

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.8509/2000

(From the judgement and order dated 20/12/1999 in SA 1635/99  
of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

RAM PHAL

Petitioner (s)

VERSUS

BANARASI & ORS.

Respondent (s)

( With Appln(s). for exemption from filing O.T. )  
(with prayer for interim relief)

Date : 02/01/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.N. KHARE  
HON'BLE MR. JUSTICE N. SANTOSH HEGDE

For Petitioner (s) Mr. Mukesh K. Giri,Adv.

For Respondent (s) Ms. Meera Agarwal,Adv.  
Mr. R.C. Mishra,Adv.

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

.....L.....I.....T.....T.....T.....T.....T.....J.  
.SP2

Leave granted.  
The appeal is allowed with no order as to costs.

.SP1  
(Neelam Kawatra) (S. Krishnan)  
Court Master Court Master

Signed order is placed on the file.

CIVIL APPEAL NO.3 OF 2001@@  
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(Arising out of S.L.P.(C)No. 8509/2000)

Ram Phal

Appellant (s)

versus

Banarasi & Ors.

Respondent (s)

O R D E R@@  
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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3 OF 2001  
(Arising out of S.L.P.© No. 8509/2000)

Ram Phal

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Appellant

-versus-

Banarasi and others

..

Respondents

O R D E R

.....L.....I.....T.....T.....T.....T.....T.....J.  
.SP2

Leave granted.

Hukam Chand, the father of Respondents executed a Registered Agreement with the plaintiff-appellant to sell agricultural land for a sum of Rs.2,90,000/- on 3.11.1988. Subsequently on 1.1.1993 Hukan Chand died. It is alleged that after the death of Hukam Chand his sons who are respondents herein refused to execute the sale deed in pursuance of agreement for sale. It is alleged that under such circumstances the plaintiff-appellant filed a suit for specific performance of agreement for sale before the Civil Judge, Kairana, Muzaffarnagar. The said suit was numbered as Suit No.38/93. The respondents also filed a suit for cancellation of registered agreement dated 3.11.88 and the said suit was numbered as Suit No. 63/93 before the Civil Judge, Kairana, Muzaffarnagar. Both the suits were consolidated and tried together. The Civil Judge partly decreed the suit of plaintiff-appellant by granting alternative relief claimed by the plaintiff-appellant for refund of Rs.2,40,000/- with interest. The relief for specific performance of the agreement for sale was refused. The suit filed by the respondent was also dismissed. The respondents herein filed an appeal before the District Judge. The District Judge in the said appeal decreed the suit of plaintiff-appellant for specific performance of agreement for sale and set aside the decree of the trial Court granting alternative relief for refund of the earnest money. Aggrieved, the respondents herein filed Second Appeal before the High

Court against the judgment and decree of the First Appellate Court. When the second appeal came up for admission on 20.12.99 the High Court directed to list the appeal for framing of question of law on 28.3.2000. However, the High Court granted interim order by staying the execution of the decree. It is against the said order granting interim relief the respondent in the second appeal has preferred this appeal. This Court, on number of occasions, has repeatedly held that the High Court acquires jurisdiction to decide the second appeal or deal with the second appeal on merits only when it frames substantial question of law as required to be framed under Section 100 of the Civil Procedure Code. In the present case, what we find is that the High Court granted interim order and thereafter fixed the matter for framing of question of law on a subsequent date. This was not the way to deal with the matter as contemplated under section 100 CPC. The High Court is required to frame the question of law first and thereafter deal with the matter. Since the High Court dealt with the matter contrary to the mandate enshrined under section 100 CPC, the impugned order deserves to be set aside.

For the aforesaid reasons, we set aside the order dated 20.12.1999 and send the matter back to the High Court. The High Court shall deal with the matter in the light of the legal position stated above.

The appeal is allowed but there shall be no order as to costs.

.SP1

.....J  
(V.N. Khare)

New Delhi,  
January 02, 2001.

.....J  
(N. Santosh Hegde)