

SUPREME COURT OF INDIA

H. David

Vs.

Gopi

C.A.No.769 of 2009

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

06.02.2009

ORDER

1. Leave granted.

2. Heard learned counsel for the parties.

3. This appeal has been filed against that portion of the impugned order dated 19th February, 2006, passed by the High Court whereby Second Appeal No.990 of 2004 filed by respondent No.1 against the judgment and decree passed by the appellate Court, has been allowed and Civil Revision Petition (NPD) No.1108 of 2004 filed by the appellant against order dated 18.3.2004 passed by Sub Judge in I.A. No.1078 of 2003 in O.S. No.46 of 1997 has been dismissed. It is not in dispute that the appeal was decided at the stage of final hearing without framing any substantial question of law. It is well settled that, in a second appeal, the High Court is obliged to frame a substantial question of law, if any arising therein and only thereafter it can dispose of the appeal. Since that course has not been adopted in the present case, the impugned order allowing the second appeal is liable to be set aside.

4. While dismissing the civil revision petition, the High Court has not assigned any reason whatsoever. Therefore, that part of the impugned order is also liable to be set aside.

5. Accordingly, the appeal is allowed, impugned order in so far as the same relates to Second Appeal No.990 of 2004 and Civil Revision Petition No.1108 of 2004 is set aside and both the aforesaid cases are remitted to the High Court. Now the High Court shall consider whether in the second appeal any substantial question of law arises or not. If it comes to the conclusion that substantial question of law does arise, in that event, it shall frame the same and, thereafter, proceed to dispose of the appeal in accordance with law. The civil revision petition shall also be disposed of on merits after giving opportunity of hearing to the parties.