

SUPREME COURT OF INDIA

Aruti Amrota Ankushe (Dead) By Lrs.

Vs.

Malatibai

C.A.No.4656 of 2000

(Ashok Bhan and C. K. Thakker JJ.)

17.08.2004

JUDGMENT

Ashok Bhan, J.

1. The High Court has interfered with the concurrent findings recorded by the courts below without framing a substantial question of law as enjoined by Section 100 of the Code of Civil Procedure (for short "CPC"). This Court in a number of decisions has held that the High Court can exercise its jurisdiction under Section 100 CPC in second appeal only on the basis of substantial question of law framed at the time of admitting the appeal or modified or substituted later and the second appeal has to be heard and decided only on the basis of such duly framed substantial question of law, if any. Judgment rendered by the High Court in second appeal without following the aforesaid procedure is not sustainable in law.

2. Reference may be made to R. Lakshmi Narayan v. Santhi 62], M.S.V. Raja & Another v. Seeni Thevar & Others 33], Kanhaiyalal & Others v. Anupkumar & Others 6], R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple & Another], Md. Mohammad Ali (Dead) by Lrs. V. Jagadish Kalita & Others].

3. In all the aforesaid cases, this Court has held that the High Court can exercise its jurisdiction under Section 100 CPC only on the basis of substantial questions of law and the second appeal has to be heard and decided only on the basis of such duty framed substantial questions of law, if any. A judgment rendered by the High Court under Section 100 CPC without following the aforesaid procedure is not sustainable in law.

4. As indicated above, in the present case, the High Court has assumed jurisdiction under Section 100 CPC without framing a substantial question of law, and interfered with the concurrent findings recorded by the courts below. On this ground alone, 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 first frame questions of law, if any, and then proceed with the matter and decide the same in accordance with law.

5. Since the suit from which the present proceedings arise pertain to the year 1985, we would request the High Court to hear the second appeal and decide the dispute as early as possible preferably within a period of six months from the date of receipt of a copy of this order and record.

6. The Registry is directed to transmit the record of this case to the High Court forthwith.

7. The appeal accordingly stands allowed.