

SUPREME COURT OF INDIA

Mirza Wajahad Baig

Vs.

Sharanappa

(S.B. Majmudar and Y.K. Sabharwal J.)

07.04.2000

ORDER

S.B. MAJUMDAR, J.

1. Delay condoned.

2. Leave granted.

3. We have heard learned Counsel for the appellants as well as learned Counsel for the sole contesting respondent being respondent No.1. respondent nos. 2 and 3 are formal parties, respondent No. 4 is also a formal party.

4. The short question is whether the High Court was justified in interfering in Second Appeal when the respondent No. 4, appellant No. 3 in these appeals was not served and also without keeping in view the limited jurisdiction under Section 100, CPC, 1908 (C.P.C.). A mere look at the impugned decision brings out these vital defects in the judgments under appeal. It is also necessary to note that the said appellant applied for getting the order recalled on the ground that he was not served in those proceedings. Even that application was dismissed. There is no dispute between the parties that appellant No. 3 was tried to be served at his Hyderabad address when he was residing at Gulbarga.

5. For all these reasons, therefore, we deem it fit to allow these appeals, set aside the impugned order of the High Court in Second Appeal No. 1155 of 1992 as well as the rejection of the application for recall of the order in Second Appeal and restore Second Appeal No. 1155 of 1992 on the file of the High Court with a request to re-decide the same after hearing the parties concerned and in accordance with law and keeping in view the limited jurisdiction under Section 100, C.P.C.

6. As the Second Appeal will be of 1992, we request the High Court to decide the remanded proceedings expeditiously and preferably within a period of three months from the receipt of a copy of this order.

7. A copy of this order shall be sent by the Registrar of this Court to the Registrar of the High Court for placing it before Hon'ble the Chief Justice of the High Court for information and necessary action.

8. Learned Counsel for the appellants undertook to appear before the High Court in the remanded

proceedings. We direct them to file appearance in the remanded appeal within four weeks from today.

9. We make it clear that we do not make any observations on the merits of the controversy between the parties.

10. The Civil Appeals are allowed accordingly.

11. No costs.