

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8189 OF 2009
(@ SLP(C) No.8216 of 2006)

KANTH SRI & ORS.

....APPELLANTS

VERSUS

MUNNA & ORS.

....RESPONDENTS

O R D E R

Leave granted.

Heard learned counsel appearing for the parties.

This appeal can be disposed of on a very short question. The second appeal was filed by the present respondents before the High Court challenging the judgment and decree of the Appellate Court, which had granted a decree for specific performance of contract for sale. By the impugned order, the High Court had reversed the judgment of the Appellate Court and allowed the second appeal. We have been taken through the judgment of the High Court by the learned counsel appearing for the appellants. It appears from the said judgment that the High Court had proceeded to dispose of the second appeal in the absence of any learned counsel appearing for the respondents. The judgment of the High Court shows:

“Heard the learned counsel for the

appellant. None argued for the respondents. Shri K.N. Mishra, learned counsel for the respondent submitted that he has no instructions to argue the appeal."

We are informed by the learned counsel appearing for both the parties that Shri K.N. Mishra could not appear for the present respondents because he had not filed vakalatnama on behalf of the heirs and legal representatives of the deceased respondent. In fact, he had filed vakalatnama on behalf of the respondent, who subsequently died. That being the position, it is now admitted position that the second appeal was allowed without giving any opportunity of hearing to the respondents therein. We are, therefore, of the view that an opportunity should be given to these respondents to contest the second appeal in the High Court. The impugned order is, therefore, set aside, the appeal is restored to its original file and the matter is remanded back to the High Court for fresh disposal of the Second Appeal No.1242 of 1980, after giving opportunity of hearing to the parties and passing a reasoned judgment in accordance with law.

Both sides agreed that no further notice need to be sent to the respondents regarding fixation of a date of hearing of the second appeal by the High Court. That being the position, we request the High Court to decide

the appeal after remand within a period of three months from the date of supply of a copy of this order to it.

The impugned order is accordingly set aside. The appeal is allowed to the extent indicated above. There will be no order as to costs.

.....J.
(TARUN CHATTERJEE)

.....J.
(SURINDER SINGH NIJJAR)

NEW DELHI,
DECEMBER 09, 2009.



JUDGMENT