

SRI DOKKA SAMUEL
v.
DR. JACOB LAZARUS CHELLY

MARCH 14, 1997

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

Code of Civil Procedure, 1908 :

S. 114—Review—Omission to cite an authority of law—Held, is not a ground for reviewing the prior judgment, saying that there is an error apparent on the face of the record, since the counsel has committed an error in not bringing to the notice of the court the relevant precedents.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2238 of 1997.

From the Judgment and Order dated 29.2.96 of the Karnataka High Court in R.S.A. No. 90 of 1983.

G.V. Chandrasekhar and P.P. Singh for the Appellant

P.R. Ramasesh for the Respondent.

The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel on both sides.

This appeal by special leave arises from the judgment of the learned single judge, made on February 29, 1996 in R.S.A. No. 90/1983 by Karnataka High Court. The respondents had filed a suit in the trial Court for declaration that he had purchased two plots bearing Nos. 307 and 308 admeasuring 40'x31' in Hubli town and for recovery of possession on the plea that the appellant has no manner right whatsoever to interfere with his possession. The trial Court dismissed the suit. On appeal, it was decreed. In the second appeal, the learned Judge confirmed the same. But in the review application, the single Judge reheard the matter and reversed the decree of the appellate Court and confirmed that of the trial Court. Thus, this appeal by special leave.

A It is seen that by an order passed by this Court on 24th November, 1995, liberty was given to the appellant, in the event of the High Court reviewing the order on merits against him, to agitate his rights in this Court. The question is : whether the High Court was justified in reviewing the earlier order and reversing the finding recorded by the appellate Court? It is not in dispute that the sale deed is for a small sum of Rs. 300 and odd and that the property sold commands good market value. The question arises : whether the document was a sale deed or is only a document for collateral purpose? The respondent himself in an earlier suit had pleaded that it was an agreement of sale. In view of such an admission, the High Court has wrongly reversed the decree of the appellate Court holding the transaction to be a real sale. In the second appeal, the High Court confirmed, in the first instance, the decree of the appellate Court. Subsequently, the High Court has reviewed the judgment and reconsidered the matter holding that relevant precedents were not cited. Since this Court had given liberty to raise the questions of reviewability of the judgment of the High Court, the question arises : whether the High Court could not have embarked upon appreciation of evidence and considered whether there was an error apparent on the face on record? It was contended before the learned Single Judge that various decisions were not cited; proper consideration was paid; in fact the sale deed was acted upon; and that there was no proof that the sale was not for valid consideration. The omission to cite an authority of law is not a ground for reviewing the prior judgment saying that there is an error apparent on the face of the record, since the counsel has committed an error in not bringing to the notice of the Court the relevant precedents. In fact, since the respondent had claimed that it is not a sale deed but was executed for collateral purpose, it was for the respondent to establish that the sale was for real consideration and he had a valid sale deed duly executed by the appellant. The High Court wrongly placed burden on the appellant and reviewed the order and heard the matter on merits. The entire approach of the learned Single Judge is not correct in law.

G The appeal is accordingly allowed. The impugned order of the High Court stands set aside and decree of the appellate Court, as confirmed by the High Court in the first instance, is upheld. In other words, the suit stands decreed. No costs.

H R.P.

Appeal allowed.