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SLP(C)No. 446 OF 2001

ITEM No.44

Court No. 4

SECTION IVA  
A/N MATTER

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.446/2001

(From the judgement and order dated 15/12/1997 in RSA 472/90  
of The HIGH COURT OF KARNATAKA AT BANGALORE)

F.M. PARAMESHWAR TIMMAYYA HEGDE & ORS.

Petitioner (s)

VERSUS

VENKATRAMAN MANJAPPA HEDGE(D)BY LRS.&ANR

Respondent (s)

(With prayer for interim relief)  
( With Appln(s). for c/delay in filing SLP )

Date : 26/03/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAIAK  
HON'BLE MR. JUSTICE U.C. BANERJEE

For Petitioner (s)

Mr. Rajesh Mahale, adv.

For Respondent (s)

Mr. P.R. Ramasesh, adv.

UPON hearing counsel the Court made the following  
O R D E R

.....L.....I.....J  
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Delay condoned subject to depositing cost of  
Rs.2,000/- in the High Court to be taken by the plaintiff.  
Leave granted.  
Appeal stands disposed of in terms of the signed  
order.

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(J.S. Rawat)  
Court Master

(Suneet Bala Sharma)  
Court Master

(Signed order is placed on the file)

.PL58

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2001@@  
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(Arising out of SLP(C) No. 446 of 2001)

F.M. Parameshwar Timmayya Hegde & Ors. ...Appellant (s)

Versus

Venkatraman Manjappa Hegde (D) ...Respondent(s)  
By L.Rs. & Anr.

O R D E R~@@  
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Delay condoned subject to deposit of cost of Rs.2,000 in the High Court to be taken by the plaintiff.

Leave granted.

The defendant is in appeal against the judgment of the High Court in second appeal No. 472 of 1990. A suit for declaration of title and confirmation/recovery of possession being filed by the plaintiff, the Trial Judge dismissed the same. The judgment and decree was affirmed by the lower Appellate Court. The second Appellate Court in the impugned judgement came to the conclusion that the very sale deed in question would be sufficient to establish the plaintiff's title notwithstanding the fact that the defendant has been resisting the right of the plaintiff's vendor to convey title in respect of the land under the sale deed in question. The High Court proceeded with the matter, as the alternative claim of the defendant on the question of occupancy right was pending before the tribunal.

As it appears, the defendant has lost in the said ...2

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proceeding and that has reached the finality, but notwithstanding the fact that the defendant has not been declared as an occupancy tenant, but, all the same, the plaintiff's title as well as the right of recovery of possession has to be established. The impugned finding of the High Court, on the face of it, that title must be held to have been established because of the sale deed appears to be erroneous as relevant concurrent findings of the forums below have not been considered. The defendant also took the contention that the second appeal itself was not maintainable.

Having regard to the finding arrived at, we think it appropriate to remit the second appeal to be reconsidered by the High Court after taking into account all the objections raised by the defendant, including the objection with regard to maintainability of the appeal. We accordingly set aside the impugned judgment and remit the matter to the High Court for reconsideration. The appeal stands disposed of accordingly.

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.....J@@  
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( G.B. PATTANAIAK )@@  
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New Delhi,  
March 26, 2001.

.....J@@  
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( U.C. BANERJEE )@@  
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