

SUPREME COURT OF INDIA

N. Balakrishnan

Vs.

Kailasa Naicker (D) By Lrs.

C.A.Nos.5310-5311 of 2008

(B.N. Agrawal and G.S. Singhvi JJ.)

29.08.2008

ORDER

1. Delay condoned.
2. Leave granted.
3. Heard learned counsel appearing on behalf of the appellants.
4. In spite of service of notice, nobody has appeared on behalf of the respondent to contest the prayer made in these appeals.
5. By the impugned order, the High Court, after re-appreciating the evidence set aside the judgment and decree passed by the Lower Appellate Court and restored that of the trial court without framing any substantial question of law. It is well- settled that, in a second appeal filed under Section 100 of the *Code of Civil Procedure, 1908*, if the High Court is of the opinion that a substantial question of law arises, then such question of law is required to be framed and decided. In this case, the High Court upset the judgment of the Lower Appellate Court without framing any substantial question of law. Therefore, on this ground alone the impugned order is liable to be set aside.
6. Accordingly, the appeals are allowed, impugned judgment and order are set aside and the second appeal is restored to its original number. The High Court shall now consider whether any substantial question of law arises in the second appeal and in case it is of the opinion that such question arises, then it shall frame the same and, thereafter, decide the appeal after giving opportunity of hearing to the parties. If the High Court is of the opinion that no substantial question of law arises in the appeal, it shall have no option but to dismiss the same.