

SUPREME COURT OF INDIA

Kailash Nath Tripathi

Vs.

Kedarnath Tewari

C.A.No.2 of 2009

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

05.01.2009

ORDER

1. Leave granted.

2. By the impugned order, the High Court dismissed the second appeal on the ground that no substantial question of law is involved therein.

3. Having heard learned counsel for the parties and perused the records, we are of the opinion that the High Court was not justified in dismissing the second appeal on the ground that no substantial question of law was involved therein. In our view, the following substantial questions of law do arise in the second appeal before the High Court:

“[a] Whether the statement made by an advocate appearing on behalf of the plaintiff under Order X Rule 2 of the Code of *Civil Procedure, 1908*, could be treated to be an admission by the party?;

[b] Whether the finding of fact recorded by the First Appellate Court to the effect that passage from `Gha' to `Cha' in the map prepared by the Amin could not be treated as a public road as the passage ends at the `Ghari' [cattle shed] of the plaintiff was vitiated in law?”

4. Accordingly, the appeal is allowed, impugned order rendered by the High Court is set aside and the matter is remitted to it for fresh disposal of the second appeal in accordance with law. Upon remand, the High Court shall issue notice to the respondents in the appeal and formulate aforesaid substantial questions of law.

5. It would be open to the High Court to formulate any other substantial question of law which it deems fit and proper.