SUPREME COURT OF INDIA

City Municipal Council Bhalki

Vs.

Gurappa

C.A.No.8044-8048 of 2015

(V.Gopala Gowda and Amitava Roy,JJ.,)

29.09.2015

JUDGMENT

V.Gopala Gowda,J.,

SLP (Civil)No.21561-21565 of 2005

1. Leave granted in the Special Leave Petitions.

2. The present appeals arise out of the common impugned judgment and order dated 15.07.2005 passed by the High Court of Karnataka at Bangalore in Regular Second Appeal Nos. 1053, 1054, 1055, 1056 and 1057 of 2001, whereby the High Court set aside the judgment and order dated 22.09.2001 passed by the Additional District and Sessions Judge, Bidar in RA Nos. 9, 10,11,12 & 13 of 1997.

3. The facts which are required to appreciate the rival legal contentions urged on behalf of the parties are stated in brief hereunder:

> "The plaintiff-deceased respondent no.1 herein (since died during the pendency of these appeals, is being represented by his LRs i.e. respondent Nos. 1a to 1g) had filed a suit O.S. No. 255 of 1984 before the Additional Civil Judge (Sr. Divn.), Bidar against the Deputy Commissioner, Bidar for declaration that he is the owner of the land bearing Sy. No. 183 measuring 1 acre 13 guntas and Sy. No. 184 measuring 4 acres 9 guntas which are arising out of the old Sy. Nos. 249 and 250 situate at Balki and as such sought for a declaration that they are the owners of the said property and the assignments of property, if any, created by the defendants-appellants as ineffective. The deceased respondent no.1 also sought for correction to correct the revenue records in respect of the suit land. The learned Civil Judge dismissed the said suit on the ground that the plaintiff-deceased respondent no.1:
>
> "has filed the present suit against the Deputy Commissioner and the Chief Officer on some misconception of the fact. If wants to obtain a effective decree, he has to

implead various persons who are in actual possession of various portion of the suit land and seek the effective relief like declaration of possession etc as the plaintiff has miserably failed to prove his possession over the suit property……"

4. The land in old Sy. Nos. 249 and 250 of Kasba Balki previously belonged to the ancestors of respondent no.1 herein, Gurappa (since deceased). The total extent of this land was 41 acres 18 guntas. Out of the above land, 20 acres 29 guntas was owned by the first cousin brother of Gurappa, and he was the owner of the remaining 20 acres and 29 guntas. Parts of it came to be acquired by the state government. Ultimately, the deceased respondent no.1 retained ownership over 5 acres and 22 guntas of land. During the revision of survey and resettlement of the lands in the village, the land in the said Sy. Nos. 249 and 250 was divided into six new Sy. Nos. 179 to 184. It is the case of the legal heirs of the deceased respondent no.1 that some discrepancies had crept in while preparing the new revenue records and that due to the wrong entries, the names of the owners and their actual possession did not tally with the survey numbers. The suit land measuring 4 acres and 9 guntas which belonged to the deceased respondent no.1 was shown in the name of one Chaturbhuj Heda and allotted Sy. No.184. Another land, which actually belonged to Chaturbhuj Heda was allotted Sy. No. 182 and it was shown in the name of the deceased respondent no.1. Chaturbhuj Heda got his land surveyed and the Assistant Director of Land Records (ADLR) directed him to get his name entered in the RTC of Sy. No. 182, which actually belonged to him. The revenue records of the suit schedule property of the deceased respondent no.1, however, remained uncorrected. The deceased respondent No.1 thereafter filed Suit No. 39 of 1993 before the Civil Judge, Sr. Div. at Basavakalyan, herein after called as Civil Judge, impleading several defendants, and prayed for grant of the decree of declaration of the title of the respondents to the suit land, recovery of possession of the suit land and perpetual injunction restraining the defendants therein from constructing shops over the suit land. The learned Civil Judge after examining the evidence on record decreed the suit in favour of the deceased respondent no.1, and declared him as the owner of the suit property. On the issue of the ownership of the suit property, the learned Civil Judge held as under:

"PW1 has marked Ex P9 to show that Sy.No 249 and 250 are his ancestral properties. Ex. P9 is Khasra Patrak. It is for the year 1954-1955. It is maintained as per the Hyderabad Land Revenue Act 1917. This Act was repealed on 01.04.1964 and Karnataka Land Revenue Act 1954 came into effect. In view of Section 133 KLR Act, there is presumptive value for the entries of the RoRs of the land……Ex. P9 unequivocally shows that the plaintiff and Ghallappa were joint owners and joint possessors of land Sy. Nos. 249 and 250 of Kasba Balki."

