

Marappa and ors. Vs. Thimmegowda and anr.

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Court : Karnataka

Decided On : Mar-03-1981

Reported in : AIR1981Kant121; ILR1981KAR688; 1981(2)KarLJ73

Judge : K.S. Puttaswamy, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 100 - Order 14, Rule 2; ;
[Karnataka Stamp Act, 1957](#) - Sections 33 and 39

Appeal No. : Second Appeal No. 753 of 1979

Appellant : Marappa and ors.

Respondent : Thimmegowda and anr.

Advocate for Def. : H.N. Narayan, Adv.

Advocate for Pet/Ap. : C.N. Kamath, Adv.

Judgement :

1. This appeal is by the legal representatives of defendant No. 1 and is directed against the judgment and decree dated 28-2-1979 of the Principal Civil Judge, Bangalore District, Bangalore, in R. A. No. 11 of 1978 affirming the judgment and decree dated 26-11-1977 of the Munsiff, Doddaballapur in O. S. No. 168 of 1969.

2. On 4-10-49, respondent No. 1/plainiff instituted O. S. No. 168 of 1969 against defendant No. 1 and his brother Hanumantharayappa who was arrayed as

defendant No. 2 for recovery of possession of a house bearing No. 53 and vacant site situated at Muppadigatta in Madure Hobli, more fully described in the plaint schedule. He claimed title to the Property under a registered gift deed dated 27-3-1941 executed by his mother-in-law Smt. Hanumakka. He alleged that the defendants were in possession of the same as trespassers without, any manner of right, title and interest and they had not delivered the same when called upon by him to do so.

3. In his written statement, defendant No. 1 denied the gift deed alleged to have been executed by Smt. Hanumakka and the title of the plaintiff to the property. He claimed that it was the ancestral family property of the defendant's and they were in possession of the same for over 50 years. He also alleged that Smt. Hanumakka had executed a document on 26-5-1938 in favour of his mother relinquishing all her rights in her favour and that she had also delivered possession to his mother on the same day, Proceeding further, he stated that the said document has been attested by the plaintiff and he is estopped from denying his title or claiming any title in himself. Alternatively, defendant No. 1 alleged that he and the other defendant were in continuous and undisturbed possession and had acquired title by prescription over the said property. He also alleged that the suit was not maintainable and was also barred by time. Defendant No. 2 also filed a separate written statement adopting the written statement of defendant No. 1 and stating the very things that had been stated by defendant No. 1.

4. On the above pleadings, the learned Munsiff framed the following issues :

- (1) Whether the suit house belonged to Hanumakka. the mother-in-law of the plaintiff ?
- (2) Whether Hanumakka gifted the suit house to the Plaintiff and his wife under the registered gift deed dated 27-3-1941 and put them in possession of the same ?
- (3) Whether Hanumakka was staying in the suit house till her death on behalf of the plaintiff and his wife?

(4) Whether defendants are in illegal occupation of the suit house after the death of Hanumakka?

(5) Whether the suit house is the ancestral property of the defendants ?

(6) Whether the plaintiff is estopped from denying the defendants' title to the suit house as mentioned in Para 4 of the 1st defendant's written statement ?

(7) Whether the defendants' have acquired title to the suit house by adverse possession over the statutory period ?

(8) Whether the suit is barred by time ?

(9) To what reliefs are the Parties entitled ?

On a consideration of the evidence placed before him, the learned Munsiff by his judgment and decree dated 28-3-1974 answered all the material issues against the plaintiff and dismissed his suit. Against the said judgment and decree of the learned Munsiff, the plaintiff filed an appeal in R. A. No. 119 of 1974 before the Additional Civil Judge, Bangalore, who by his Judgment and decree dated 12-2-1975 allowed the same and remanded the suit to the learned Munsiff for fresh disposal in the light of the directions contained in his judgment one of which was that he did not permit the plaintiff to adduce additional evidence though he permitted the defendants to do so. Against the said Judgment and decree of the learned Civil Judge, the plaintiff filed Miscellaneous Second Appeal No. 150 of 1975 before this Court challenging that part of the direction of the learned Civil Judge by which he had precluded him from placing additional evidence. On 22-1-1976, Venkataswami, J., allowed the said appeal and set aside the direction of the learned Civil Judge that had been challenged in that appeal.

