

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 4405 OF 2001

SIDDHESWARASWAMY MOOLAGADDIGIMATH

Appellant (s)

VERSUS

CHANDRANTAIAH M.HIREMATH(DEAD) BY LRS.

Respondent(s)

(With office report)

Date: 31/10/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA
HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s) Mr. Rajesh Mahale, Adv.
Mr. R.C. Kohli,Adv.

For Respondent(s) Mr. Shankar Divate,Adv.

UPON hearing counsel the Court made the following
ORDER

We are of the view that the first appellate Court and the High Court in second appeal were both not justified in upsetting the well-merited finding recorded by the trial Court on the basis of oral evidence and documents on record. In the result, the order of the first appellate Court and the order of the High Court in second appeal are, accordingly, set aside. The trial Court decree is restored and affirmed. This appeal is, accordingly, partly allowed to the extent indicated above in terms of the signed order. The parties are asked to bear their own costs.

(Ravi P. Verma) (Anand Singh)
Court Master Court Master
[Signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4405 OF 2001

SIDDHESWARASWAMY
MOOLAGADDIGIMATH

.....APPELLANT(S)

Versus

CHANDRANTAIAH M. HIREMATH
(DEAD) BY LRS.

.....RESPONDENT(S)

ORDER

This appeal has been filed by the defendant against the order of the High Court passed in second appeal.

We have heard the parties.

In view of the order that we propose to pass, it may not be necessary to recite the entire facts leading to the filing of the present appeal. Suffice it to say that the plaintiff filed a suit for declaration and ownership in respect of land in survey No. 61B and permanent injunction in respect of survey No.61A/2/1 and alternately for recovery of possession in respect of land in survey No. 61A/2/1. The trial Court after considering oral and documentary evidence adduced by both the parties including sketch map Ex.P.1, decreed the suit as under:-

"The suit of the plaintiffs is decreed partly. The defendants shall hand over the suit survey No.61A/2/1 of Unkal Village shown as A.B.C.D.E.F. in the plaint sketch at Ex.P.1

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to the plaintiffs. The claims of the plaintiffs for declaration that the defendants are the licensees of the suit S.No.61B measuring 20 guntas shown as A.F.E.G.N.W.K. in the sketch at Ex.P.1 and for permanent injunction are rejected. Under the circumstances, the plaintiffs and defendants shall bear their own costs."

Aggrieved thereby, the defendants filed first appeal and the plaintiffs also filed cross objections. The first appellate Court set aside the decree of the trial Court in respect of survey No.61A/2/1 and confirmed the decree in respect of survey No.61B.

Aggrieved thereby, plaintiffs filed second appeal before the High Court. The High Court framed two substantial questions of law as under:-

1. Whether the teeth of admission by the defendants themselves that the plaintiffs ancestrers were the owners of RS.No.61B, as the appellate Court denying the decree of declaration?

2. Whether the finding of the appellate Court that the licence claimed by the plaintiffs is irrevocable and sustainable and even if it is so, whether that area of the

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licence can be enlarged by the Appellate Court when the defendants do not themselves to claim a larger area?

The High Court decided both the questions in favour of the plaintiffs and decreed the plaintiffs' suit in respect of survey No.61B and 61A/2/1.

We may, at this stage, point out that the substantial questions of law framed by the High Court, as noticed above, is not in consonance with the questions raised before the High Court. In other words, the so called substantial questions of law framed by the High Court were not really an answer and not relevant to redress the questions at hand.

Before the trial Court, the sketch map has been exhibited as Ex.P.1. The admitted position in the sketch map shows that the suit land in survey No.61A is shown as agricultural land. The suit land in survey No.61B consisting of 20 guntas has been shown as 'math'. The trial Court examining the documents on record and the sketch map comes to a finding that the suit land in survey No.61A/2/1 is decreed in favour of the plaintiff and the prayer of the plaintiff for declaration as the owner in respect of suit land in survey No.61B was rejected.

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We have perused the other documents and the sketch map Ex.P.1. A bare perusal of the sketch map Ex.P.1 would clearly show that suit land in survey No.61A/2/1 is an agricultural land said to have been cultivated by the plaintiffs. It also clearly shows that the suit land in survey No.61B consisting of 20 guntas is a 'math'. This being the documentary evidence which has been relied by the trial Court, we are of the view that the first appellate Court and the High Court in second appeal were both not justified in upsetting the well-merited finding recorded by the trial Court on the basis of oral evidence and documents on record. In the result, the order of the first appellate Court and the order of the High Court in second appeal are, accordingly, set aside. The

trial Court decree is restored and affirmed. This appeal is, accordingly,
partly allowed to the extent indicated above. The parties are asked to
bear their own costs.

.....J.
(H.K. SEMA)

New Delhi;
October 31, 2007.

.....J.
(LOKESHWAR SINGH PANTA)