

CASE NO.:
Appeal (civil) 5807 of 2000

PETITIONER:
Janardhan Narasimha Nayak

RESPONDENT:
Balwant Venaktesh Kulkarni & Anr

DATE OF JUDGMENT: 07/03/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J.

Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Karnataka High Court allowing the second appeal filed by the respondent no.1 under Section 100 of the Code of Civil Procedure, 1908 (in short the 'CPC').

Respondent No.1 is the plaintiff and had filed the suit for specific performance of the contract of sale dated 31.1.1972. Suit was decreed by the Trial Court and the appeal was dismissed by the First Appellate Court. The second defendant-respondent no.2 took the stand that he was the purchaser subsequent to the agreement for sale, he had no knowledge of the agreement and had no notice of the sale and he is not bound by the earlier agreement of sale. The Trial Court came to hold that defendant no.2 had knowledge of the agreement. The First Appellate Court held that either he had dishonest notion or had notice. At the time of the admission in the second appeal the following question of law was formulated:

"Whether the Court below was just in placing reliance on the order of the Assistant Commissioner, who rejected the permission of sale of the land and thus hold against the appellant?"

Thereafter with the following observations/conclusions the second appeal was allowed.

"When the trial court on evidence has come to the conclusion on seeing the witness in the box, appreciated the demeanor, the appellate court without considering the points raised by the trial court went on discussing the legal position and came to a different conclusion which I have no hesitation, to set aside on the ground that they are not warranted by the facts of the case. The entire approach of the appellate court is vitiated by the pre-considered mind that the agreement of sale cannot be given effect to once there was a sale in between the parties. This view is certainly wrong

and under such pre-considered notion, the approach made by the appellate court which has resulted in wrong delivery of the judgment."

Learned counsel for the appellant submitted that the second appeal was allowed without indicating any basis and reason. The conclusions are also without any foundation. It was erroneously held that the entire approach of First Appellate Court was vitiated by pre-conceived mind that the agreement of sale cannot be given effect once there was a sale in between the parties. No such finding was recorded by the First Appellate Court.

Learned counsel for the respondents on the other hand submitted that though the judgment of the High Court is not happily worded, yet in essence the High Court has found First Appellate Court's conclusion to be vitiated.

Perusal of the order of the High Court quoted above shows that there was total non-application of mind. There is practically no reason indicated as to why the High Court took the view that First Appellate Court's order was on account of a pre-conceived mind. Merely because the Trial Court had occasion to see the witness that cannot be a ground to hold that First Appellate Court had pre-conceived notion. No reasons had been indicated by the High Court to set aside the order of the First Appellate Court even without analysing the evidence and the respective stand.

We, therefore, set aside the order of the High Court, remit the matter to the High Court for fresh disposal on merits. As the matter is pending since long, we request the High Court to dispose of the second appeal as early as practicable preferably by the end of August, 2007.

The appeal is allowed with no order as to costs.