

# SUPREME COURT OF INDIA

H.K.N.Swami

Vs.

Irshad Basith

(2005) 10 SCC 0243

(Ashok bhan and S.H.Kapadia,JJ.)

22.07.2004

## Order

1. The Plaintiff-respondent (hereinafter referred to as “the respondent”) filed a suit for permanent injunction restraining the defendant-appellant (hereinafter referred to as “the appellant”) from interfering with his possession in property bearing Site No. 44/6 in Jaya chamarajendra Road, presently 38<sup>th</sup> Division, Bangalore City, Measuring ‘90’ x100’. The trial court dismissed the suit on the ground that the plaintiff had failed to prove his title as also the possession over the suit property. It was also found that the identity of the property was also in doubt .

2. Aggrieved by the aforesaid judgment of the trial court, the respondent filed a Regular First Appeal No. 116 of 1990 in the High Court. Without recording a finding that the respondent was in possession of the property as also the title to the property abruptly concluded that the title or the property is found to be in favor of the respondent. Finding as to the title has not been arrived at by the High court on appreciation of evidence.

3. The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title. The order of the High Court is cryptic and the same is without assigning any reason.

4. For the aforesaid reasons, we accept this appeal, set aside the judgment of the High Court and remit the matter back to the High Court to decide it afresh keeping in view the observations made by the Court in *Madhukar Vs. Sangram*<sup>1</sup> while dealing with the first appeal.

5. The Registry is directed to remit the record to the High Court forthwith. Since this first appeal pertains to the year 1990, we would request the High Court to dispose of the appeal subject to its variation on an application being made by either of the parties.

7. Both the IAs are dismissed as infructuous.

Judgment Referred.

<sup>1</sup>(2001) 4 SCC 0756