

# SUPREME COURT OF INDIA

Bashir Ahmed

Vs.

Abdul Rahman

C.A.No.10643 of 1983

(Doraiswamy Raju and D. M. Dharmadhikari JJ.)

12.03.2003

## ORDER

1. I. A. No. 11 to retain Res. No. 5 is allowed as the other side has no objection.

2. The above appeal has been filed against the judgment of a learned single Judge of the Allahabad High Court, Lucknow Bench dated 19-2-1980 in Second Appeal Nos. 383 of 1964 and 444 of 1984 where-under the learned single Judge has chosen to interfere with the concurrent judgment of the Courts below. Heard the learned counsel appearing on either side. It would be unnecessary as also inappropriate to advert to the details of the claims of the respective parties on either side having regard to the grievance made even at the forefront by the learned senior counsel for the appellant that the interference so made was even without formulating the substantial question of law as was obligatory for the learned Judge in terms of the provisions contained in Section 100 of the Code of Civil Procedure as amended. Though the learned counsel for the respondent tried to contend that since the reversal was only on the question of law, the absence does not make any difference. We are afraid that we can countenance such a stand on behalf of the respondent. It is by now well settled law in catena of decisions including the one reported in *Deena (dead) through LRs v. Bharat Singh (dead) Through LRs and others*<sup>1</sup>, whereunder the stipulation under Section 100 of the CPC as to the need to formulate a substantial question of law is mandatory and the failure to do so would vitiate the adjudication itself. On this only ground we are setting aside the judgment of the High Court and direct the restoration of the second appeal to its original file to be disposed of afresh on merits after formulating a substantial question of law and after hearing all the parties before it.

3. Since the suit is of the year of 1956 and the second appeal itself has been decided somewhere in 1980 and some public interest is also involved, the Hon'ble the Chief Justice of the High Court of Allahabad is requested to have the matter fixed for early hearing, preferably within a period of six months from the communication of this order.

4. The appeal is allowed in the above terms. No costs. Appeal allowed.

<sup>1</sup>(2002 (6) SCC 336)