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C.A.No. 1388 OF 1999
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1388 OF 1999

RAHEL KAMALABAI APPELLANT

VERSUS

VELAYUDHAN P.P. PILLAI RESPONDENT

O R D E R

This appeal is by the defendant challenging the validity and correctness of the judgment passed by the High Court in the second appeal reversing the concurrent findings of fact recorded by the two courts below.

The learned counsel for the appellant firstly contended that the impugned judgment cannot be sustained on a short ground that the second appeal was disposed of without formulating any substantial question or questions of law if arose for consideration between the parties as required under Section 100 of the Code of Civil Procedure

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(C.P.C.). Secondly, he contended that even on the merits the High Court committed a serious error in upsetting the concurrent findings recorded by both the courts below; the High Court did not correctly appreciate the position that there was no question of res judicata having regard to the facts as found by the First Appellate Court.

On the other hand, the learned counsel for the respondent was not in a position to show from the impugned judgment that any substantial question or questions of law were either formulated or considered in the impugned judgment, but he contended that on merits the respondent has got a case and the impugned judgment can be sustained.

In the view we propose to take, we do not wish to express on the merits of the respective contentions urged on behalf of the parties. It is not disputed and it is also clear from the impugned judgment that neither any substantial question of law were formulated nor were considered in the impugned judgment. This court has consistently and repeatedly laid down that it is mandatory to formulate substantial question or questions of law, if

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arise for consideration between the parties, as required under Section 100 of the C.P.C. In the impugned judgment, as already stated above, such course was not adopted. This being the position, the impugned judgment cannot be sustained. Consequently, it is set aside. The second appeal is remitted to the High Court to consider whether any substantial question or questions of law arise for consideration between the parties and to dispose of the appeal.

The appeal is allowed accordingly. No costs. All the contentions of the parties are left open to be urged before the High Court.

.....J.
(SHIVARAJ V. PATIL)

.....J.

New Delhi, (Dr. AR. LAKSHMANAN)
February 11, 2004.

ITEM No.102(PH)

Court No. 9

SECTION XIA

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.1388/1999

RAHEL KAMALABAI APPELLANT(S)

VERSUS

VELAYUDHAN P.P. PILLAI RESPONDENT(S)

Date : 11/02/2004 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Appellant (s)Mr. E.M.S. Anam, Adv.

For Respondent (s)Mr. Romy Chacko, Adv.
for Mr. Rajiv Mehta, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel for the parties for five minutes.
The appeal is allowed with no costs in terms of the signed order

Sarita (Shelly Sengupta)
Court Master

(Signed order is placed on the file)