

C.A.No. 3272 OF 1998

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3272 OF 1998

MAST RAM

APPELLANT

VERSUS

MURTI SITLA MANDIR MAHA. BY PRESIDENT

RESPONDENT

O R D E R

The High Court, by the impugned judgment passed in the second appeal, has upset the concurrent findings recorded by both the courts below. From the perusal of the judgment it is clear that the High Court did not consider any substantial question of law before disposing of the second appeal, that too allowing it, reversing the concurrent findings of fact recorded by both the courts. This Court has repeatedly stated that it is essential to frame a substantial question or questions of law, if arise for consideration in a second appeal, as required under Section 100 of the Code of Civil Procedure. The learned counsel for the appellant although tried to support the impugned judgment on facts, but, was fair enough to state

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that the substantial question of law was neither framed nor considered by the High Court before disposing of the second appeal.

This being the position, without expressing one way or the other on the merits of the rival contentions, we set aside the impugned order and remit the second appeal to the High Court to consider whether any substantial question or questions of law arise for consideration between the parties as required under Section 100 of the Code of Civil Procedure and proceed to dispose of the appeal in accordance with law.

The appeal is accordingly allowed. No costs.

.....J.

(SHIVARAJ V. PATIL)

.....J.

New Delhi, (D.M. DHARMADHIKARI)

December 10, 2003.

ITEM No.106

Court No. 7

SECTION XIV

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. 3272/1998

MAST RAM

APPELLANT

VERSUS

MURTI SITLA MANDIR MAHA. BY PRESIDENT
(With office report)

RESPONDENT

Date : 10/12/2003 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s) Mr. Abhineet Sinha, Adv.
Mr. Ejaz Maqbool, Adv.
Ms. Minakshi Nag, Adv.

For Respondent (s)
Mr. Chandra Prakash Pandey, Adv.

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

Heard learned counsel for the parties for 10 minutes.
The appeal is allowed in terms of the signed order.
No costs.

Sarita (Shelly Sengupta)
Court Master

(Signed order is placed on the file)