5. On remand, the learned Munsiff framed the following additional issue:

'Whether the plaintiff is entitled to the possession of suit schedule Property ?'

The learned Munsiff did not record any further evidence and after hearing the parties, by his judgment dated 26-11-1977 decreed the plaintiff's suit. Against the said Judgment and decree of the learned Munsiff, defendant No. 1 filed R. A. No.

11 of 1978 before the learned Civil Judge. As there was 12 days, delay in filing that appeal. defendant No. 1 filed an application, I. A. No. 1. under Section 5 of the Limitation Act. 1963 for condonation of delay in filing the appeal. On 1. A. No. 1 notice was ordered to the plaintiff and defendant No. 2 who was arrayed as respondent No. 2 in that appeal. On 7-9-1978 defendants 1 and 2 filed an application under Order 41, Rule 27 (L A. No. 111) for reception of additional evidence. On 24-2-1979 the learned Civil Judge heard arguments on merits and also an I. A. No. 1 and by his judgment dated 28-2-1979 has dismissed the said appeal on merits as also on the ground that there was no sufficient cause for allowing I. A. No. 1 and condoning the delay. On 25-6-1979, the legal representatives presented this second appeal before this Court. On 6-8-1979 Venkatachaliah, J. admitted the appeal to consider the following substantial question of law:

'Whether on the facts and the circumstances of the case and in view of the findings as to continuous possession in favour of the appellant, a presumption for ouster was not permissible to be raised and whether consequent a finding of prescriptive title is in favour of the appellant recorded.'

At the hearing of the appeal, I found it necessary to frame one more substantial question of law and accordingly framed the same, heard counsel on the substantial question of law earlier framed and also on the substantial question of law framed by me. The substantial question of law framed by me reads thus:

'Whether the trial court by its failure to determine the duty and penalty payable in pursuance of the order of remand made in P. A. No. 119 of 1974 as modified by this Court in K & A. No. 150 of 1975, mark the document for collateral purposes and give an Opportunity to the parties to Place their evidence, has committed an illegality and impropriety occasioning failure of justice to the parties in particular, to the defendants'.

6. As noticed earlier, the learned Civil Judge first dealt with the merits of the case and then considered I. A. No. 1 and held that defendant No. 1 had not made out sufficient cause for condoning the delay. As the learned Civil Judge has dealt with the appeal on merits and has dismissed the same on merits, whatever may be his

view on I. A. No. 1 this appeal has necessarily to be decided on merits within the limited scope and ambit of Section 100 of the Code. But, at the same time, it is necessary to point out that the procedure adopted by the learned Civil Judge is somewhat strange and is illegal. Whenever an application for condonation of delay is made in any legal proceeding, it is imperative for the Court to decide the application in the first instance and then take up the appeal or application on merits. If the Court finds that the party had not made out sufficient cause for condoning the delay, the application made for condoning the delay has to be rejected which necessarily results in the dismissal of the appeal or application filed before Court. I am somewhat surprised that Sri. S. V. Tilgul, an experienced Civil Judge who has now been promoted as a District Judge, should have committed such a simple mistake. Apart from this, the allegations made accompanying I. A. No. 1 filed by defendant No. 1 in which he had asserted that he was unwell in proof of which he had even produced a medical certificate, has not been controverted by the plaintiff by filing any counter-affidavit or objections to the said application. In these circumstances, the learned Civil Judge was not even justified in holding that defendant No. 1 had not shown sufficient cause for condoning the delay. But, as nothing turns on that finding of the learned Civil Judge, I do not propose to say anything further on the same.

7. As a conclusion on the second substantial question formulated by me inevitably necessary a remand to comply with the remand order made in R. A. No. -119 of 1974 modified by this Court in M. S. A. No. 150 of 1975, I first propose to examine the second substantial question formulated by me, in the first instance.

8. In order to satisfactorily decide the question, it is necessary to notice a few more facts that are not in dispute and are manifest from the proceedings themselves.

