

IN THE SUPREME COURT OF INDIA  
 CIVIL APPELLATE JURISDICTION  
 CIVIL APPEAL NO. 8113 OF 2010  
 (Arising out of SLP(C) No.13632/06)

SHANKARAPPA & ANR. Appellant (s)  
 VERSUS  
 MODINSAB VALLAD GAILBUSAB Respondent(s)

O R D E R

1. Leave granted.

2. This appeal arises out of the order dated 15th November, 2005, passed by the Karnataka High Court, in C.R.P. No. 4434/02, by which the order of the Appellate Court in Misc. Appeal No. 27/01, filed by the appellant herein, was set aside and the order of the Trial Court dated 20th March, 2010, on an application under Order 39 Rules 1 & 2 CPC in O.S. No. 59/87, was restored.

3. It appears that on 19th July, 1989, an ex-parte order passed on the aforesaid application for temporary injunction filed by the respondent, to restrain the defendant No.1 (the appellant No.1), from selling the suit property to the defendant No.2 (the

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appellant No.2), was made absolute till final disposal of the suit. As will appear from the materials on

record, the appellant No.1 subsequently sold the suit property to the son of the appellant No.2, leading to the filing of the Petition under Order 39 Rules 1 & 2 C.P.C.

4. The Trial Court held both the appellants to be guilty of having violated the aforesaid order of injunction and accordingly sentenced the appellants to

one month's detention in civil prison.

5. Against the said order the appellants moved the Addl. Civil Judge (Senior Division), Hubli, by way of Misc. Application No. 27/01, and the said order of the Trial Court was reversed on the finding that since the injunction was confined to transfer of the suit property to the defendant No.2, the appellant No.1 herein had not violated the said order since the said deed has not been executed in favour of the appellant No.2 herein, but in favour of his son. The said view taken by the First Appellate Court was reversed by the High Court, which, by its order dated 15th November, 2005, restored the order of the Trial Court. It may be indicated at this stage that despite service of notice, the respondent did not appear to contest the matter.

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6. Having heard learned counsel for the appellants, we are unable to appreciate the view taken by the First Appellate Court since there was a definite embargo for sale of the suit property by the appellant No.1, in favour of the appellant No.2 only. Since the sale was effected in favour of the son of the defendant No. 2, technically speaking, it cannot be said that the appellant No.2 has disobeyed and violated the order of injunction referred to hereinabove.

7. The appeal, therefore, succeeds and is allowed.

8. The order of the High Court, impugned in the appeal, is set aside.

.....J.  
( ALTAMAS KABIR )

.....J.  
( A.K. PATNAIK )

New Delhi,  
September 17, 2010.

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).13632/2006

(From the judgement and order dated 15/11/2005 in  
of The HIGH COURT OF KARNATAKA AT BANGALORE)

CRP No. 4434/2002

SHANKARAPPA &amp; ANR.

Petitioner(s)

VERSUS

MODINSAB VALLAD GAILBUSAB

Respondent(s)

(With appln(s) for c/delay in filing SLP and prayer for interim  
relief and office report )

Date: 17/09/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR

HON'BLE MR. JUSTICE A.K. PATNAIK

For Petitioner(s) Mr. Ramesh K. Mishra,Adv.  
Mr. Sanjay R. Hegde,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following  
O R D E RLeave granted.  
The appeal is allowed in terms of the signed  
order.

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(Ganga Thakur)  
PS to Registrar(Juginder Kaur)  
Court Master

Signed order is placed on the file.