

Devaraju Pillai

Vs

Sellayya Pillai Civil Appeal No. 2733-34 of 1972

(O. Chinnappa Reddy, G. L. Oza JJ)

11.11.1986

ORDER

1. We are afraid that the order of the High Court which is under appeal cannot stand a moment's scrutiny. The question in this case was whether a certain document of title was a deed of settlement or a will. The learned Single Judge of the High Court sitting in second appeal considered the document and held that it was a deed of settlement. He noticed that, apart from the deed being styled as a deed of settlement and registered as such, one of the recitals in the document was that the disposition was irrevocable. On an application being filed for review of the judgment of the learned Single Judge, another learned Single Judge of the High Court - the Judge who heard the second appeal not being available -, virtually sitting in judgment over the decision of the learned Judge who decided the second appeal construed the document differently and held that it was a will and not a deed of settlement. This the learned Single Judge was not entitled to do. If the party was aggrieved by the judgment of the learned Single Judge sitting in second appeal the appropriate remedy for the party was to file an appeal against the judgment of the learned Single Judge. A remedy by way of an application for review was entirely misconceived and we are sorry to say that the learned Single Judge who entertained the application totally exceeded his jurisdiction in allowing the review and upsetting the judgment of the learned Single Judge, merely because he took a different view on a construction of the document. These appeals are, therefore, allowed with costs. The judgment of the learned Single Judge in Second Appeal No. 1048 of 1966 is restored.

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