

SUPREME COURT OF INDIA

J. Lingaiah

Vs.

G. Hanumanthappa

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

28.04.2000

ORDER

1. Leave granted.

2. We have heard learned Counsel for the Appellants and learned Counsel appearing for Respondent Nos. 1 to 3 who are the contesting Respondents finally in this appeal.

3. Respondent No. 5 who is a contesting Respondent though served, has not thought it fit to appear and contest the present proceedings. Respondent No. 4 who is deemed to be served has not thought it fit to appear and contest the proceedings though 30 days are over since the issuance of notice to him. Respondent Nos. 6 & 9 who are reported dead are merely proforma Respondents. Their names shall stand struck off from the record as no application for bringing their legal representatives on record is filed so far by the Appellants. Rest of the Respondents are proforma Respondents.

4. In a suit of the year 1980, the High Court by its impugned judgment has remanded the proceedings for fresh decision of the trial court. The reasoning adopted by the High Court for passing the remand order is that no issue was framed about the exact identification of the property. When we turn to page 40 of the paper book we find that the trial court has already framed one issue to that effect, Issue No. 1 reads as under.

1. Whether the suit schedule property comprises in Sy. No. 26.2/B or in Sy. No. 4 of Vyalikaval Village?

5. Not only that, issue No. 3 was framed to the following effect.

3. Whether the defendant No. 2 and others prove that the entire schedule property was acquired for formation of Vyalikaval Extension by CITB?

6. Unfortunately, the High Court has not noted that such issues were not only framed but on evidence the trial court arrived at findings thereon. When we turn to paragraph 3 of the impugned judgment, we find as if the Respondents had prayed for such a remand order before the High Court though on a reading of the whole paragraph it does not appear to be so. Learned Counsel for the Appellants -the Respondents before the High Court submitted that such a prayer was never made before the High Court. For all these reasons, therefore, the appeal is allowed. The impugned order of the High Court is set aside. Regular First Appeal No. 172 of 1992 is restored to the file of the

High Court with a request to the same on merits in accordance with law after hearing the parties. We express no opinion on the merits of the controversy between the parties. No costs.