

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JUNE 2022

BEFORE

THE HON'BLE MR.JUSTICE N.S.SANJAY GOWDA

M.S.A. No.28/2022 (RO)

BETWEEN:

CHURCH OF SOUTH INDIA TRUST
ASSOCIATION (R)
REPRESENTED BY ITS BISHOP
RT. REV. MOHAN MANORAJ

... APPELLANT

(BY SRI.PUNDIKAI ISHWARA BHAT, ADVOCATE)

AND:

1. SRI.K.L.JAYAPRAKASH

2. SRI.UDAYRAJ KUNDAS

... RESPONDENTS

(BY SRI.HAREESH BHANDARY T, ADV. FOR R1;
NOTICE TO R-2 IS DISPENSED WITH V/O
DTD:27.05.2022)

THIS M.S.A. IS FILED UNDER ORDER 43 RULE 1 (U) OF C.P.C. PRAYING TO AGAINST THE JUDGMENT AND DECREE DATED 27.10.2021 PASSED IN RA NO.12/2021 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, SAKALESHPUR, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 19.03.2021 PASSED IN O.S.NO.34/2016 ON THE FILE OF THE ADDITIONAL CIVIL JUDGE AND JMFC, SAKALESHPUR, DECREETING THE SUIT AND REMANDING BACK THE MATTER WITH DIRECTION.

THIS APPEAL COMING ON FOR ADMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This second appeal is preferred by the plaintiff.

2. The plaintiff filed a suit seeking for recovery of possession of the property which had been leased in the favor of the defendant.

3. The defendant though appeared before the Trial Court did not file any written statement nor did he participate in the proceedings till the very end. He thereafter made an application seeking permission to file his written statement.

The Trial Court however did not grant permission and proceeded to decree the suit.

4. Being aggrieved, the defendant preferred an appeal. The Appellate Court by the impugned order has remanded the matter to the Trial Court with a direction to the Trial Court to give an opportunity to the defendant to file his written statement, thereafter frame issues and provide an opportunity to the defendant to adduce evidence and thereafter decide the suit on merits.

5. The grievance of the learned counsel for the appellant is that the Appellate Court has made sweeping observations questioning the very title of the plaintiff.

6. Learned counsel for the defendant fairly submits that the defendant's induction into the suit property was on the basis of a lease agreement which was not in dispute. If the defendant does not dispute the tenancy between himself and the plaintiff, the Appellate Court was clearly in error in coming to the conclusion that there was a cloud on the title of the plaintiff.

7. Reference may be made to Section 116 of the Indian Evidence Act, 1872 which does not permit a tenant to deny the title of the landlord, if he accepts his induction into the premises by the landlord. In this case since it is not disputed by the defendant that he was inducted into the said property by the plaintiff under a lease agreement, the question of doubting the title of plaintiff would not arise.

8. In that view of the matter, in my view, all the observations made by the Appellate Court in the impugned order regarding the title of the plaintiff shall not be looked into by the Trial Court while considering the suit on merits. The Trial Court shall confine its consideration only to the question of entitlement of the plaintiff to seek for eviction of the defendant and will not go into the question of title of the plaintiff.

Subject to the above, this second appeal is dismissed.

**SD/-
JUDGE**

Akc