

SUPREME COURT OF INDIA

Madhavan Nair

Vs.

Ramankutty

(B Kirpal and S R Babu JJ.)

29.10.1999

ORDER

1. Special leave granted.

2. The trial Court had decreed the suit for recovery which had been filed by the respondent. On appeal, the lower appellate Court reversed the said decision whereupon a second appeal was filed by the respondent herein before the High Court. The High Court by the impugned judgment allowed the appeal and decreed the suit. Hence this appeal by special leave.

3. It is contended by the learned Senior Counsel. Shri Paikeday for the appellant that in exercise of its jurisdiction under Section 100 of the CPC, the High Court was required to frame a substantial question of law which was not done in the instant case. On the other hand, it is submitted by the learned Senior Counsel. Shri K. Sukumaran for the respondent that there was a State amendment made in Section 100 in Kerala wherein a new Clause (d) was inserted to the effect that the finding of the lower appellate Court on any question of fact material to right decision of the case on the merits being in conflict with the finding of the Court of first instance on such question would be maintainable. He. therefore, submits that as the judgment of the lower appellate Court was that of reversal, the High Court had the jurisdiction to go into the facts and come to an appropriate conclusion thereon.

4. We are unable to agree with the submission of the learned Senior Counsel for the respondent. Section 97(1) of the CPC (Amendment) Act, 1976 provides that any amendment which is made or provision inserted in the principal Act by a State Legislature or a High Court before the commencement of the amending Act shall except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed. In Clause (m) of Sub-section (2) of Section 97 of the said Act, it is specifically provided that the provisions of

the amended Section 100 shall not apply to or affect any appeal which stood admitted before the amendment in Section 100. in the present case, the appeal was admittedly filed after 1.2.1977 and this being so, it is the amended provisions of Section 100 which were applicable, the Kerala State amendment in Section 100 having come to an end by virtue of the provisions of Section 97(1) of the amending Act. The High Court, therefore, ought to have applied the provisions of the amended Section 100, framed a substantial question of law if it arose and then decided the appeal.

5. For the aforesaid reasons, this appeal is allowed, the judgment of the High Court set aside and the case remanded to the High Court to decide SA No. 1083 of 1989 afresh in accordance with law.

6. No order as to costs.