

SUPREME COURT OF INDIA

T.Thimmaiah

Vs.

Venkatachala Raju

C.A.No.5195 of 2001

(Tarun Chatterjee and Harjit Singh Bedi JJ.)

09.05.2008

JUDGMENT

Harjit Singh Bedi, J.

1. In this appeal, the appellant challenges an order made in review whereby the first appeal, which had earlier been allowed by the learned Single Judge of the High Court, has now been dismissed. This matter arises out of the following facts:

2. The appellant herein, vide sale deed dated 27th December 1971, purchased a property bearing site No.6 in 3rd block, Muneshwara Block, Palace Guttahalli, Bangalore-3, and as per Schedule "A" and "B" with the plaint the property was identified by specific boundaries as well. On 26th October 1993 the appellant herein filed a suit for declaration and possession of the Schedule `B' property which was in possession of the defendant respondent. The suit was contested by the defendant- respondent. The trial court however decreed the suit on 22nd January 1991. The defendant-respondent thereupon filed a first appeal in the High Court of Karnataka and the said appeal was dismissed by the learned Single Judge on 16th February 1999. The respondent thereafter filed a review petition on 14th November 1999. A notice was issued to the present appellant in the review application and objections were filed thereto as well. The learned Single Judge, however, vide order dated 26th February 2001, allowed the appeal by reviewing his earlier order and dismissed the suit. It is in this circumstance that the present appeal is before us.

3. During the course of hearing, the learned counsel for the appellant has pointed out that a bare perusal of the order in review would reveal that it is based on a complete reappraisal of the matter on facts and the provisions of Order 47 Rule 1 of the *Code of Civil Procedure* which would govern an application for review, have been completely ignored. It has been submitted by the counsel that the Single Judge had, in the first judgment, examined the facts and dismissed the appeal and on a reconsideration of the same facts, had allowed the same, which was not justified. We find merit in this plea. From a bare perusal of the judgment in review, it is clear that the principles laid down under Order 47 Rule 1 of the CPC have been completely ignored. We accordingly allow the appeal, set aside the order in review dated

26th February 2001 and dismiss the appeal in the suit. We, however, give liberty to the respondent herein to challenge the judgment dated 16th February 1999, if so advised.

4. There will, however, be no order as to costs.