

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2647/2024  
[@ SLP [C] NO.18912/2019]

AYSHA & ORS.

Appellant(s)

VERSUS

A M HUSSAINAR

Respondent(s)

O R D E R

Leave granted.

The appellants are plaintiffs in the suit for partition and separate possession. The trial Court, after framing the issues, decreed the suit. Aggrieved, the defendants filed the appeal before the High Court of Kerala. By the impugned order, the High Court remitted the matter back to the trial Court for fresh consideration with specific reference to Exhibit B-3. Exhibit B-3 is the registered settlement deed which the respondent/defendant relies on.

The High Court, in our considered view, ought not to have remitted the matter after setting aside the judgment and decree of the trial Court. While doing so, the High Court found that the respondent did not adduce sufficient evidence in support of Exhibit B-3. Such an approach cannot be countenanced.

The appellate Court is the final court of fact and law. An order of remand under Order 41 Rule 23, Code of Civil Procedure cannot be made for a mere asking. If the High Court is of the view that the evidence is not sufficient enough to decide a particular issue from its point of view, it can very well call for a finding from the trial Court. As stated, it is the defendant who filed the appeal while relying upon Exhibit B-3.

In such view of the matter, we have no hesitation in setting aside the impugned order while requesting the High Court to decide the RFA No.609/2016 afresh in accordance with law.

If the High Court is of the view that the evidence is not sufficient for coming to a just conclusion, it can call for a finding from the trial Court, in which case, it can have a recourse to Order 41 Rule 23-A of the CPC.

The impugned order is set aside and the appeal is allowed.

Taking into consideration the fact that the appeal is of the year 2016, we request the High Court to decide it expeditiously.

We make it clear that the we have not expressed any opinion on the merits of the case.

.....J.  
[M.M. SUNDRESH]

.....J.  
[S.V.N. BHATTI]

NEW DELHI;  
FEBRUARY 19, 2024.

ITEM NO.66

COURT NO.14

SECTION XI-A

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

Petition(s) for Special Leave to Appeal (C) No(s). 18912/2019

(Arising out of impugned final judgment and order dated 12-02-2019 in RFA No. 609/2016 passed by the High Court Of Kerala At Ernakulam)

AYSHA &amp; ORS.

Petitioner(s)

VERSUS

A M HUSSAINAR

Respondent(s)

Date : 19-02-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.M. SUNDRESH

HON'BLE MR. JUSTICE S.V.N. BHATTI

For Petitioner(s) Mr. K. Rajeev, AOR  
Mr. Shinoj K. Narayanan, Adv.  
Ms. Niveditha R.menon, Adv.  
Mr. Pranav Krishna, Adv.  
Mr. Aditya Verma, Adv.  
Mr. Tarun Kumar, Adv.

For Respondent(s) Mr. Raghenth Basant, Sr. Adv.  
Ms. Sonali Jain, AOR  
Ms. Kaushitaki Sharma, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.  
Pending application, if any, stands disposed of.

(ASHA SUNDRIYAL)  
ASTT. REGISTRAR-cum-PS

(POONAM VAID)  
COURT MASTER (NSH)

[Signed order is placed on the file]