the appellant, placing reliance on the judgment of this Court in *Shrimant Shamrao Suryavanshi v.*

Pr alhad Bhairoba Suryavanshi [2002 (3)SCC 676], the relevant portion of which reads thus:

"The Special Committee's report which is reflected in the aims and objects of the amending Act, 1929 shows that one of the purposes of enacting Section 53-A was to provide protection to a transferee who in

part-performance of the contract had taken possession of the property even if the limitation to bring a suit for specific performance has expired. In that view of the matter, Section 53-A is required to be interpreted in the light of the recommendation of the Special Committee's report and aims, objects contained in the amending Act, 1929 of the Act and specially when Section 53-A itself does not put any restriction to plea taken in defence by a transferee to protect his possession under Section 53-A even if the period of limitation to bring a suit for specific performance has expired."

contended that the law of limitation is not applicable to a plea taken in

defence to protect the possession under Section 53-A of the Transfer of

Property Act, 1882. That the view taken by the High Court which runs

contrary to the decision, quoted above, cannot be sustained.

Though we could have concluded the matter here itself, but

keeping in view the fact that the second appeal has been disposed of by

the learned Single Judge in a perfunctory manner, we deem it

appropriate in the interest of justice to provide both the parties proper

and adequate opportunity of hearing. Appeal is allowed. Judgment and

decree passed by the High Court is set aside and the case is remitted

back to the High Court for a fresh decision in accordance with law.

The High Court shall now proceed to decide the appeal on the

question of law, already framed, or if it is satisfied that any other

question of law arises in the appeal, frame additional question(s) of law

after recording reasons therefor in exercise of its power under clause

(5) of Section 100 CPC.

The appeal is allowed accordingly. However, there shall be no

order as to costs.

Since the present proceedings pertain to a suit filed in the year

1985, we would request the High Court to dispose of the appeal as

expeditiously as possible.

Registry is directed to transmit the record to the High Court

forthwith.

.....J.

(ASHOK BHAN)

.....J.

(A.K. MATHUR)

New Delhi;

MARCH 17, 2005.