

CASE NO.:
Appeal (civil) 2034-2037 of 2008

PETITIONER:
RAJAMMA AND ORS

RESPONDENT:
THIMMAKKA AND ORS

DATE OF JUDGMENT: 14/03/2008

BENCH:
S.B. SINHA & V.S. SIRPURKAR

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NOS. 2034-37 OF 2008
[Arising out of SLP(C) Nos.13046-13049/2007]

Leave granted.

The parties have joined issues in regard to the status of appellant No.1 herein, who was plaintiff No.3 before the Trial Court, as to whether she was the legally wedded wife of P. Narasimhaiah.

Admittedly, two suits were filed by the plaintiff-appellant No.1. O.S. No.6530/97 was filed by the plaintiff-appellant No.1 herein for grant of probate in respect of a purported will executed by said P. Narasimhaiah on 5.11.1988 (Ext. P1) and the second suit, being OS. No. 3602/96, was filed for grant of an injunction.

Respondents, who were Defendant Nos. 1 to 3 in the aforementioned suits, filed a counter suit being O.S. No. 2499/91 for a decree of permanent injunction against appellant No.1.

-2-

The main issue, as noticed hereinbefore was the status of the appellant No.1. The second issue evidently was as to whether the said P. Narasimhaiah executed the aforementioned will dated 5.11.1988 in favour of the appellant No.1 herein.

Before the learned Trial Judge, all the suits were consolidated. Parties adduced common evidence and the learned Trial Judge rendered a common judgment.

Whereas O.S. No.6530/97 and O.S. No. 3602/96 were decreed; O.S. No.2499/91 was dismissed.

Respondents filed three appeals thereagainst before the High Court. By reason of the impugned judgment dated 28.8.2006 the said first appeals were allowed.

A bare perusal of the impugned judgment shows that the High Court did not consider all the aspects of the matter pertaining to the issues which arose between the parties. The reasonings of the learned Trial Judge have not been met. No question in terms of Order 41 Rule 31 was formulated.

In that view of the matter, we are of the opinion that in the interest of justice, the matter should be directed to be heard afresh by the High Court and we order accordingly.

-3-

The impugned judgment is, therefore, set aside and the matters are remitted to the High Court for consideration thereof afresh. As one of the suits is of the year 1991, we would request the High Court to consider the desirability of disposing of the matter as

expeditiously as possible, preferably within a period of eight weeks from the date of communication of this order.

The appeals are disposed of with the aforementioned direction. No costs.

JUDIS