

SUPREME COURT OF INDIA

Venkatalakshamma

Vs.

H.V. Srinivasa

C.A.Nos.7260-7261 of 2001

(Markandey Katju and B. Sudershan Reddy JJ.)

18.02.2009

ORDER

1. Heard learned counsel for the parties.

2. These appeals have been filed against the judgment of the High Court of Karnataka dated 27th May, 1998 and against order dated 13th October, 2000, passed in the review petition. We have carefully perused the impugned judgement as well as the judgements of the Trial Court and the First Appellate Court.

3. The High Court, in Paragraph (5) of the impugned judgement, has framed the following two substantial questions of law:

“1) Whether non-grant of the decree of partition in all items except item 9 to 14, is correct?

2) Whether the plaintiff is entitled to the decree in respect of the properties, including items 9 to 14?”

4. The First Appellate Court has recorded a finding of fact that the properties in question were not the joint family properties. Hence, the High Court should have framed a question of law whether the said finding of the First Appellate Court was perverse or not but no such question of law was framed by it. In the circumstance, we set aside the impugned judgement and order of the High Court and remit the matter to the High Court for a fresh decision after framing the aforesaid question of law and any other question(s) of law that may arise in the second appeal after hearing the parties. We hope and trust that the High Court will decide the second appeal expeditiously.

5. The civil appeals are, accordingly, allowed and the impugned judgement and order passed by the High Court are set aside. No order as to costs.