

**HON'BLE SRI JUSTICE M.SATYANARAYANA
MURTHY**

SECOND APPEAL No.295 of 2010

JUDGMENT:

The plaintiff in O.S.No.57 of 1998 on the file of the Senior Civil Judge, Nuzvid, and the respondent in A.S.No.185 of 2007 on the file of VII Additional District & Sessions Judge (Fast Track Court) at Vijayawada, being unsuccessful before the first appellate Court, preferred this Second Appeal under Section 100 of C.P.C., challenging the decree and judgment passed in A.S.No.185 of 2007, whereby the decree passed by the trial Court was reversed dismissing the suit in O.S.No.57 of 1998 filed for mandatory injunction to direct the defendants to implement the order dated 01.08.1980 passed by the Survey & Settlement Officer.

2. Undisputedly, the Survey & Settlement Officer passed an order granting settlement patta in favour of the plaintiff, but the same was not mutated in the revenue records by the defendants on the ground that the land in dispute is a forest land. The matter went on trial and, ultimately, the suit was decreed in favour of the plaintiff by the trial Court, but the appellate Court reversed the finding without appreciation of evidence on record, except reproducing the deposition of witnesses in various

paragraphs, not complied with the mandatory requirements under Order XLI Rule 31 of C.P.C. Therefore, on this ground alone, the judgment and decree of the first appellate Court is liable to be set aside.

3. The learned counsel for the appellants has drawn the attention of this Court to a judgment of this Court in **Baratam Seethamma and others v. Bora Chandravathi**^[1], wherein it was held that non-consideration of oral evidence by the first appellate Court itself definitely is a substantial question of law and no other questions need be gone into. In such a case, the matter has to be remanded.

4. Following the principle laid down in the above judgment, the decree and judgment passed by the first appellate Court is set aside, as it is in violation of mandatory procedure prescribed under Order XLI Rule 31 of C.P.C., and the matter is remanded to the first appellate Court with a direction to restore the same to its original number in appeal register and decide the appeal afresh on appreciation of both oral and documentary evidence, since the first appellate Court is the final Court of fact.

5. With the above direction, the Second Appeal is allowed and the VII Additional District & Sessions Judge

(Fast Track Court), Vijayawada, is directed to dispose of A.S.No.295 of 2010 afresh in accordance with law, after affording reasonable opportunity to both the parties, and the parties are directed to appear before the first appellate Court on 14.10.2016.

6. Miscellaneous petitions, if any pending in this appeal, shall stand closed. There shall be no order as to costs.

M.SATYANARAYANA MURTHY,J

18-08-2016

v v

[\[1\]](#) 2003 (4) ALD 866