

IN THE SUPREME COURT OF INDIA
 CIVIL APPELLATE JURISDICTION
 CIVIL APPEAL NO. 2317 OF 2003

CHOWDAMMA & ANR.

APPELLANTS

VERSUS

DY. COMMISSIONER, KARNATAKA & ORS.

RESPONDENTS

O R D E R

A grant of land, measuring 13 acres 1 gunta in area was made in favour of one K. Nagabhushana Rao (whose heirs and legal representatives are respondents 2 to 5 in this appeal) to compensate for his land that was submerged as a result of construction of an irrigation project. C. Govinda (whose widow is appellant no.1) and Nagaraja (appellant no.2) who had lost their lands in the same way and who claimed to be in occupation over 1 acre 20 guntas and 2 acres 4 guntas respectively of the land settled in favor of Nagabhushana Rao raised objection to the grant in respect of the areas under their possession. On the basis of their objection the Deputy Commissioner, Shimoga, cancelled the grant in favour of Nagabhushana Rao to the extent of 3 acres 24 guntas over which C.

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Govinda and Nagaraja were found to be in possession. The order passed by the Deputy Commissioner was affirmed by the Karnataka Appellate Tribunal. The heirs and legal representatives of K. Nagabhushana Rao (who had died by then) took the matter to the High Court of Karnataka in W.P. No.15163 of 1991. In that Writ Petition C. Govinda (claiming 1 acre 20 guntas) and Nagaraja (claiming 2 acres 4 guntas) were impleaded as respondents 3 and 4, respectively. C. Govinda died in August, 1995, even while

the Writ Petition was pending before the High Court. No steps were taken to substitute his heirs and legal representatives in his place and the Writ Petition, with a dead person as one of the respondents, was finally disposed of by a learned Single Judge, vide judgment and order dated November 20, 1997. The learned Single Judge allowed the Writ Petition and set aside the orders passed by the Karnataka Appellate Tribunal and the Deputy Commissioner.

Against the order of the learned Single Judge, the heirs and legal representatives of the deceased C. Govinda along with Nagaraja preferred an intra-court appeal (Writ Appeal No.6501 of 1997). In the appeal, it was expressly pleaded that the Writ petition was allowed without bringing the heirs and legal

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representative of the deceased C. Govinda on record and the order of the Writ Court was thus, passed against a dead person. The Division Bench, hearing the writ appeal noted the submission but brushed it aside giving a reason which appears to us to be prima facie untenable. The only reason given by the Division Bench was that both C. Govinda and Nagaraja were being represented before the court by a common lawyer. This is what the Division Bench observed in that regard.

"Admittedly, Counsel for the appellants Sri S.R. Hegde Hudlamane had appeared both for respondent nos. 3 and 4 in the writ petition, who had common pleas. He submits that he had no knowledge about the death of C. Govinda, and, therefore, he could not inform the Court about it. If that be the position, the estate of C. Govinda was well represented and his heirs cannot raise any plea of prejudice of any nature."

We fail to see how the estate of C. Govinda can be said to be represented simply because the same lawyer who

appeared on behalf of Nagaraja was appearing on his behalf. We are satisfied that for this reason alone, the orders of both the Division Bench and the learned Single Judge are fit to be set aside. We, accordingly, set aside the two orders passed by the High Court and remit the case to the learned Single Judge who will dispose of the

Writ Petition afresh after ³ hearing the parties in accordance with law.

Since the matter has become very old, it is hoped and expected that the Writ Petition No.15163 of 1991, that stands restored by virtue of this order would be heard and disposed of without any undue delay and preferably within four months from the date of receipt/production of a copy of this order before the High Court.

Since the appellants before us are represented through the Supreme Court Legal Services Committee, it is appropriate that this order should be placed before the Chairman, Karnataka High Court Legal Services Committee to make suitable arrangements, in case the appellants are not able to conduct their case on their own.

In the result, the appeal is allowed in the manner as indicated above.

.....J.
(AFTAB ALAM)

.....J.
(R.M. LODHA)

NEW DELHI,
OCTOBER 5, 2010.

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). 2317 OF 2003

CHOWDAMMA & ANR.

Appellant (s)

VERSUS

DY. COMMISSIONER, KARNATAKA & ORS.

Respondent(s)

(With office report)

Date: 05/10/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AFTAB ALAM

HON'BLE MR. JUSTICE R.M. LODHA

Amicus Curaie

Mr. P.Vishwanatha Shetty, Sr. Adv.

For Appellant(s)

Mr. Vijay Kumar, Adv.

For Ms. Sangeeta Kumar, Adv.

For Respondent(s)

Mr. S.N. Bhat, Adv.

Mr. Sanjay R. Hegde, Adv.

Mr. Krutin Joshi, Adv.

Mr. Abhishek Malviya, Adv.

Mr. Radha Shyam Jena ,Adv

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed in terms of the
signed order.

(Neetu Khajuria)
Sr. P.A.

(S.S.R. Krishna)
Court Master

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(signed order is placed on the file.)

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