

ITEM NO.110

COURT NO.7

SECTION XIIA

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). 6085 OF 2000

P.RAMA RAO (DEAD)BY LR.

Appellant (s)

VERSUS

AVANTHI CO-OP.HOUSG.SOCTY.& ANR

Respondent(s)

WITH I.A.NO.3 & 4

(With appln.(s) for substitution and c/delay in filing appln. for substitution and office

report )

Date: 14/12/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s)

Mrs.D. Bharathi Reddy,Adv.

Mr. D. Rama Krishna Reddy, Adv.

Mr. Ch. Leela Sarveswar, Adv.

For Respondent(s)

Mr. M.N. Rao, Sr. Adv.

Mrs. Sudha Gupta,Adv.

UPON hearing counsel the Court made the following

O R D E R

Delay condoned. Substitution allowed.

11 We are of the opinion that the interest of justice shall be subserved if the impugned judgment is set aside and the matter is remitted to the High Court for consideration of the matter afresh. The High Court shall, before proceeding with the matter on the merit, formulate the substantial question(s) arising, if any.

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

( Ravi P. Verma )

Court Master

( Pushap Lata Bhardwaj )

Court Master

[Signed order is placed on the file]

2

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6085 OF 2000

P. RAMA RAO (DEAD) BY LR.

APPELLANT

(S)

Versus

AVANTHI CO-OP. HOUSG.

RESPONDENT

SOCTY. & ANR.

(S)

## O R D E R

This appeal arises out of judgment and order dated 12/08/1999 passed by the High Court of Andhra Pradesh whereby and whereunder the Second Appeal filed by the first respondent herein being Second Appeal No.751/1998 was allowed setting aside the judgment and decree of the first appellate Court dated 10/04/1998 in A.S. No.1 of 1996 affirming the judgment and order of trial Court dated 01/11/1994 passed in O.S. No.4288/1988 holding that no layout was sanctioned in the year 1961.

In view of the order proposed to be passed by us, it is not necessary to state the fact of the matter in details. Suffice it to say that the appellant herein alongwith six

3

others had purchased 4 acres 18 guntas of land in Survey Nos. 29 to 32 situated at Rasoolpura village, Secunderabad in the State of Andhra Pradesh. It is not in dispute that the land in question is situated outside the notified civil area of Secunderabad Cantonment Area. It is classified as B-II lands.

Allegedly, the Cantonment Board, Pune, in exercise of its powers conferred under Section 181 of the Cantonment Act, 1924 approved the layout submitted by the appellant and his co-purchasers.

Appellants and his co-purchasers intended to partition the lands.

A suit was filed. A compromise was entered into by and between them in O.S. No.360/1979. The said purported sanction of 02/11/1961 forms part of the compromise decree.

Respondent No.1 is said to be the purchasers of other portions of the land which were allotted to the appellant's co-sharers by the said earnest decree. As the

4

first respondent intended to interfere with the common rights of the appellants, the suit was filed by the appellants.

The said suit was dismissed by a judgment and decree dated 01/11/1994 in O.S. No.4288/1988.

An appeal was preferred thereagainst by the

appellants which was allowed by reason of a judgment and order dated 10/04/1998 by the First Appellate Court holding that the layout plan of 1961 was approved by the Cantonment Board, Secunderabad.

A Second Appeal was preferred by the first respondent. The High Court did not formulate any substantial question of law as was required under sub-Section (5) of Section 100 of Code of Civil Procedure. It proceeded to hear the parties. In its judgment, which is impugned before us, the learned judge stated:

"Here, the substantial question of law which arises for consideration is whether the appellate Court has arrived at the finding based on evidence."

Keeping in view the nature of the dispute involved between the parties, we are of the opinion that the

5

purported question framed by the learned Judge of the High Court cannot be said to be a substantial question of law within the meaning of Section 100 of Code of Civil Procedure. The question framed by the High Court namely whether the appellate Court has arrived at the finding based

on evidence per se suffers from a manifest error inasmuch the same is not a substantive question of law.

Our attention, however, has been drawn to an observation made by the first appellate Court that there was no sanctioned layout plan of 1961 before the Court.

"There is no sanctioned layout plan of 1961 before the court. Therefore, it is difficult to ascertain in the actual area covered by the roads and other amenities and the buildings. However, it can be ascertained from the concerned authorities and accordingly, it is to be effected on the ground."

We need not go into the said disputed question inasmuch as our endeavour hereinbefore was to show that the High Court had proceeded to determine the issue

6

without framing any substantial question of law. The substantial question of law, purported to have been formulated, in our opinion, did not satisfy the requirement of Section 100 of the Code of Civil Procedure. We may

furthermore point out that the first appellate Court has in its judgment not only considered the rival contentions of the parties at some length, it took into consideration the issues framed by the learned trial Judge.

We are, therefore, of the opinion that the interest of justice shall be subserved if the impugned judgment is set aside and the matter is remitted to the High Court for consideration of the matter afresh. The High Court shall, before proceeding with the matter on the merit, formulate the substantial question(s) arising, if any.

Appeal is allowed. No costs.

.....J.  
( S.B. SINHA )

New Delhi; .....J.  
December 14, 2006. ( MARKANDEY KATJU )