5. Further, the learned Civil Judge also recorded a finding of fact on appreciation of evidence on record, that the old Sy. Nos. 249 and 250 were divided into six new Sy. Nos. (179 to 184) during the revision of survey and resettlement of land. The learned Civil Judge further directed the defendant nos.2-22 therein to put the deceased respondent no.1 in possession of the suit property. On the issue of the wrong area being mentioned by the plaintiff- deceased respondent no.1 in the earlier suit, the learned Civil Judge held as under:

"Upon perusal of all the records and upon hearing argument what appears to us is that 1) in his previous suit the plaintiff showed the area of Sy.No 184 as 6 acres 35 guntas in his present suit he showed the area of Sy. No. 184 as 4 acres 09 guntas such error was due to the mistakes of the revenue department. Inspite of notice under Ex. P30 D-1 kept mum. Such conduct of D1 was against the purpose of Section 80 CPC. The purpose of such notice is to give an opportunity to the government, reconsider the legal position to make amends or to settle the claim without litigation. It was his duty to take steps for corrections of the entries of revenue records. He did not do so. Thereby the plaintiff was led to file the suit mentioning the incorrect area. It appears the plaintiff did what he could. If one carefully reads Ex. P30 he will understand the pain, helpless and awkward position of the plaintiff. If D1 remained lethargic, if D1 did not do his duty inspite of notice, if the plaintiff filed a suit with incorrect available materials of revenue records, it appears, it would be unjust to penalize the plaintiff for such an error on his part. The plaintiff could not have undertaken by himself the detailed survey of the concerned land. The plaintiff himself could have done any of this to set right the revenue records. Therefore, one has to believe the plaint allegations, noted supra." The plea of the suit being barred by res judicata was also raised in the suit proceedings by the defendants therein. The learned Civil Judge came to the conclusion on proper appreciation of facts and evidence on record that the "lis" involved in the previous suit between the parties was not finally heard and decided, and was only 'closed' for non availability of necessary and sufficient records and held as under:

"Therefore I am inclined to hold that the properties and reliefs in the suit are different also that the matter in this suit has not been heard and finally decided in all its perspectives in the previous suit (i.e O.S. 255/ 84 C.J Bidar)." Aggrieved, of the judgment and decree passed in the O.S. No. 39 of 1993 the appellants herein filed Regular Appeal Nos. 9 of 1997, 10 of 1997, 11 of 1997, 12 of 1997 and 13 of 1997 before the Additional District and Sessions Judge at Bidar urging various grounds. The learned Additional District and Sessions Judge by his judgment and order dated 22.09.2001, set aside the judgment and order of the Civil Judge, Bidar. Firstly, it was held that the suit filed by the deceased respondent no.1 herein was not maintainable, as the same had been filed without issuing notice to the appellants herein under Section 80 of Code of Civil Procedure (hereinafter referred to as "CPC") and Section 284(1) of the Karnataka Municipalities Act. It was further held that the suit is also not maintainable as it is barred by res judicata. The learned Additional District and Sessions judge held that in the instant case, the earlier suit in O.S. No. 255 of 1984 was not dismissed on technical grounds, but on merits after framing issues and taking into consideration the evidence of both the parties. The learned judge also came to the conclusion that the deceased respondent no.1 herein had not succeeded in proving his title to the suit land. The deceased respondent no.1 then preferred Regular Second Appeal Nos. 1053, 1054, 1055, 1056 and 1057 of 2001 before the High Court of Karnataka by framing certain substantial questions of law. The learned single judge of the High Court set aside the judgment and order of the Additional District and Sessions Judge in the first appeals dated 22.09.2001 referred to supra. On the issue of

dismissal of suit for want of notice, the learned single judge held that the dismissal of the suit on the technical grounds was bad in law. The learned single judge also restored the finding of fact recorded by the learned Civil Judge in O.S. No. 39 of 1993 that the deceased respondent no.1 herein had succeeded in proving his title and ownership over the suit property. Further, on the issue of res judicata, it was observed that to take the plea of res judicata, one of the ingredients is that the litigating parties must be the same and that the subject matter of the suit also must be identical. The earlier suit was dismissed not on merits but for want of clarity and for want of necessary parties. Thus, all the substantial questions of law framed were answered in favour of the deceased respondent no.1 herein. Aggrieved, the appellant Municipality has filed these present appeals before us questioning the correctness of the judgment of the learned single judge of the Karnataka High Court by raising various questions of law and urging grounds in support of the same."

