

CASE NO.:  
Appeal (civil) 5707 of 2002

PETITIONER:  
SUBRAY THIMMANNA HEGDE & ORS

RESPONDENT:  
NAGARAJ THIMMANNA HEGDE & ORS

DATE OF JUDGMENT: 10/04/2008

BENCH:  
H.K. SEMA & MARKANDEY KATJU

JUDGMENT:  
JUDGMENT  
O R D E R

CIVIL APPEAL NO.5707 OF 2002

Heard the parties.

This appeal is filed by the defendants against the judgment passed by the High Court in Second Appeal. The plaintiffs' suit was dismissed by the trial court. In appeal the First Appellate Court confirmed the decree of the trial court. Aggrieved thereby, the plaintiffs filed Second Appeal before the High Court.

The High Court framed a substantial question of law as under :

1. It is open to the appellants to challenge the sale on the following grounds :

- a)The property was subject to mortgage and there was contravention of the sections 35 and 85 of the Karnataka Co-operative Societies Act, 1959.
- b)The sale was in breach of Order 21 Rule 64 CPC on the ground that the property sold was worth much more than the amount sought to be recovered.
- c)Status as debtor of the father of the appellants who suffered decree for money?

2. Whether the decree made by the lower appellate court is vitiated for its failure to consider the points involved in question No.1?

At the time of hearing of the Second Appeal the High Court has also framed the additional substantial question of law reads :

"12. The question of law was framed as mentioned supra. At the time of hearing, one more question was framed and the counsel was directed to address arguments on the basis of that question as well. The question is :  
"Once a property is found to be ancestral property whether that the property of the minors who get the right by birth could be brought to sale ?"

It is submitted that the property is ancestral property and the father was acting as Manager and Karta of the family. If that is the case the question of framing the additional substantial question of law would not arise. Similarly, the substantial question of law as framed by the High Court, a),b) and c), referred to above, in our view, does not constitute the substantial question of law as contemplated under Section 100 CPC. We, therefore, set aside the order of the High Court and remand the case to the High Court to frame fresh substantial question of law strictly compliance of Section 100 CPC, if any, and decide the appeal afresh. The order of the High Court is accordingly set aside.

The appeal is allowed. No costs. Since, the matter is pending for a quite long time, the High Court is requested to dispose of the appeal within six months.