

SUPREME COURT OF INDIA

H.H. Pooranandaswamiji (D) Thr. L.Rs

Vs.

Sharadamma

C.A.No.3376 of 2001

(B.N. Agrawal and G.S. Singhvi JJ.)

22.01.2009

ORDER

Exemption allowed.

1. Delay in filing substitution application is condoned.
2. Applications for substitution are allowed.
3. No notice need be issued to the legal representatives of the deceased respondents as they have already entered appearance.
4. Heard learned counsel for the parties.
5. The trial court dismissed the suit for declaration of title and recovery of possession filed by the plaintiff-respondent after recording findings both against the plaintiff and defendants. The High Court allowed the first appeal and decreed the suit only on the ground that the trial court recorded a finding against the defendants on the question of adverse possession. In our view, being the first appellate Court, the High Court was required to scrutinise the pleadings and evidence of parties and decide the appeal on merits in the light of the issues framed by the Trial Court. Since, the High Court has not adopted that course, this appeal deserves to be allowed.
6. Accordingly, the appeal is allowed, impugned order render by the High Court is set aside and the matter is remitted to it to decide the same afresh after giving opportunity of hearing to the parties in accordance with law.