6. We have heard the learned counsel appearing on behalf of both the parties. On the basis of the factual evidence on record produced before us and the circumstances of the case and also in the light of the rival legal contentions urged by the learned senior counsel for both the parties, we have broadly framed the following points which require our attention and consideration- Whether the suit in O.S. No. 39 of 1993 filed before the Civil Judge, Bidar was barred by res judicata?

7. Whether the deceased respondent no.1 has succeeded in proving his title over the ownership of the suit property?

What order?

8. Answer to Point No.1 The deceased respondent no.1 had filed a suit in O.S. No. 255 of 1984, which was dismissed. Thereafter, he filed a suit in O.S. No. 39 of 1993 before the Civil Judge, Bidar, after impleading certain other defendants therein and changing the description of the suit property. Mr. Basava Prabhu S. Patil, learned senior counsel appearing on behalf of the appellant Municipality contends that the earlier suit in O.S. No. 255 of 1984 having been filed by the deceased respondent no.1 against the same defendants; in respect of the same subject matter, with the same allegations and having been decided by a court of competent jurisdiction, on merits after due consideration of the extensive evidence led by the parties, attracts the bar of res judicata and the subsequent suit in O.S. No. 39 of 1993 was not maintainable. It is further contended that the suit in O.S. No. 255 of 1984 was not dismissed on technical grounds, but the Trial Court gave a well reasoned order, passed after considering the matter on merits. The learned senior counsel contended that the Trial Court had recorded a finding of fact that the land claimed by the deceased respondent no.1 was not created out of the land in Sy. Nos. 249 and 250. The learned senior counsel further contends that the impleadment of respondent nos.3 to 22 herein in the subsequent suit O.S. No. 39 of 1993 was not enough to overcome the bar of res judicata, as they all claimed title to the suit land through the appellant Municipality. The learned senior counsel further contends that the Trial Court had not granted the liberty to the deceased respondent no.1 to file a fresh suit, and that

since the matter had been decided on merits, the subsequent suit brought on the same grounds was not maintainable in law.

9. The learned senior counsel further contends that the deceased respondent no.1 was barred from seeking relief in respect of Sy. No. 183 in the subsequent suit in O.S. No. 39 of 1993 as it was hit by the bar of Order II Rule 2 of the CPC.

10. Mr. Shekhar Naphade, learned counsel appearing on behalf of some of the legal heirs of the deceased respondent no.1, on the other hand contended that the bar of res judicata does not operate on the subsequent suit in O.S. No. 39 of 1993 by virtue of the judgment and order dated 09.01.1986 passed in O.S. No. 255 of 1984 as the earlier suit had been dismissed on the ground of non-joinder of necessary parties, and the said order could not be said to operate as res judicata. He further contended that the suit property and even the parties involved in the two original suits are different. The learned senior counsel further contended that the Trial Court in the order passed in O.S. No. 255 of 1984 has given liberty to the deceased respondent no.1 to file a fresh suit, as the suit was dismissed only on the ground that no effective relief can be granted. The learned counsel further contended that the bar of Order II Rule 2 of the CPC cannot operate against the heirs of the deceased respondent no.1, as they could not identify the property due to the mismanaged revenue records, and thus, they should not be made to suffer for the same. Mr. K Nagmohan Das, learned senior counsel appearing on behalf of some of the other legal heirs of the deceased respondent no.1 argued that the bar of res judicata does not operate on the suit in O.S. No. 39 of 1993, as the earlier suit cannot be said to have been dismissed on merits. The learned senior counsel contends that for the bar of res judicata to operate, there must have been a final adjudication on substantial issues between the same parties on the same subject matter, which was not done in the instant case. We agree with the contentions advanced by the learned senior counsel appearing on behalf of the legal heirs of the deceased respondent no.1.

