

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 7180 OF 2002

T.M. MOHAMMED HANIFA & ANR.

Appellant (s)

VERSUS

RAJATHI BEEVI & ANR.

Respondent(s)

(With office report)

Date: 02/12/2008 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU

HON'BLE MR. JUSTICE AFTAB ALAM

For Appellant(s) Mr. K.K. Mani, Adv.

Mr. C.K.R.Lenin Sekar, Adv.

For Respondent(s) Mr. V.Balasubramanian, Adv.for

Mr. V. Balachandran, Adv.

UPON hearing counsel the Court made the following
ORDER

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

(Parveen Kr. Chawla)
Court Master

(Indu Satija)
Court Master

[Signed Order is placed on the File]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7180 OF 2002

T.M.Mohammed Hanifa & Another

..Appellants

versus

Rajathi Beevi & Another

..Respondents

ORDER

Heard learned counsel for the parties and perused the record.

Plaintiffs are the respondents in this appeal. They filed a suit
for permanent injunction claiming that the lane in question is a private
lane.

The trial Court by its judgment dated 10th March, 1999 decreed
the suit and held that the lane in question was a private lane, but the

first appellate court under Section 96, C.P.C. reversed the finding of the trial Court and held that it was a public lane.

Against that finding, plaintiffs filed a second appeal before the High Court and the High Court has reversed the finding of the first appellate court and held that it was a private lane.

It is well settled that the High Court in second

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appeal cannot reverse a finding of fact of the first appellate court and can only interfere if there is an error of law.

Learned counsel for the respondents(plaintiffs) has submitted that there was no documentary evidence to show that it was a public lane and this is what the High Court has held. We are afraid that we cannot accept this argument as apart from documentary evidence, there can also be oral evidence. In this case, oral evidence was also there in support of the finding that it was a public lane. The first appellate court under Section 96, C.P.C. is the last court on facts and the High Court should not have interfered with the findings of fact of the first appellate court.

In view of above, we allow the appeal; set aside the judgment of the High Court and restore the judgment of the first appellate court. No order as to costs.

.....J.
[MARKANDEY KATJU]

NEW DELHI;
DECEMBER 02, 2008.

.....J.
[AFTAB ALAM]