

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.4912 OF 2002

Fakkirappa Basappa Bhairappanavar & Ors. ...Appellant(s)

Versus

H.F. Bhairappanavar (Dead) By L.Rs. & Anr. ...Respondent(s)

O R D E R

Heard learned counsel for the parties.

The suit for partition, possession and mesne profits filed by Hanumanthappa Fakkirappa Bhairappanavar, who is now represented by his L.Rs. was dismissed by the Trial Court by recording a finding that the plaintiff has failed to prove that his family and defendants are still a joint family; that plot Nos. 1, 2 and 3 were purchased from joint family funds and that V.P.C. No. 276 house was constructed on it out of joint family funds. The Trial Court further held that a partition had taken place in the family in 1950 which was reduced in writing in the year 1960 and that the disputed properties are self acquired properties of defendant no.1. On appeal, the High Court reversed the findings recorded by the Trial Court and decreed the suit.

From a bare perusal of the impugned order, it is clear that while reversing the order of the Trial Court, the High Court has taken into consideration only two documents i.e. Exhibits P-21 and P-22 and ignored other documentary as well as oral evidence adduced by the parties.

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It is well-settled that while exercising the power of the first appellate court which is the final court of fact, the High Court is obliged to consider the entire oral and documentary evidence produced by the parties and record independent findings on all the issues. Since, in the present case, the High Court has failed to consider the evidence produced by the parties in its entirety, the impugned order is liable to be set aside.

Accordingly, the appeal is allowed, impugned order is set aside and the matter is remitted to the High Court for fresh disposal of the appeal in accordance with law.

No costs.

[B.N. AGRAWAL]J.

[G.S. SINGHVI]J.

New Delhi,
March 31, 2009.