

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7309/2009

KALO-BALA MALAKAR (DEAD) THROUGH LRS. Appellant(s)

VERSUS

SASANKA SEKHAR MALAKAR AND OTHERS Respondent(s)

O R D E R

A civil suit for partition filed by the Appellant was dismissed by the Trial Court. The First Appellate Court partly allowed the appeal by holding that the appellant had established her right and title in respect of 3 acres 3/4 decimal out of the suit scheduled property of 10 acres 6 decimals.

The High Court while considering the second appeal filed by Respondent No.1 reversed the judgment of the First Appellate Court. Though a question of law was formulated, the reversal of the judgment of the First Appellate Court is on findings of fact. It need not be reiterated that the jurisdiction of the High Court under Section 100 of the Civil Procedure Code, 1908 ('CPC') is restricted to determine substantial questions of law. Needless to say, the findings of fact by the First

Appellate Court are final.

The suit was filed in the year 1996. We are not inclined to remand the matter back to the High Court, taking into account the pendency of the suit for a very long period of time.

During the pendency of this appeal, we encouraged the learned counsel appearing for the parties to explore the possibility of settlement taking into account the fact that the parties are related to each other. We are informed that Respondent No.1 was willing to part with 2 acres of land with ease.

As the efforts made by the learned counsel failed, we heard the matter on merits. We are of the view that the High Court has exceeded its jurisdiction under Section 100 of the CPC by reversing the judgment of the First Appellate Court.

Therefore, judgment of the High Court is set aside and the judgment of the First Appellate Court is restored. The Trial Court shall proceed with appointing a Commissioner for partition of the suit schedule property with metes and bounds, which shall be done expeditiously.

The appeal is, accordingly, allowed. Pending application(s), if any, shall stand disposed of.

..... J.
(L. NAGESWARA RAO)

..... J.
(B.R. GAVAI)

..... J.
(A.S. BOPANNA)

NEW DELHI
11th MAY, 2022

ITEM NO.101

COURT NO.5

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 7309/2009

KALO-BALA MALAKAR (DEAD) THROUGH LRS.

Appellant(s)

VERSUS

SASANKA SEKHAR MALAKAR AND OTHERS

Respondent(s)

Date : 11-05-2022 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO

HON'BLE MR. JUSTICE B.R. GAVAI

HON'BLE MR. JUSTICE A.S. BOPANNA

For Appellant(s) Mr. Ranjan Mukherjee, AOR
Ms. Aayushi, Adv.For Respondent(s) Ms. Soumya Chakraborty, Sr. Adv.
Mr. Akash Verma, Adv.
Mr. Jitendra Kumar, AORUPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order. Pending application(s), if any, shall stand disposed of.

(Geeta Ahuja)
Court Master(Anand Prakash)
Assistant Registrar

(Signed Order is placed on the file)