

SUPREME COURT OF INDIA

A.G. Sarvamangala

Vs.

S.N. Mruthunjayaswamy

C.A.No.3713 of 1999

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

14.07.2004

ORDER

The Order of the Court is as follows

1. By the impugned order dated 10th September, 1997, 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 judgments including the judgment 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 the substantial questions of law. A judgment rendered by 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 a fresh decision in accordance with law. The High Court will proceed with the matter only after framing substantial questions of law, if any, in the appeal.
3. The Registry is directed to remit the record of this case to the High Court forthwith. Since proceedings relate to a suit instituted in the year 1978 and the Regular Second Appeal pertains to the year 1989, we would request the High Court to take up the matter on priority basis and dispose it of as expeditiously as possible in accordance with law. This appeal accordingly stands allowed. Interim order dated 7th of April, 1998 stands vacated.