9. In his written statement, defendant No. 1 expressly relied on a document-dated 26-5-1938 alleged to have been executed by Hanumakka in favour of his mother. In conformity with that stand, defendant No. 1 sought to produce the said document through one of the attestors viz., Hanumantharavarppa, DW-1. On an objection raised by the counsel for the plaintiff to its production on the ground that it was an unregistered document and was inadmissible in evidence, the learned

Munsiff by an order made in the course of the examination of DW. 1 upheld the same and did not admit the same in evidence. Another attempt made by in defendant No. 1 through Marappa DW-4 also met with the same fate.

10. In sustaining the judgment and decree of the learned Munsiff dismissing the suit. the defendant urged before the learned Civil Judge that the order made by the learned Munsiff not admitting the said document at least for collateral purposes was illegal and erroneous. Examining the said contention, the learned Civil Judge observed thus :

'There can be no doubt that the document relied upon by the defendants being an unregistered document is not admissible in evidence to prove that Hanumakka gifted the suit property in favour of the defendants' mother. But that document could have been admitted in evidence only for the collateral purpose of proving the nature of the defendants' possession of the suit property. If that document is a genuine document and if the defendants prove that they have been in possession of the property by virtue of that document. then, that would be an important piece of evidence to show that the defendants' possession was adverse to the interest of Hanumakka and the plaintiff and that the defendants were in possession treating the property as their own. Unfortunately in the lower court the defendants do not appear to have made a request for marking the document at least for the collateral purpose of proving the nature of their possession. The defendants have also taken up a contention that the plaintiff has attested that document and that as such he is estopped from disputing their title. Because the document was not admitted in evidence, even this contention of the defendants could not be gone into. I feel that it is necessary in the interest of justice that the defendants should be permitted to mark the document relied upon by them for the collateral purpose of proving the nature of their possession of the suit property and to adduce evidence about the genuineness of the document. I must point out there that as the document is not stamped, the defendants would have to pay duty and penalty before they are allowed to mark it even for the collateral purpose.'

On the above observation, the learned Judge made the appropriate directions his final order which was not disturbed by this Court in M. S. A, No. 150 of 1975.

11. On remand, unfortunately the learned Munsiff without fully comprehending the above directions of the learned Civil Judge that was clearly binding on him, did not decide, the duty and penalty payable by defendant No. 1 on the document and did not call upon him to Pay the amount that is Payable by him on that document. Without complying with the first requirement of the remand order, the learned Munsiff did not also comply with the other requirements that very much depended on complying with the first requirement. Without recording any further evidence. the learned Munsiff heard arguments on 19-11-1977 on the evidence already placed by the parties and delivered his judgment on 26-11-1977 decreeing the plaintiff's suit. At this stage it is useful to notice what happened on 16-11-1977 and 19-11-1977 as recorded in the order sheet of the Court. The order sheet of those two dates reads thus:

'16-11-1977 Plaintiff by Sr. MHS/GSM D-1, D2 by Sri B. K. S. Evidence. Sri. MHS and Sri. BKS present. Duty and Penalty not paid in spite of the appellate Court's order. Defendants 1 and 2 absent. Defendants' witnesses also absent, Arguments by 19-11-1977.

Sd/-

Munsiff.

'19-11-1977 Plaintiff by Sri MHS/ GSM D1, D2 by Sri B. K. S. Arguments Sri. MHS and Sri. BKS present. Add-1tional issue framed, read over in Court. Sri. MHS and Sri. BKS have no further evidence. Arguments heard. Judgment by 24-11-1977.

Sd/-

Munsiff.'

12. Sri. C. N. Kamath, learned Counsel for the appellant, has contended that in terms of the remand order in R. A. No. 119 of 1974 and even otherwise. the trial Court was bound to determine the duty and penalty payable by defendant No. 1 on the document dated 26-5-1938, collect the amount so determined mark the same as an exhibit and afford an opportunity to place additional evidence which it had illegally failed to do resulting in failure of Justice and the first appellate Court in not

correcting the same has committed a substantial error of law justifying this Court's interference under S. 100 of the Code.

13. Sri. H. N. Narayan, learned counsel for respondent No. 1 while supporting the decrees of the Courts below urged that . the failure if any to Day duty and penalty and place additional evidence was on the part of defendant No. 1 and not on the part of the trial Court and the Courts below have not committed an error of law much less a substantial error of law justifying this Court's interference under Section 100 of the Code.

