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SLP(C)No. 1792 OF 2001
ITEM No.7

Court No. 8

SECTION IVB
A/N MATTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.1792/2001

(From the judgement and order dated 29/09/2000 in RSA 427/88
of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

RAM KISHAN

Petitioner (s)

VERSUS

KHAZANI

Respondent (s)

(With prayer for interim relief)
(For Final Disposal)

Date : 11/09/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.B. SHAH
HON'BLE MR. JUSTICE R.P. SETHI

For Petitioner (s)

Mr.R.S. Hegde,Adv.,
Mr.S.S. Parashar,Adv.,
Mr.S.R. Parashar,Adv.,
Mr.Somiran Sharma,Adv.
Mr.P.P. Singh,Adv.

For Respondent (s)

Mr.S.K. Bansal,Adv.,
Mrs.Savitri Bansal,Adv.,
Mr.H.L.Bajaj,Adv.

UPON hearing counsel the Court made the following

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Leave granted.

Appeal is allowed, impugned judgment and decree
passed by the High Court is set aside and the matter is
remitted back to the High Court to decide the same in
accordance with law after formulating substantial question
of law, if any, arising in the matter.

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(Vijay Kumar Sharma)
Court Master

(K.K. Chadha)
Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6339 OF 2001@@
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SHRI RAM KISHAN

Appellant

Versus

SMT. KHAZANI

Respondent

O R D E R@@
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Leave granted.

Heard the learned counsel for the parties.

The High Court of Punjab and Haryana at Chandigarh, in R.S.A. No.427 of 1988, has reversed the judgment and decree passed by the trial court which is confirmed by the lower appellate court dismissing the suit filed by the respondent-plaintiff.

Learned counsel appearing for the appellant contended that without formulating substantial question of law as required under Section 100 of Code of Civil Procedure and without considering the material evidence on record, the High Court decided the matter and, therefore, the impugned judgment and decree is required to be decided.

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From the impugned judgment, it is apparent that the High Court has not formulated question of law involved in the matter which is required to be decided in the second appeal. After recording the issues framed by the trial court, hearing the parties and going through the record, the High Court straightway set aside the judgment and decree passed by the trial court. In our view, the entire approach of the High Court is against the law as provided under Section 100 CPC. It is the duty of the High Court to formulate substantial question of law for its determination. As that has not been done, the impugned judgment and decree passed by the High Court is required to be set aside.

With regard to the jurisdiction of the High Court under Section 41 of the Punjab Courts Act, 1918, this Court in Kulwant Kaur & Ors. vs. Gurdial Singh Mann@@
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(dead) by LRs & Ors. (2001) 4 SCC 262, has held that@@
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Section 100 CPC would prevail and has held that the power to entertain the second appeal by the High Courts stands restricted only on such occasions when High Court is otherwise satisfied about the involvement of a substantial question of law.

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In the result, appeal is allowed, impugned judgment and decree passed by the High Court is set aside and the matter is remitted back to the High Court to decide the same in accordance with law after formulating substantial question of law, if any, arising in the matter.

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.....J.
(M.B. Shah)

.....J.
(R.P. Sethi)

New Delhi,
September 11, 2001.