

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).20824/2010

(From the judgement and order dated 05/03/2010 in RSA No.
2001/2007 of The HIGH COURT OF KARNATAKA AT BANGALORE)

MUKKATIRA JAYA Petitioner(s)

VERSUS

MUKKAATTIRA PEMMAIAH Respondent(s)

(With prayer for interim relief)

Date: 03/02/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE A.K. PATNAIK

For Petitioner(s) Ms. Kiran Suri,Adv.
Mr. Vijay Verma,Adv.

For Respondent(s) Mr. S.N. Bhat,Adv.

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

Leave granted.

The appeal is allowed in terms of the
signed order.

(O.P. Sharma) (M.S. Negi)
Court Master Court Master
(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1502 OF 2011
(Arising out of SLP(C)NO.20824/2010

MUKKATIRA JAYA ..Appellant

VERSUS

MUKKAATTIRA PEMMAIAH ..Respondent

O R D E R

Leave granted. Heard.

2. The appellant is the plaintiff in a suit for declaration relating to acquisition of a right of way by prescription over the suit schedule road (measuring 12' x 1600') shown as A to C in the suit sketch and for a mandatory injunction directing the defendant-respondent to remove the iron gate installed at point B in the suit sketch and remove the trees/plants grown/planted between the points B and C.

3. The defendant-respondent made a counter claim seeking a permanent injunction restraining the appellant-plaintiff from obstructing the use of the road commencing from Survey No.322/6 and running in Survey No.322/3 and 322/5 and to remove the lock put on the gate at Point C.

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The trial Court decreed the suit on 5.7.2006 and dismissed the counter claim of the respondent. The respondent's appeal was dismissed by the first appellate court on 16.4.2007. A further second appeal by the respondent was disposed of by the High Court by the impugned judgment dated 5.3.2010 directing the appellant to give key of gate situated at point-C in the sketch to the respondent-defendant and further directing the respondent-defendant to give a key in regard to gate installed at Point-B in the sketch to the appellant, to enable him to use the road.

4. Feeling aggrieved by the direction to the appellant-plaintiff to give a key of the gate at point 'C' to the respondent-defendant, the appellant has filed this appeal by special leave. The following contentions are urged by the appellant:

(a) The High Court having framed a question of law, did not answer it while disposing of the appeal.

(b) The High Court committed a serious error in interfering with the concurrent finding of the Courts below that respondent-defendant was not using the road beyond the point 'C' in the sketch. Both trial court and the first appellant court had rejected the counter claim

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of the defendant. Without setting aside the said finding of the trial court and the first appellant court, the High Court had given relief to the respondent in regard to his counter claim, which is unwarranted.

5. It is sufficient to consider the first contention for the disposal of this appeal. The High Court has framed the following question of law for its consideration in the second appeal:

"Whether the courts below were justified in granting a decree of mandatory injunction directing removal of the gate which is erected by the defendant in the road which belongs to him over which easementary right has been declared in favour of the plaintiff, for the plaintiff to enjoy?"

This question has not been addressed or answered by the High Court. On the other hand, the High Court has referred to the contentions in paras 1 to 5 and given its decision in para 6 without any discussion or consideration of contentions or reasons for the decision. As the High Court having framed the question of law, has not chosen to answer it, the matter requires to be remanded to the High Court for appropriate decision on the question.

6. Accordingly, without expressing any opinion on the merits of the matter, this appeal is allowed and the

judgment of the High Court is set aside and the matter is remanded to the High Court for disposal of the second appeal in accordance with law.

7. Having regard to the close relationship between the parties to the suit and the respective situation of their properties and the nature of passage rights claimed, we request the High Court to refer the matter to Bangalore Mediation Centre for attempting a negotiated settlement before taking up for final hearing on merits.

.....J.
[R.V. RAVEENDRAN]

NEW DELHI
FEBRUARY 3, 2011

.....J.
[A.K. PATNAIK]