

# SUPREME COURT OF INDIA

Jagannath

Vs.

Arulappa and Anr.

C.A.No.4150-51 of 1999

(Ashok Bhan and A.K.Mathur,JJ.)

01.02.2005

## ORDER

1. These appeals are directed against the final judgment and decree of a Single judge of the High Court of Karnataka at Bangalore in RFAs Nos. 40 and 188 of 1989 which have been disposed of by the common judgment dated 16-12-1998. By the impugned judgment, the High Court has reversed the well-reasoned judgment of the trial court without setting aside the findings recorded by the trial court.

2. A Court of first appeal can reappreciate the entire evidence and come to a different conclusion. In the present case, we find that the High Court has not adverted to many of the findings which had been recorded by the trial court. For instance, while dismissing the suits filed by the respondents, the trial court had recorded a finding on Issue 5 that the defendant-appellant had taken actual possession on the suit properties in Execution Petition No. 137 of 1980 arising out of OS No.224 of 1978. Without reversing this finding, the High Court simply allowed the appeals and decreed the suits filed by the plaintiff-respondents in toto. Similarly, there are other issues on which findings recorded by the trial court have not been set aside by the High Court. The Points involved in the appeals before the High Court required a deeper consideration of the findings recorded by the trial court as well as the evidence and the pleadings on record.

3. We are not satisfied with the judgment rendered by the High Court, Accordingly, we set aside the same and remand the case to the High Court for a fresh decision in accordance with law. All contentions are left open to the parties to be raised in the appeals before the High Court.

4. Since these appeals arise from the two suits being O.S. Nos. 10260 and 10261 instituted in the year 1980, we would request the High Court to take up the appeal for hearing and dispose of them as expeditiously as possible.

5. The parties are at liberty to move an application before the learned Chief Justice of the High Court for fixation of an early date of hearing.

6. The Registry is directed to transmit the record of the case to the High Court forth with to enable it to proceed with the matter.

7. The appeals are allowed accordingly.