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C.A.No. 5930 OF 1998
.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp
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~ ITEMNO. 104 COURT NO. 7 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. 5930/98

Narayana Prabhu Dass Prabhu & Anr. .. Appellant (s)

Vs.

Giri Prabhu R Prabhu & Ors. .. Respondent(s)

DATE : 26 .4.2001 : This/These matter (s) was/were
called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU
HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

For Appellant (s) : Mr. T.L.V. Iyer, Sr. Adv.
Mr. T.G.N. Nair, Adv.

For Respondent (s) : Mr. P. Krishnamurthy, Sr. Adv.
Mr. M.P. Vinod, Adv.

UPON hearing counsel the Court made the following
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The appeal is allowed in terms of the signed order.
There shall be no order as to costs.

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Charanjit (Om Prakash)
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. 5930/1998@@
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Narayana Prabhu Dass Prabhu & Anr. .. Appellants

Vs.

Giri Prabhu R. Prabhu & Ors. .. Respondents

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This appeal arises out of a judgment of the High Court made in second appeal filed under Section 100 of the Code of Civil Procedure.

The contention putforth on behalf of the Appellants is that the second appeal had been allowed without formulation of any question of law much less a substantial question of law.

Mr. P. Krishnamurthy, learned Senior Advocate for the respondents submitted that that question of law may not have been formed but substantial questions of law arising in the appeal have been duly considered by the High Court and therefore, the matter will have to be examined on merits rather than short circuiting the matter by a remand.

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Ratio of several decisions of this Court including 2001 (9) SCC 29 titled Batakrushna Das Vs. Natabar Behera , 2000 (9) SCC 60 titled Kampaiah (Dead) By Lrs. Vs. Doddanaraiah and Ors., 2000(9) SCC 735 titled Ananta Kalappa Jaratakhane Vs. Krishtappa and Ors., 2000 (9) SCC 517 titled G. Thankamma Amma and Anr. Vs. N Raghava Kurup and Ors., 2000 (9) SCC 418 titled Prem Bai Vs. Jnaneshwar Ramakrishna Patange and Ors., 2000 (9) SCC 505 titled Baidyanath Bhattacharya and Anr. Vs. S Karmakar (Dead) By Lrs., 2000 (9) SCC 254 titled Shankarepa M Mutanki Vs. B.M. Mutanki, 2000 (9) SCC 233 Manorama Thampuratti Vs. C.K. Sujatha Thampuratti and Ors., 2000 (9) SCC 219 titled Govind Das Vs. Kanhiya Lal and Anr., 2000 (9) SCC 384 titled Mohd. Abdul Muqtedar (Dead) By Lrs. and Anr. Vs. Shaikh Fakruddin and Ors., 2000 (9) SCC 473 titled Major Singh Vs. State of Punjab and Ors. and 2000 (5) SCC 64 titled Ramavimasam Grandhasama & Ors. Vs. NSS

Karayogam is that Section 100 (2) is mandatory and must be followed strictly. Hence it is appropriate that we

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set aside the order made by the High Court and remit the same to the High Court for fresh consideration after formulation of substantial question of law and in accordance with law. The appeal shall stand allowed accordingly. There shall be no order as to costs.

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[S. RAJENDRA BABU]@@
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[K.G. BALAKRISHNAN]@@
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New Delhi,@@
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April 26, 2001 @@
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