

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

C.C.C.A.No.225 of 2016

ORDER:

With the consent of both the learned counsel for the appellants and respondents, the appeal itself is taken up for hearing.

Learned counsel for the appellants submits that Ex.B.7, oral gift deed, has been marked; on 01.02.2012 DW.1 was recalled; and relying on **Hafeeza Bibi v. Sk.Farid**¹, the lower Court marked Ex.B.7; but when the final arguments were heard, the Court below by oversight forgot to consider Ex.B.7. It is also evident that Exs.B.1 to B.6 are listed in the appendix of the judgment, Ex.B.7 is not mentioned. Learned Counsel points out that in the operative portion of the gift deed in page No.7, of para 9 of the judgment, the Court held that the defendants did not place any evidence before the Court that Mohammed Khaja gifted A and B schedule property to his wife. As per the counsel, this is a glaring error as Ex.B.7 is already on record; and, therefore, he prays to remand the matter to the lower Court.

In reply to his submissions, learned counsel for the respondents submits that Ex.B.7 is not admissible in evidence; in view of the law declared later by the Hon'ble Supreme Court and that the document cannot be received in evidence at all; and his objection, therefore, is that the Court below did not commit any error .

¹ 2011(5) SCC 654

After hearing both the learned counsel, this Court is of the opinion that there is no error apparent on the face of the record. The lower Court overlooked Ex.B.7 which was taken on record and marked as an exhibit, as can be seen from the proceedings dated 01.02.2012. Therefore, the finding, in page No.7 of para 9 that no document is filed, is not correct.

Hence, this Court feels that this is a fit case for remand of the matter to the lower Court. It is made clear that, on remand, the rights of the parties are not taken away and both the parties are entitled to make legal and factual submissions and raise objections on the contents of this document.

With these observations, the Appeal is disposed of. The matter is remanded to the lower Court with a direction to consider Ex.B.7 after hearing the submissions of both the counsel. The lower Court is directed to dispose of the matter within a period of eight weeks from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, pending, shall stand closed.

D.V.S.S.SOMAYAJULU,J

Dt:03.07.2018
 Note:CC two days
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