

SUPREME COURT OF INDIA

Vasant N. Karkhanis (dead) by Lrs

Vs.

Prabhavati B. Hajarnis (dead) by L.Rs

C.A.No.3204 of 1999

(Ashok Bhan and S. H. Kapadia JJ.)

13.07.2004

ORDER

The Order of the Court is as follows

1. By the impugned order dated 5th and 6th April, 1999 the learned single Judge of the High Court of Karnataka at Bangalore, hearing the Second Appeal has reversed the concurrent findings recorded by the courts below without framing a substantial question of law arising in the appeal as required under Section 100 of the Code of Civil Procedure (CPC). This Court in a catena of decisions including in the case of M.S.V. Raja and Another vs. Seeni Thevar and others 33), has held that the High Court can exercise its jurisdiction under Section 100 CPC only on the basis of substantial questions of law framed and the Second Appeal has to be heard and decided only on the basis of such duly framed substantial questions of law. A judgment rendered by the High Court under Section 100 CPC without following the aforesaid procedure is not sustainable in law.
2. As indicated above, in the present case, the High Court has assumed jurisdiction under Section 100 CPC without framing a substantial question of law. On this short, ground, the appeal is accepted. The impugned order of the High Court is set aside and the case is remitted back to the High Court for disposal afresh in accordance with law. The High Court will proceed with the matter only after framing substantial question of law, if it arises in the appeal.
3. The Registry is directed to remit the record of this case to the High Court forthwith. Since the Regular Second Appeals pertain to the year 1991, we would request the High Court to take up the matter and dispose it of as soon as possible in accordance with law.
4. This appeal accordingly stands allowed. Interim order dated 14.2.2000 stands vacated.