

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.8117/1999

(From the judgement and order dated 05/02/1999 in SA 896/98
of The HIGH COURT OF KERALA AT ERNAKULAM)

CHACKO PILO

Petitioner (s)

VERSUS

KUTTY DAMODARAN (DEAD)

Respondent (s)

(With appln(s). for substitution of L.Rs of the deceased respondent)
(With prayer for interim relief) (With office report)
(For Final Disposal)

Date : 05/12/2002 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.N. KHARE
HON'BLE MR. JUSTICE ASHOK BHAN

For Petitioner (s) Mr. P Krishnamoorthy, Sr.Adv.
Mr. Romy Chacko, Adv.

For Respondent (s) Mr. MP Vinod, Adv.

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

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Mr. M.P.Vinod, learned counsel states that he will
vakalatnama/memo of appearance within a week.

Substitution application is allowed.

Leave granted.

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

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(Alka Dudeja)
Court Master

(S. Krishnan)
Court Master

Signed order is placed on the file.

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CIVIL APPELLATE JURISDICTION

Civil Appeal No. 8208 of 2002@@
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(Arising out of S.L.P.(C) No. 8117 of 1999)

Chacko Pilo ... Appellant (s)

VERSUS

Kutty Damodaran (Dead) ... Respondent (s)

O R D E R@@
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Leave granted.

This Court has repeatedly held that the High Court acquires jurisdiction to decide the second appeal under Section 100 of the Civil Procedure Code only when it frames substantial question of law. In this case what we find is that the High Court, without framing any substantial question of law, proceeded to decide the second appeal on merits. On this short question, the judgment under challenge deserves to be set aside.

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We, accordingly, set aside the judgment under challenge and remit the matter to the High Court to decide the second appeal in terms of Section 100 of the Civil Procedure Code.

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

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.....J.@@
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(V.N. Khare)@@
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.....J.@@
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(Ashok Bhan)@@
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New Delhi,
December 03, 2002