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C.A.No. 2577 OF 1998

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2577 OF 1998

N.V.SRINIVASA MURTHY ..Appellant
Versus

N.V.GURURAJA RAO & ORS. ..Respondents

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 as enjoined by Section 100 of the Code of Civil Procedure (for short "CPC"). This Court in a number 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 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]

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 without framing a substantial question of law, and interfered with the concurrent findings recorded by the courts below. On this ground alone, the appeals are 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 suits being R.A.No.7/89 and R.S.A.No.759/91 from which the present proceedings arise pertain to the years 1989 and 1991, we would request the High Court to hear the second appeal as expeditiously as possible.

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

The appeal accordingly stands allowed.

.....J.
[Ashok Bhan]

.....J.
[S.H. Kapadia]

New Delhi,
August 10, 2004

ITEM No.106
SECTION IVA

Court No.10

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

CIVIL APPEAL NO. 2577 OF 1998

N.V. SRINIVASA MURTHY
ANT (S)

..... APPELL

VERSUS

N.V. GURURAJA RAO & ORS.
T (S)

.....RESPONDEN

(With office report)

Date : 10/08/2004 This/These Petition/Petitions 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. M.K. Dua, Adv.

For Respondent (s) Ms. Vandana Jalan, Adv.
Mr. P.R. Ramasesh, Adv.

Mr. P.P. Singh, Adv.

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

The appeal is allowed in terms of the signed order.

(Satish K. Yadav)
Court Master

(Kanwal Singh)
Court Master

(Signed order is placed on the file)