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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2191 /2024
[@ SLP [C] NO.16039/2022]

SASEENDRAN & ANR.

Appellant(s)

VERSUS

K.M. CHERIAN (DIED)
THROUGH LEGAL HEIR & ORS.

Respondent(s)

O R D E R

Leave granted.

The impugned judgment is sought to be challenged on the sole ground that having found that the trial Court has not answered the issues of fact, the judgment and decree of the trial Court could not have been set aside by remanding it back for fresh consideration.

Learned senior counsel appearing for the appellant submitted that a perusal of the Order XLI Rules 23 and 33, Code of Civil Procedure would show that the First Appellate Court is duty bound to call for the findings from the trial Court in the event of its inability to decide an issue of fact and, in such circumstances, there is no need for setting aside the judgment and decree of the trial Court and remand it thereafter.

Learned counsel for the respondent submitted that the trial Court dismissed the suit only on the question of limitation without noticing the fact that

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the respondents are challenging the sale deed which was executed by defendant No. 1.

Upon hearing the learned counsel appearing for both the sides, we are of the view that the High Court ought not to have set aside the judgment and decree despite finding that the trial Court did not venture into the issues framed, other than the one pertaining to the limitation. It is well open to the First Appellate Court while exercising power under section 96 of the Code of Civil Procedure to act as the final Court of fact and law. An appeal is the continuation of the proceedings. In such view of the matter, it is well open to the High Court to consider the issues both on facts and law either by itself or at best call for such finding from the trial Court.

We do not wish to say anything on the discretion to be exercised by the High Court. Suffice it to state that the impugned order deserves to be set aside as it is for the High Court to decide all the issues by rendering findings on it, while deciding the appeal on merits.

In such view of the matter, the impugned order stands set aside and the matter is remitted back to the High Court to decide A.S. No.34 of 2003 by taking note of all issues raised before it.

It well is open to the High Court to call for any finding on any particular issue.

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The appeal is allowed accordingly.

Taking into consideration the fact that the appeal is of the year 2003 and the civil suit was filed way back in the year 1999, we request the High court to make an endeavour to dispose of the appeal within a period of one year from the date of receipt of the copy of the order.

Pending application(s), if any, shall stand disposed of.

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

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

NEW DELHI;
FEBRUARY 13, 2024.

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ITEM NO.38

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
R E C O R D O F P R O C E E D I N G S**

Petition(s) for Special Leave to Appeal (C) No(s). 16039/2022

(Arising out of impugned final judgment and order dated 20-06-2022 in AS No. 34/2003 passed by the High Court Of Kerala At Ernakulam)

SASEENDRAN & ANR.

Petitioner(s)

VERSUS

K.M. CHERIAN (DIED) THROUGH LEGAL HEIR & ORS.

Respondent(s)

Date : 13-02-2024 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. V. Chitambaresh, Sr. Adv.
Mr. Jogy Scaria, AOR
Mrs. Beena Victor, Adv.
Mr. C. Govind Venugopal, Adv.
Mr. Keerthipriyan E, Adv.
Ms. M. Priya, Adv.
Mr. Ashwani Soni, Adv.

For Respondent(s) Mr. K.parameshwar, AOR
Ms. Arti Gupta, Adv.
Ms. Kanti, Adv.
Mr. Chinmay Kalgaonkar, Adv.
Ms. Raji Gururaj, 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]