14. Section 100 of the Code Prior to its amendment by the Civil P. C. (Amendment) Act of 1976 inter alia empowered a High Court to interfere if there was an error of law. By the amendment introduced to Section 100, a High Court is empowered to interfere only if there is a substantial question of law and not otherwise. The term 'substantial' which has not been defined is not capable of a precise definition also. The terms 'substantial question of law' were found in Section 110 of the Code before it was deleted in 1973 which authorised the High Courts to grant a certificate to appeal to the Federal Court or the Privy Council and also our Supreme Court. Section 100 has incorporated those very terms on the recommendations of the Law Commission and, therefore, the meaning attached to those terms by the Privy Council and our Supreme Court when they had occasion to deal with them can be followed by this Court.

15. In Raghunath Prasad Singh v. Deputy Commr. of Partabgarh the judicial committee of the Privy Council interpreted 'substantial question of law' occurring in Section 110 of the Code as 'substantial question of law' as between the parties in the case involved. On the question whether the facts of that case raised a substantial question of law or not, the Privy Council observed thus:

'Mr. DeGruyther has really tried to show the Board that there is no substantial question of law by more or less taking up the merits of the case and showing that the decision . is quite obviously right. Their Lordships do not think that they would be quite in safety to take that view in a case which certainly occupied the Court below for a very long time and on which there is a very elaborate judgment. They therefore think that upon the face of the matter there is, as between these parties,

a substantial question of law'.

On that conclusion, the Privy Council granted leave to appeal. In *Chunilal V. Mehta and Sons Ltd. v. Century Spinning and .* : AIR 1962 SC1314 . the Supreme Court had occasion to consider the very term occurring in Section 110 of the Code. On a review of the earlier cases and following the principles stated by the judicial committee in *Raghunath Prasad Singh's* case. the Supreme Court expressing its concurrence with the view taken by the High Court of Madras in *R. Subba Rao v. N. Veeraju* : AIR1951 Mad969 , stated the principle in these terms (at p. 1318):

'The other case relied upon was *R. Subba Rao v. N. Veeraju* : AIR1951 Mad969 . In that case the test of the kind suggested by Bose, C. J., was rejected on the ground that logically it would lead to the position that even a Palpably absurd plea raised by a Party would involve a substantial question of law because the decision on the merits of the case would be directly affected by it. What was, however, said was that when a question of law is fairly arguable. where there is room for difference of opinion on it or where the Court thought it necessary to deal with the question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was Practically covered by the decision of the highest court or if the general principles; to be applied in determining the question are well settled and the only question was of applying those principles to the particular facts of the case, it would not be a substantial question of law.

We are in general agreement with the view taken by the Madras High Court and we think that while the view taken by the Bombay High Court is rather narrow the one taken by the former High Court of Nagpur is too wide. The proper test for determining whether a question of law raised in the case is substantial would in our opinion be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or, the general

Principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law'.

It is in the light of these principles, I have to ascertain whether the question formulated by me is, a substantial question of law or not.

16. An order or a direction of a superior Court whether right or wrong cannot be ignored by a subordinate

Court. A subordinate Court in law is bound to carry out the order or direction of a superior Court. Any failure on the part of a subordinate Court to carry out the order or direction of a superior Court in letter and spirit is destructive of our legal and judicial system itself. Whether the failure to carry out the direction of a superior Court is deliberate or unintentional, as in the present case, has no relevance in deciding the validity of the order of the subordinate Court.

17. A somewhat similar question came up for consideration before the Supreme Court in *Bhopal Sugar Industries Ltd. v. Income-tax Officer, Bhopal* : [1960]40ITR618(SC) . In that case, the income-tax officer had not carried out a direction issued by the appellate authority on the ground that the view taken by the appellate authority was itself erroneous in the law. A writ petition filed by the assessee for compelling the Income-tax Officer to carry out the direction of the appellate authority was unsuccessful before the High Court. On appeal by the assessee the Supreme Court reversing the order of the High Court stated the Principle in these words (at p. 185):

We think that the learned Judicial Commissioner was clearly in error in holding that no manifest injustice resulted from the order of the respondent conveyed in his letter dated March 24, 1955. By that order the respondent virtually refused to carry out the directions which a superior tribunal had given to him in exercise of its appellate powers in respect of an order of assessment made by him. Such a refusal is in effect a denial of justice and is further more destructive of one of the basic principles in the administration of justice based as it is in this country on a hierarchy of Courts. If a subordinate tribunal refuses to carry out directions given

to it by a superior tribunal in the exercise of its appellate powers, the result will be chaos in the administration of justice and we have indeed found it very difficult to appreciate the process of reasoning by which the learned Judicial Commissioner while roundly commending the respondent for refusing to carry out the directions of the superior tribunal. yet held that no manifest injustice resulted from such refusal.'

