

**SUPREME COURT OF INDIA**

Rattan Chand

Vs.

Kala Devi

C.A.No.1378 of 1998

(Brijesh Kumar and Arun Kumar JJ.)

01.04.2004

**ORDER**

1. Heard the learned counsel for the appellant. No one appears for the respondents though served.
2. Learned counsel for the appellant submits that the High Court has gone into the question of fact and has upset the findings of fact recorded by the First Appellate Court. It is also indicated that no substantial question of law was formulated while admitting or deciding the second appeal.
3. It appears that the suit filed by the respondents was dismissed but the First Appellate Court had decreed the suit of the plaintiff. The Judgment of the First Appellate Court has been set aside in second appeal. We feel that it was necessary to have formulated a question of law in compliance of Section 100(4) CPC. The Learned counsel for the appellant has referred to the decisions of this Court in *Md. Mohammad Ali (dead) by L.Rs. vs. Jagadish Kalita & ors.* , *Janki Narayan Bhoir vs. Narayan Namdeo Kadam* 4 and *Kanhaiyalal & ors. vs. Anupkumar & ors.* 6.
4. In view of the position indicated above, we allow the appeal, set aside the Judgment and Order passed by the High Court and remand the matter for deciding the second appeal after formulating substantial question of law arising for consideration in the second appeal.
5. Heard the learned counsel for the appellant for about half an hour.
6. The appeal is allowed, the Judgment and order passed by the High Court is set and the matter is remanded for deciding the second appeal in terms of the signed order.