

ITEM NO.118

COURT NO.10

SECTION

IVA

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. 3710 OF 1999

CHANDRAWWA

Appellant

(s)

VERSUS

YEMANAVVA (DEAD) BY LRS.

Respondent

(s)

(With office report)

Date: 16/12/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE A.K.MATHUR

For Appellant(s)

Mr. Shankar Divate,Adv.

For Respondent(s)

Mr. Girish Ananthamurthy, Adv.

Mr. P.P. Singh,Adv.

UPON hearing counsel the Court made the following

O R D E R

The Civil Appeal is allowed in terms of the signed order.

(Parveen Kr. Chawla)

(Kanwal Singh)

Court Master

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. 3710 OF 1999

Chandrawwa

Appellant (s)

Versus

Yemanavva (D) By Lrs.

Respondent (s)

O R D E R

The High Court has interfered with the concurrent findings

recorded by the courts below without framing a substantial question of law

at the admission stage itself, as enjoined by Section 100 of the Code of

Civil Procedure (for short "CPC"). This Court in a catena of decisions

has held that the High Court can exercise its jurisdiction under Section 100

CPC in second appeal only on the basis of substantial question of law framed at the time of admitting the appeal or modified or substituted later and the second appeal has to be heard and decided only on the basis of such duly framed substantial question of law, if any. Judgment rendered by the

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High Court in second appeal without following the aforesaid procedure is not sustainable in law.

Reference may be made to R.Lakshmi Narayan v. Santhi [2001 (4) SCC 688], M.S.V.Raja & Another v. Seeni Thevar & Others [2001 (6) SCC 652], Kanhaiyalal & Others v. Anupkumar & Others [2003 (1) SCC 430], R.V.E.Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P.Temple & Another [2003 (8) SCC 752], Md.Mohammad Ali (Dead) by Lrs. V. Jagadish Kalita & Others [2004 (1) SCC 271], Thiagarajan & Ors. v. Sri Venugopalaswamay B. Koil & Ors. [JT 2004 (5) SC 54].

In all the aforesaid cases, this Court 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 and, without framing a

substantial question of law at the admission stage or at any later stage, interfered with the concurrent findings recorded by the courts below. On

this ground alone, 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 first frame questions of law, if any, and then proceed with the matter and decide the same in accordance with law.

Since the proceedings pertain to a suit having been instituted in the year 1981, we would request the High Court to dispose it off at an early date.

The Registry is directed to transmit the record of this case to the High Court forthwith.

The appeal stands allowed accordingly.

....J.

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(ASHOK BHAN)

New Delhi;
...J.
December 16, 2004.

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(A.K. Mathur)