

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5492 OF 2013
(Arising from SLP(C) No.12557/2013)

Farzana

versus

..Appellant

Bashir Ahamed and others

..Respondents

O R D E R

Leave granted.

This appeal is directed against judgment dated 16.11.2012 of the learned Single Judge of the Punjab and Haryana High Court whereby he allowed the second appeal filed by respondent No.1, reversed the judgments and decrees passed by the trial Court and the lower appellate Court and partly decreed the suit filed by respondent No.1 for possession and granted permanent injunction in respect of the remaining portion of the suit land.

While issuing notice of the special leave petition on 12.4.2013, this Court passed the following order:

"Issue notice on the special leave petition as also on the petitioner's prayer for interim relief, returnable on 12.07.2013, to the respondents to show cause as to why leave may not be granted, the judgment under challenge may no be set aside only on the ground that the learned Single Judge decided the second appeal without framing a question of law in terms of Section 100(1), CPC and giving opportunity of hearing to the parties with reference to such substantial question of law. Dasti, in addition, is permitted.

In the meanwhile, status quo regarding possession of the property in question, as it is obtaining today, shall be maintained by both the parties.

It shall be the duty of the petitioner to serve the respondents before the next date of hearing failing which the interim order passed today shall stand automatically vacated."

Shri Aldanish Rein, learned counsel for the respondents defended the impugned judgment by pointing out that after analyzing the pleadings and evidence produced by the parties, learned Single Judge framed substantial question of law and partly decreed the suit. According to him, even though the methodology adopted by the learned Judge of the High Court may not strictly in consonance with the mandate of Section 100, CPC, this Court should not interfere with the judgment under challenge.

In our view, the submission of the learned counsel is wholly meritless and deserves to be rejected.

Section 100 CPC casts a duty on the High Court to frame substantial question of law, hear the parties with reference to the question of law so framed and decide the second appeal. It does not give an option to the High Court to first consider the merits of the

[signed order is placed on the file]