11. The principle of res judicata has been codified under Section 11 of CPC in the following terms:

> "11. Res judicata— No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court." The principle of res judicata is a need of any judicial system, that is, to give finality to the judicial decisions of the disputes between parties. It also aims to prevent multiplicity of proceedings between the same parties of the same subject matter of the lis. An issue which was directly and substantially involved in a former suit between the same parties, and has been decided and has attained finality cannot be re-agitated before the courts again by instituting suit or proceeding by the same parties on the same subject matter of earlier lis. This court in a catena of cases has laid down the law relating to the essential elements that need to be satisfied before a plea of res judicata can be raised by a party. In the case of *Sheodan Singh v. Daryao*

Kunwar[1] it was held as under: "A plain reading of s. 11 shows that to constitute a matter res judicata, the following conditions must be satisfied, namely - (i) The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue in the former suit; (ii) The former suit must have been a suit between the same parties or between parties under whom they or any of them claim; (iii) The parties must have litigated under the same title in the former suit; (iv) The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised; and

(v) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the Court in the first suit." The above legal principles laid down by this Court have been reiterated in the case of *Syed Mohd. Salie Labbai & Ors. v. Mohd.Hanifa & Ors*[2] as under:

"…….it may be necessary to mention that before a plea of res judicata can be given effect, the following conditions must be proved-

(1) that the litigating parties must be the same;

(2) that the subject-matter of the suit also must be identical;

(3) that the matter must be finally decided between the parties; and (4) that the suit must be decided by a court of competent jurisdiction." Thus, for the bar of res judicata to operate in the subsequent original suit proceedings, the litigating parties must be the same, and the subject matter of the suit must also be identical. Further, it has also been held by this court in the case of *Ram Gobinda v. Bhakta Bala*[3] that for the bar of res judicata to operate in the subsequent original suit proceedings, the decision in the former suit must have been decided on merits on the same substantial questions both on facts and in law that would arise in the subsequent original suit."

12. In the instant case, no doubt the Trial Court in the suit in O.S. No. 255 of 1984 filed by the deceased respondent no.1 framed certain issues and even examined the documents produced by the parties. The fact which cannot be lost sight of is that ultimately the learned trial judge came to the following conclusion:

"For all the reasons mentioned above, I come to the conclusion that the plaintiff has failed the present suit against the Deputy Commissioner and the chief officer on some mis-conception of fact. If he wants to obtain an effective decree, he has to implead various persons who are in actual possession of various portions of the suit land and seek the effective relief like declaration and possession etc as the plaintiff has miserably failed to prove his possession over the suit property……" The prayer in suit in O.S. No. 255 of 1984 was for:

"declaration of title holding that the illegal and unauthorized assignment if any created by defendant no.2 shall stand void ab initio and issue of perpetual injunction in respect of land Sy.No. 184 measuring 06 acres 35 guntas, situated at Balki……" Whereas, the prayer in the suit of O.S. No. 39 of 1993 instituted by the deceased respondent no.1 reads as under:

> "1) Declaration of plaintiff's title to the suit land
>
> 2) Recovery of possession of the suit land
>
> 3) Perpetual injunction, restraining D3 to D22 from constructing shops over the suit land.
>
> 4) Correction of R.O.Rs" Thus, it can be seen that neither the parties, nor the subject matter was the same in the earlier suit O.S. No. 255 of 1984 and O.S. No. 39 of 1993. It also becomes crystal clear that the deceased respondent no.1 herein has availed the indirect liberty granted by the Additional Civil Judge in O.S. No. 255 of 1984 that "if he wants to obtain an effective decree, he has to implead various persons who are in actual possession of various portions of the suit land and seek the effective relief like declaration of possession etc" Since neither the reliefs claimed in the two suits were identical, nor the parties are the same and nor could the decision in the first suit said to have been on merits, it cannot be held in the singular facts and circumstances that the suit in O.S. No. 39 of 1993 was barred by res judicata as contended by the learned senior counsel Mr. Basava Prabhu S. Patil. At this stage, we also direct our attention to the contention raised by Mr. Basava Prabhu S. Patil, learned senior counsel appearing on behalf of the appellant Municipality that the suit in O.S. No. 39 of 1993 was not maintainable, as the notice was issued under Section 80 of CPC in suit O.S. No. 255 of 1984 could not be said to be sufficient notice for the institution of the suit in O.S. No. 39 of 1993. We cannot agree with the said contention. The High Court of Karnataka in the Second Appeal had dismissed the contention on the ground that the notice issued in the suit O.S. 255 of 1984 can be said to be constructive notice. The High Court considered that the object of the Section is the advance of justice and securing of public good.

