

**SUPREME COURT OF INDIA**

T. Devarajulu

Vs.

T. Suseelamma

C.A.No.4145 of 2004

(Shivaraj V. Patil and B. N. Srikrishna JJ.)

16.07.2004

**ORDER**

The Order of the Court is as follows

1. Heard the learned counsel for the parties.
2. Leave granted.
3. This appeal is filed by the plaintiff in the original suit questioning the validity and correctness of the judgement and decree passed by the High Court setting aside the judgment and decree passed by the trial court and remanding the suit for disposal to the trial court. In appeal before the High Court, an application was made under Order 41 Rule 27 of the *Code of Civil Procedure, 1908* (for short, 'C.P.C.' to receive certain additional evidence. The High Court, by the impugned judgment, has stated thus:

"After hearing both counsel and having perused the judgment of the court below as also the previous record which has been filed herein with the plea to receive them as additional evidence, we are of the considered view that the matter needs an opportunity of filing the written statement by the appellants and also addition of evidence both oral and documentary. Thus, the documents, which have been filed along with the petition under Order-41 Rule 27 of Civil Procedure Code, be returned by the Registry of the appellant to be produced before the Court below.

In the circumstances we allow this appeal setting aside the impugned judgment and decree and remand the matter to the lower court for fresh trial and disposal after affording opportunity to either party for adducing of both oral and documentary evidence."

4. It is to be noticed that Defendant Nos. 24 to 26 had filed a memo before the trial court along with other defendants that they were adopting the written statement filed on behalf of the fifth defendant as their written statement. The High Court, without examining the

application filed under Order 41 Rule 27 C.P.C. on its merits while disposing of the appeal, passed the order of remand, that too, without considering, in the first place, the evidence available on record in order to examine whether the remand was necessary, and if so, for what purpose. When Defendant Nos. 24 to 26 had adopted the written statement, as noticed above, the application filed under Order 41 Rule 27 C.P.C. ought to have been considered on its merits while hearing and disposing of the appeal.

5. In this view, without expressing anything more on the merits of the respective contentions, we allow this appeal, set aside the impugned judgment and remit the appeal to the High Court for disposal in accordance with law, in the light of what is stated above. The suit is of the year 1984. The High Court in the impugned order itself had directed the trial court to dispose of the suit within six months after the remand. Under the circumstances, we expect the High Court to dispose of the appeal as expeditiously as possible.

6. No costs.