Even though the Supreme Court was dealing with a case of refusal to carry out the direction of an appellate authority under the Income-tax Act. the principle stated in that case equally applies to every judicial Proceeding and more so to a judicial proceeding before a civil Court.

18. On the above analysis. I am clearly of the view that the question formulated by me is a substantial question of law and it is therefore, necessary to examine the correctness of the same on the facts of the case.

19. Earlier, I have extracted the direction of the learned Civil Judge in R. A. No. 119 of 1974. According to the said direction, as modified by this Court in M. S. A. No. 150 of 1975, the trial Court was directed to determine the duty and penalty payable on the document dated 26-5-1938. admit the same in evidence and then afford an opportunity to the parties to Place such additional evidence as they propose to place in support of their respective cases.

20. The provisions of uniform Karnataka Stamp Act of 1957 (hereinafter referred to as the Act) that replaced the Mysore Stamp Act of 1900 (Mysore Act 2 of 1900) and other similar Acts in the other integrating areas are in pari materia with the Indian Stamp Act of 1899. Chapter IV deals with the instruments that are not duly stamped produced before a Court or an authority for any purpose, except a Police Officer, Section 33 of the Act directs a Court or an authority, before whom an insufficient^{1v} or not duly stamped instrument is Produced. to impound the same. determine the duty and Penalty and collect the same in accordance with the Act. When defendant No. 1 sought to produce the document dated 26-5-1938 through DW-1, the learned Munsiff then and there should have impounded that document. determined the duty and Penalty chargeable on that document and collected the same under the Act. which he failed to do. On appeal, the learned Civil Judge

without reference to S. 33 of the Act. but taking the view that that document was admissible in evidence for collateral purposes directed the learned Munsiff to determine the duty and penalty and admit the same in evidence for the limited purpose.

21. An examination of the order sheet, after remand, discloses that the learned Munsiff did not truly comprehend the provisions of the Act or the directions of the learned Civil Judge, did not determine the duty and penalty payable on the document, called upon defendant No. 1 to pay the same and then admit the said document in evidence for the limited purpose. The order sheet dated 26-10-1977 and 16-11-1977 records that duty and Penalty has not been paid. Apparently, the learned Munsiff appears to have Proceeded that notwithstanding the -fact that there was no determination by him, defendant No. 1 should have paid the same and the same has not been paid by him. Firstly, the above approach of the learned Munsiff is plainly erroneous in law and also the direction of the learned Civil Judge. Secondly. in the absence of a determination and an order thereto. it is difficult to conceive as to how defendant No. 1 can be expected to pay the same. An order determining the duty and Penalty payable by a party should precede the payment of duty and penalty by a Party. When the Court itself had not determined the duty and penalty, the learned Munsiff was clearly in error in noting that duty and penalty has not been paid and therefore, the document cannot be admitted in evidence and the case had to be decided without relying on the said evidence. From this it follows that the error committed by the learned Munsiff was a substantial error of law.

22. Sri Narayan urged that defendant No. 1 in his appeal had not urged this ground and in any event did not argue the same before the first appellate Court and, therefore, the same should not be permitted to be urged for the first time in this second appeal before this Court.

23. In Ground No. 10. defendant No. 1 had urged that the learned Munsiff should have relied on the document dated 26-5-1938. In para 10 of his judgment the learned Civil Judge also notices a contention urged by the counsel based on that ground. But. in the course of his order, the learned Civil Judge has not expressly

dealt and decided the same. From this, it cannot be said that defendant No. 1 had not urged this ground before the first appellate Court. Assuming that the same had not been clearly and expressly urged as is now urged before this Court. the around urged does not depend or on investigation of facts but is apparent from the records and therefore this Court will not be justified in refusing to examine the same. In this view, I see no merit in this contention of Sri Narayan and reject the same.