13. In our opinion, this issue does not arise at all, as a municipal council is not a public officer, and no notice is necessary when a suit is filed against a municipality. Thus, the question of sufficiency of notice under Section 80 of the CPC does not arise at all. Further, the issuance of notice under Section 284(1) of the Karnataka Municipalities Act, 1964 also does not arise for the reason that the dispute between the parties in the suit in O.S. No. 39 of 1993 does not attract the above provision of the Act and therefore, we need not advert to and answer the above contention. Answer to Point no.2 Mr. Basava Prabhu S. Patil, the learned senior counsel appearing on behalf of the appellant Municipality contends that the onus of proving title to the suit property heavily rests on deceased respondent no.1, and that the mere failure on part on the appellant Municipality to establish its title to the suit schedule property does not entitle the deceased respondent no.1 to obtain a decree of declaration, possession

and consequential reliefs as sought for in respect of the suit schedule property in the original suit proceedings.

14. The learned senior counsel further contends that the variation in the extent of land claimed by the deceased respondent no.1 at different stages, that is, 6 acres and 35 guntas in the suit O.S. No. 255 of 1984 and 5 acres and 21 guntas in the suit in O.S. No. 39 of 1993 without any explanation offered by the deceased respondent no.1 for such variation itself if indicative of the falsity of the claim of deceased respondent no.1. The learned senior counsel has further contended that the entries in the revenue records in respect of the suit schedule property stand in the name of one Ghallappa and Chaturbhuj Heda and thus no presumption from the RTC records as to the ownership of suit property the deceased respondent no.1 or his legal heirs can be raised by them. The learned senior counsel contends that the learned Civil Judge and the High Court of Karnataka have erred in coming to the conclusion that the deceased respondent no.1, has succeeded in establishing his title over the suit property. On the other hand, Mr. Shekhar Naphade, the learned counsel appearing on behalf of some of the legal heirs of the respondent no.1 contends that they have succeeded in establishing their title of ownership over the suit property. He has further contended that the variations in the extent of the land have only crept in due to the mistake of the appellant Municipality. The onus was on the Municipality to maintain the record properly and the same has not been done in the instant case. The same cannot be made a ground to disentitle the deceased respondent no.1, especially in light of the fact that the Civil Judge in O.S. No. 39 of 1993, on appreciation of evidence on record recorded the finding of fact that the deceased respondent no.1 was the owner of the land bearing Sy. Nos. 249 and 250, which has been proved by way of the khasra pahni patrak, produced as Exh. P9 before it. The learned Civil Judge further examined the document produced as "Exh. P28", the map of land bearing Sy. Nos. 179 to 184 of Balki village, and "Exh. P33", copy of land revenue receipts in the name of the deceased respondent no.1 to show that the land revenue tax is paid by him in respect of land bearing Sy. Nos. 179, 182, 183 for the year 1983- 1984.

15. We are unable to agree with the contentions advanced by the Mr. Basava Prabhu S. Patil learned senior counsel appearing on behalf of the appellant Municipality. The learned Civil Judge, Bidar decreed the suit in O.S. No. 39 of 1993 in favour of the legal heirs of the deceased respondent no.1, which judgment and order was restored by the Karnataka High Court in the second appeal, after it was set aside judgment and order passed in the first appeals. The learned senior counsel on behalf of the Appellant has not brought to our attention, any evidence, which can lead us to come to the conclusion that the learned Civil Judge, Bidar and the learned judge of the High Court of Karnataka have erred in decreeing the suit in favour of the deceased respondent no.1.

