

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.5748 OF 2008
(Arising out of S.L.P. (C) No.5626 of 2005)

Gowrammanni and Ors.

...Appellant(s)

Versus

V.V. Patil (D) by L.Rs. and Ors. ...Respondent(s)

O R D E R

Leave granted.

Heard learned counsel for the appellants.

In spite of service of notice, the respondents have not entered appearance to contest the prayer made in this appeal.

By the impugned order passed in a First Appeal against the decree passed by the Trial Court, the High Court has remanded the matter to the Trial Court with a direction to give opportunity to the parties to adduce further evidence on the question of identity of disputed land.

From a bare perusal of the judgement of the Trial Court, it would appear that, on the question of identity of disputed land, the parties have adduced evidence, a Court Commissioner was appointed, who submitted a report, and he was examined as a witness and duly cross-examined and thereupon the suit was disposed of.

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In our view, in the facts and circumstances of the present case, the High Court was not justified in remanding the matter to the Trial Court but should have decided the appeal on merits after taking into consideration the evidence adduced before the Trial Court. In view of these facts, the appeal is allowed, impugned order is set aside and the appeal is remanded to the High Court to dispose of the same on merits in accordance with law after giving opportunity of hearing to the parties.

No costs.

[B.N. AGRAWAL]J.

[G.S. SINGHVI]J.

New Delhi,
September 19, 2008.