24. Sri Narayan next contended that defendant No. 1 having closed his case by stating that he had no further evidence to Place. cannot be permitted to challenge the judgments and decrees of the Courts below either on the failure to determine the duty and penalty, collect the same and admit the document dated 26-5-1938 in evidence on the around of denial of opportunity to place additional evidence.

25. On 19-11-1977 the learned counsel for defendant No. 1 had stated that he had no further evidence to place and has also signed the order sheet of that date. The correctness of the recording made by the learned Munsiff cannot be doubted. But. the question is whether defendant No. 1 also gave up his right and the benefit of the remand order to admit the document dated 26-5-1938 in evidence for collateral purposes. In my opinion the understanding of the counsel for defendant No. 1 or the order made by the learned Munsiff on 19-11-1977 does not lend itself to that construction. At the highest it can be stated that defendant No. 1 did not propose to place. any further additional evidence except admitting the document dated 26-5-1938 in evidence for collateral purposes. But, the same cannot be stretched to hold that-defendant No. I had given up his right to admit the document dated 26-5-1938 as additional evidence or the benefit of the remand order made by the learned Civil Judge in that behalf.

26. After remand, defendant No. 1 had taken steps to summon some witnesses and the witness summons to the witnesses had not been served as they were not available at the time of service. On 16-11-1977 the learned Munsiff found that the witnesses and defendant No.1 are absent and, therefore closed the case and posted the case for arguments to 19-11-1977 on which day the order, noticed by me earlier, has been made. From this, it is difficult to hold that defendant No. I did

not propose to place additional evidence. In any event, assuming that defendant No. 1 did not propose to place any additional evidence, the same did not affect his right to have the document dated 26-5-1938 admitted in evidence for collateral purposes. For these reasons, I see no merit in this contention of Sri Narayan and reject the same.

27. On the above analysis, it is clear that the learned Munsiff committed a substantial error of law occasioning failure of Justice to defendant No. 1 in not determining the duty and penalty. collect the same and admit the document dated 26-5-1938 in evidence in terms of the remand order made by the learned Civil Judge. Unfortunately, this error has not been properly examined by the learned Civil Judge and dealt by him. What conclusions either of the Courts that were competent to decide on questions of fact would have drawn on admitting the document in conjunction with evidence already on record or to be placed by the, parties. cannot be predicted with any certainty by this Court. In this view, there is no other alternative for this Court except to reverse the judgments and decrees of the Courts below and remit the case to the trial Court to comply with the earlier remand order. As the case inevitably requires to be remanded, the other substantial question of law formulated by this Court cannot be examined before the trial Court complies with the remand order and decides the case and then the first appellate Court decides any appeal that may be filed by any of the parties. In this view, the fir.4t question formulated by this Court does not require any examination and determination.

28. An examination of the circumstances reveal that defendant No. 1 is partly to be blamed for the situation brought about and the case being remanded over again to the trial Court. In this view, I consider it proper to direct defendant No. 1 to pay or deposit a sum of Rs. 150/- as costs to the plaintiff which shall not be costs in the cause on or before 2-4-1981.

29. In the light of. my above discussion, I allow this appeal set aside the judgments and decrees of the Courts below and direct the learned Munsiff to restore the suit to its original file and dispose of the same in accordance with law and in the light of the observations made in this judgment. But, in the peculiar circumstances of the

case. I direct the parties to bear their own costs in this appeal.

30. A simple suit filed by the plaintiff for recovery of possession has been pending in one or the other Court from 4-10-1969. In this, view, it is proper for the learned Munsiff to dispose of the suit with all such expedition as is possible in the circumstances of the case. In order to enable' the learned Munsiff to dispose of the suit with all such expedition as is possible in the circumstances of the case, I direct the parties to appear before him on 2-4-1981 and take further orders from him on that day for the further progress of the case. Defendant No. 1 shall pay of deposit the costs of Rs. 150/- which shall not be costs in the cause on or before 2-4-1981.

31. Regular second allowed, Case remanded.

32. Let a copy of this judgment alone with the records received. be sent to the trial Court within two weeks from this day.

33. Appeal allowed.

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