

SUPREME COURT OF INDIA

Rambilas Tapadia

Vs.

Shyamala

(V. N. Khare and N. S. Hegde JJ.)

22.01.2001

ORDER

1. It is a plaintiff's appeal. The plaintiff filed a suit for declaration that he is the owner of the property and also for cancellation of the sale deed. The suit was dismissed. The appeal filed by the plaintiff was allowed and the suit was decreed. The second appeal filed by the defendants-respondents was allowed by the High Court. It is against the said judgment the plaintiff has preferred this appeal.

2. This Court has repeatedly held that the High Court acquires jurisdiction to decide the second appeal on merits under Section 100 of the Code of Civil Procedure only when it frames substantial question of law. In the present case what we find is that the High Court without framing any question of law has allowed the second appeal filed by the defendants-respondents, which is contrary to the mandate enshrined in Section 100 C.P.C. On this short ground, this appeal deserves to be allowed. We, therefore, set aside the judgment under appeal and send the case back to the High Court to decide the second appeal on merits only after framing question of law, if any, arises in the case.

3. The appeal is allowed. There shall be no order as to costs.