16. It is a settled position of law that in a suit for declaration of title and possession, the onus is upon the plaintiff to prove his title. Further, not only is the onus on the plaintiff, he must prove his title independently, and a decree in his favour cannot be awarded for the only reason that the defendant has not been able to prove his title, as held by this Court in the case of *Brahma Nand Puri v. Neki Puri*[4] as under:

"……the plaintiff's suit being one for ejectment he has to succeed or fail on the file that he establishes and if he cannot succeed on the strength of his title his suit must fail notwithstanding that the defendant in possession has no title to the property……"

17. The same view has been reiterated by this Court in the more recent case of *R.V.E Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple & Anr.*[5] as under:

"In a suit for recovery of possession based on title it is for the plaintiff to prove his title and satisfy the Court that he, in law, is entitled to dispossess the defendant from his possession over the suit property and for the possession to be restored with him. ……In our opinion, in a suit for possession based on title once the plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant it is for the defendant to discharge his onus and in the absence thereof the burden of proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiffs title."

18. In our opinion, on perusal of the material evidence on record, the legal heirs of the deceased respondent no.1 herein have succeeded in establishing their title to the suit property. The deceased respondent no.1 herein established before the learned Civil Judge and the High Court of Karnataka that he was the owner of 20 acres and 29 guntas of land, which formed part of Sy. Nos. 249 and 250 of Balki village. Part of this land was acquired by the state government for development around the area, the details of which are as under:

Tahsil office	3 acres 30 guntas
Munsiff court	3 acres 00 guntas
School	4 acres 12 guntas
Hospital	0 acres 30 guntas
Road	1 acres 05 guntas

19. The deceased respondent no. 1 also stated in his evidence that he had alienated a further 3 acres 03 guntas in favour of Chaturbhuj Heda. Thus, out of his entire ancestral property, only an area of 5 acres and 22 guntas remained in his ownership. He produced before the learned Civil Judge the khasra patrak for the village for the year 1954-55 as Exh. P9. On the basis of the same, the learned judge rightly came to the conclusion on facts and evidence on record and held that the land in Sy. Nos. 249 and 250 was the ancestral property of the deceased respondent no.1. He further produced before the court the extract of the revision survey register as "Exh. P24" and a copy of the village map as "Exh. P28". From a perusal of these two documents, the learned Civil Judge came to the correct conclusion that it was proved that the old Sy. Nos. 249 and 250 had become Sy. Nos. 179 to 184. The learned judge also took into consideration the documents marked as "Exh. P37" which was the plaint in the suit O.S. No. 130 of 1980 filed by Chaturbhuj Heda to get the records of revenue rectified. Sri Chaturbhuj had admitted in the plaint in that suit that there was an interchange in the Sy. Nos. 182 and 184 and that he was wrongly shown as the owner of the land in Sy. No. 184,

when infact he was the owner of the land in Sy. No.182. Thus, the deceased respondent no.1 has established his title to the suit property. The learned Civil Judge further observed that the appellant Municipality has not produced any document to prove their title to the suit property. Even if it was their case that the suit property was also acquired by the state government, it should have produced the acquisition notifications under Sections 4 and 6 of the Land Acquisition Act of 1894 and award passed under Section 11 of the Act. The learned Civil Judge further held that since the appellant Municipality had denied the title to the deceased respondent no.1 and his ancestors over the suit property, there is no question of them having acquired adverse title over the same. Since the appellant Municipality had no title over the suit property, it did not have any right to confer better title upon the suit schedule property upon the other defendants in the suit in O.S. No. 39 of 1993. We find no merit in the claim of the appellant Municipality, as the reversal of the findings of fact on the relevant points answered by the High Court in exercise of its jurisdiction by recording valid and cogent reasons on the substantial questions are perfectly correct and there is no miscarriage of justice in the interference by the High Court in the judgment and order passed by it in the second appeals.

20. Answer to Point No.3 In view of the reasons mentioned supra, we are of the view that no error has been committed by the High Court in setting aside the erroneous findings of the first appellate court in its judgment and order passed in the Regular Appeals and restoring the judgment and order passed by the learned Civil Judge in O.S. No. 39 of 1993. We accordingly dismiss the Civil Appeals.

[1]*AIR 1966 SC 1332*
[2]*AIR 1976 SC 1569*
[3]*AIR 1971 SC 0664*
[4]*AIR 1965 SC 1506*
[5]*(2003) 8 SCC 0752*