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C.A.No. 3348 OF 1997

ITEM No. 102

Court No.10

SECTION XI

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 3348 OF 1997

Irshad Ahmed & Ors.

Appellant (s)

Versus

Sultan Ahmad & Ors.

Respondent (s)

(With office report)

Date : 27/07/2004 This/these Petition(s) / appeal(s) was/were called on for hearing today

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN  
HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant (s)Mr. Anil Naurya, Adv.  
Ms. Sumita Hazarika, Adv.  
Ms. Hemantika Wahi, Adv.  
Ms. Archana P. Khopde, Adv.

For Respondent (s)Mr. Pramod Swarup, Adv.  
Mr. T.N. Singh, Adv.  
Mr. V.K. Singh, Adv.

UPON hearing counsel the Court made the following

O R D E R

Appeal stands allowed in terms of the signed order.

(J.S. Rawat)  
Court Master

(Vijay Aggarwal)  
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3348 OF 1997

Irshad Ahmed & Ors.

Appellant (s)

Versus

Sultan Ahmad & Ors.

Respondent (s)

O R D E R

The High Court has interfered with the finding recorded by the First Appellate Court without framing a substantial question of law, as enjoined by Section 100 of the Code of Civil Procedure (CPC).

This Court in a catena of decisions including in the case of M.S.V. Raja & Another v. Seeni Thevar & Ors. [2001 (6) SCC 652], 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 duly 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.

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 finding recorded by the First Appellate Court. 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 disposal afresh in accordance with law. The High Court will proceed with the matter only after framing substantial question of law, if at all it arises from the findings recorded by the First Appellate Court.

Since the suit from which the present proceedings arise pertains to the year 1971, we would request the High Court to hear the Second Appeal as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order along with the records.

The Registry is directed to remit the record of this case to the High Court forthwith so that the High Court can take up the matter and dispose it off at an early date.

This appeal accordingly stands allowed. Interim order stands vacated.

.....J.  
(ASHOK BHAN)

.....J.(S.H. KAPADIA)  
New Delhi,  
July 27, 2004.