

# SUPREME COURT OF INDIA

Ramavilasom Grandhasala Rep.By Secy

Vs.

N.S.S. Karayogam

C.A.No.6588 of 2002

(Markandey Katju and Aftab Alam JJ.)

27.11.2008

## ORDER

1. Heard learned counsel for the parties and perused the record.
2. This appeal has been filed against the impugned judgment of the Kerala High Court dated 1st October, 2001 in Second Appeal No.1155 of 1989-D. The respondent in this appeal filed a suit alleging himself to be the owner of the property in dispute. It is not disputed that the original owner of the property was one Velayudhan Pillai Sivarama Pillai. He executed a gift deed in favour of Yuva Samithi on 19-08-1114 Malayalam Era 1939 A.D. There was a provision in the gift deed (Exhibit A1) to the effect that if Yuva Samithi becomes defunct the title and possession of the property covered by the gift deed would revert to the owner.
3. The Trial Court and First Appellate Court held that the Yuva Samithi had not become defunct. The clear finding of fact of the First Appellate Court in its judgment dated 28th July, 1988, was that there was no evidence to show that the Yuva Samithi had become defunct and it was still functioning in a different name i.e. United Sports Club which was attached to Ramavilasom Grandhasala. This is a finding of fact and could not have ordinarily been interfered with in Second Appeal by the High Court. It is well settled that the High Court in Second Appeal can interfere with the judgment of the First Appellate Court only if there is an error of law and not an error of fact. Ordinarily, the First Appellate Court under Section 96 C.P.C. is the last Court of facts. However, there is very limited scope for the High Court to interfere with a finding of fact in a Second Appeal, namely, if the finding of fact was based on no evidence or is totally perverse.
4. In this case, the High Court has interfered with the finding of fact of the First Appellate Court that the Yuva Samithi and Ramavilasom Grandhasala are different entities. We are of the opinion that even if the High Court was of the opinion that the finding of fact of the First Appellate Court on this point was based on no evidence or was perverse, at the most the High Court could have remitted the matter to the First Appellate Court for a fresh decision, in accordance with law, but it could not itself acted as a First Appellate Court under Section 96 of the Civil Procedure Code, which it appears to have done. It may be mentioned that the First

Appellate Court has based its finding that the Yuva Samithi is still functioning in a different name on the basis of Exhibits B-1 to B-7. In our opinion, it was incumbent upon the High Court, if it wanted to interfere with this finding to examine Exhibits B-1 to B-7 but it does not seem to have done so. Hence, we direct the High Court to reconsider the question whether the finding of the First Appellate Court that the Yuva Samithi has not become defunct and it is functioning in a different name is based on no evidence or is perverse. The High Court shall specifically deal with Exhibits B-1 to B-7 and other relevant material in support of the said finding of the First Appellate Court. All questions of law are left open to the High Court. The impugned judgment of the High Court is set aside and the case is remanded to the High Court to give a fresh decision in accordance with law and in the light of the observations made above. We hope and trust that the High Court will decide the appeal expeditiously, since the matter has been pending for long. If the High Court finds that the findings of the First Appellate Court that the Yuva Samithi is still functioning is based on no evidence or is perverse then it should remand the matter to the First Appellate Court for a reconsideration of this question. The appeal is allowed. There shall be no order as to costs.