

TOWN PLANNING MUNICIPAL COUNCIL

A

v.

RAJAPPA & ANR.

(C.A. No. 2836 of 2001)

JANUARY 10, 2008

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(DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.)

*Code of Civil Procedure, 1908; Section 100:*

*Second appeal – Formulation of question of law – Requirements of – Suit claiming land/property to be ancestral property – Dismissed by trial Court – Affirmed by first appellate Court – Reversed by the High Court – On appeal, Held: High Court by interfering with the finding of facts, without formulating a question of law, violated mandate of s.100 CPC – Moreover, the Judgment of the High Court is practically non-reasoned – Hence, matter remitted to High Court for consideration afresh after formulating the question of law – Karnataka Municipalities Act – S.284(1) – Issuance of Notice – Mandatory requirement of.*

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**Respondent No.1 filed a suit in respect of certain property claiming it to be his ancestral property. The defendants resisted the suit on the ground that the suit has been shown as 'Sega Local Fund' property since 1954 belonging to the Town Municipal Council, as such it has every right to deal with in accordance with the Municipal Laws. Trial Court dismissed the suit in limine holding the suit land/property as 'Sega Local Fund' and no notice in compliance with the mandatory requirements in terms of s.284(1) was issued. The judgment of the trial Court was upheld by the first appellate Court. In appeal, judgment of the trial Court as affirmed by the first appellate Court was reversed by the High Court. Hence the present appeal.**

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**Allowing the appeal, the Court**

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**A HELD: 1.1 The Second Appeal was allowed by the High Court without framing a question of law which is clearly contrary to the mandate of Section 100. (Para – 5) [545-F, G]**

**B *Gian Dass vs. Panchayat, Village Sunner Kalan & Ors. JT (2006) 7 SC 102; Joseph Severane and Ors. vs. Benny Mathew and Ors. JT (2005) 8 SC 509; Sasikumar and Ors. vs. Kunnath Chellappan Nair and Ors. JT (2005) 9 SC 171; Chadat Singh vs. Bahadur Ram and Ors. JT (2004) 6 SC 296 and Kanhaiyalal vs. Anupkumar JT (2002) 10 SC 98 – relied on.***

**D 1.2 The High Court in second appeal interfered with the findings of facts. Since judgment of Single Judge of the High Court is practically non-reasoned, it is not possible to find out as to what weighed with the High Court to upset the concurrent findings of fact recorded by the Trial Court and the First Appellate Court. Hence, the matter is remitted to the High Court for fresh consideration keeping in view parameters of Section 100 CPC. (Para – 6) [546-A, B, C]**

**E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2836 of 2001.**

**F From the final Order dated 12.1.1998 of the High Court of Karnataka at Bangalore in R.S.A. No. 359 of 1993.**

**S. Nanda Kumar, Satish Kumar, Ananda Selvam and V.N. Raghupathy for the Appellant.**

**The Judgment of the Court was delivered by**

**G Dr. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of the learned Single Judge of the Karnataka High Court allowing the second appeal filed by the respondent under Section 100 of the Code of Civil Procedure, 1908 (in short 'CPC'). The respondent no.1 had filed a suit in respect of 3 acres 22 guntas of land in Survey no.393/Aa (Paiki) situated in**

**H**

Yadgir-B, Taluk Yadgir. Plaintiff claimed property to be ancestral property. A

2. The defendants resisted the suit contending that the suit land being shown as 'Sega Local Fund' property since 1954, it is the property belonging to the Town Municipal Council, Vadgir as such it has every right to deal with in accordance with the Municipal Laws and that the plaintiff cannot prevent lawful action of the defendants by way of such suit. It was further contended that the plaintiff if not at all in possession of the suit land and that they have issued notification as required under the Municipal Law to provide sites to houseless persons and the plaintiff, winning over the village Accountant, got his name entered in the column of cultivator without any right and, therefore, the suit of the plaintiff is not at all maintainable. With these contentions, the defendants prayed for dismissal of the suit. B C

3. The Trial Court framed the issues and came to hold that under Section 284(1) of the Karnataka Municipalities Act, (in short the 'Act') previous notice for the suits is mandatory and there was no compliance with the said requirement and, therefore, the suit was liable to be dismissed in limine. It was also pointed out that entry in the Khasra Pahani and R.O.R. right from 1954-55 indicated the suit land as "Sega Local Fund" and the same was not challenged by the plaintiff or his ancestors. D E

4. The Trial Court and the First Appellate Court found that there was no merit in the suit and accordingly the suit was dismissed by the Trial Court and the First Appellate Court upheld it. The High Court, as noted above, reversed the findings and allowed the second appeal. F

5. At the outset it is to be indicated that the Second Appeal was allowed without framing a question of law which is clearly contrary to the mandate of Section 100. This position has been highlighted in several decisions. (See *Glan Dass v. Panchayat, Village Sunner Kalan & Ors.* (JT 2006 (7) SC 102), *Joseph Severane and Ors. v. Benny Mathew and Ors.* (JT 2005 (8) SC 509), *Sasikumar and Ors. v. Kunnath Chellappan Nair and* H

A Ors. (JT 2005 (9) SC 171), *Chadat Singh v. Bahadur Ram and Ors.* (JT 2004 (6) SC 296) and *Kanhaiyalal v. Anupkumar* (JT 2002 (10) SC 98).

B 6. Apart from that it is noted that the judgment of the learned Single Judge is practically non-reasoned. The High Court in second appeal interfered with the findings of facts. Therefore, since the judgment is practically non-reasoned, it is not possible to find out as to what weighed with the High Court to upset the concurrent findings of fact recorded by the Trial Court and the First Appellate Court. We remit the matter to the High Court for fresh consideration keeping in view parameters of Section 100 CPC.

C 7. The appeal is allowed. No costs.

D S.K.S.

Appeal allowed.