
(1981) 08 KAR CK 0009
In the Karnataka High Court
Case No : RSA 18/78

Murabi

APPELLANT

Vs

Nabisab by Lrs.

RESPONDENT

Date of Decision : 20-08-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (1982) 1 KarLJ 304

Hon'ble Judges : G. N. Sabhahit, J

Judgement

1. This appeal by the legal representatives of the defendant is directed against the judgment and decree dated 27-7-1977 passed by the Addl. Civil Judge, Bijapur in R.A. No. 160 of 1975 on his file allowing the appeal and reversing the judgment and decree dated 8-10-1975 passed by the Munsiff, Indi in O.S. No. 53 of 1974 on his file.

2. The only ground that is raised before me in this appeal is that the learned Civil Judge, after arguments were heard and the case was posted for judgment, allowed I.A. II instituted by the appellant for additional evidence without giving any opportunity to the respondent in the appeal to rebut the additional evidence though a specific prayer was made in the objection statement to give such opportunity in case documents were to be admitted into evidence.

3. It is seen from the order sheet of the appellate court that on 7-7-1977, arguments were heard and the case was posted for judgment to 13-7-1977, and thereafter an I.A. was filed by the respondent resisting the application and praying for further opportunity in case those documents were to be admitted into evidence. The learned first appellate court in the course of its judgment in para-15 observed that it was necessary to admit those documents to enable it to pronounce judgment in the interest of substantial justice. The first appellate court forgot that it had to give an opportunity to the other side, to rebut the documentary evidence and instead of so giving the opportunity, it proceeded to judgment and allowed the appeal. It is the legality and correctness of such

procedure followed by the first appellate court that is challenged before me in this appeal.

4. The Supreme Court of India in the case of the Land Acquisition Officer, CITB, Bangalore v. H. Narayanaiah, AIR 1976 SC 2403, has observed that when the High Court admitted additional evidence, it was its duty to give opportunity to the other-side to rebut the same and since the High Court had not done so, the Supreme Court was pleased to set aside the judgment of the High Court and send back the appeal to it for giving necessary opportunity. In the instant case also, since the first appellate court after admitting two documents into evidence, has not given opportunity to the other side, namely the present appellant to adduce rebuttal evidence on her behalf, it is obvious that prejudice is caused to the present appellant.

5. In the result, this appeal is allowed, the judgment and decree of the first appellate court are hereby set aside and the case is sent back to the first appellate court directing it to give adequate opportunity to the respondent in the first appeal to rebut the additional evidence adduced by the appellant before it and thereafter proceed to judgment in accordance with law. No costs of this appeal.

6. Refund the admissible court-fee.