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C.A.No. 3379 OF 1998
ITEM No. 102

Court No.10

SECTION IV

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. 3379 OF 1998

Mahila Ramkali Devi Saxena & Ors.

Appellant (s)

Versus

Nand Ram & Ors.

Respondent (s)

(With office report)

Date : 29/09/2004 This/these Petition(s) / appeal(s) was/were called on for hearing today

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant (s)Mr. U.N. Bachawat, Sr. Adv.
Mr. Alok Bhachawat, Adv.
Mr. Harinder Mohan Singh, Adv.

For Respondent (s)Mr. P.C. Jain, Sr. adv.
Mr. Madhukar Rao, Adv.
Mr. Atul Jain, Adv.
Mr. Jamshed Bey, Adv.
Mr. Parmanand Gaur, Adv.

RR-Ex-parte

UPON hearing counsel the Court made the following

O R D E R

The appeal stands allowed in terms of the signed order.

(J.S. Rawat)
Court Master

(Kanwal Singh)
Court Master

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3379 OF 1998

Mahila Ramkali Devi Saxena & Ors.

Appellant (s)

Versus

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Respondent (s)

O R D E R

The High Court has interfered with the concurrent findings recorded by the courts below without framing a substantial question of law at the admission stage itself, as enjoined by Section 100 of the Code of Civil Procedure (for short "CPC"). This Court in a catena of decisions has held that the High Court can exercise its jurisdiction under Section 100 CPC in second appeal only on the basis of substantial question of law framed at the time of admitting the appeal or modified or substituted later and the second appeal has to be heard and decided only on the basis of such duly framed substantial question of law, if any. Judgment rendered by the High Court in second appeal without following the aforesaid procedure is not sustainable in law. Reference may be made to R.Lakshmi Narayan v. Santhi [2001 (4) SCC 688], M.S.V.Raja & Another v. Seeni Thevar & Others [2001 (6) SCC 652], Kanhaiyalal & Others v. Anupkumar & Others [2003 (1) SCC 430], R.V.E.Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P.Temple & Another [2003 (8) SCC 752], Md.Mohammad Ali (Dead) by Lrs. V. Jagadish Kalita & Others [2004 (1) SCC 271], Thiagarajan & Ors. v. Sri Venugopalaswamay B. Koil & Ors. [JT 2004 (5) SC 54].

In all the aforesaid cases, this Court has held that the High Court can exercise its jurisdiction under Section 100 CPC only on the basis of substantial questions of law and the second appeal has to be heard and decided only on the basis of such duly framed substantial questions of law, if any. A judgment rendered by the High Court under Section 100 CPC without following the aforesaid procedure is not sustainable in law.

As indicated above, in the present case, the High Court has assumed jurisdiction under Section 100 CPC and, without framing a substantial question of law at the admission stage itself, interfered with the concurrent findings recorded by the courts below. On this ground alone, the appeal is accepted. The impugned order of the High Court is set aside and the case is remitted back to the High Court for disposal afresh in accordance with law. The High Court will first frame questions of law, if any, and then proceed with the matter and decide the same in accordance with law.

Since the proceedings pertain to a suit having been instituted in the year 1964, we would request the Hon'ble Chief Justice to list the second appeal out of turn and, if possible, dispose it off within three months of the receipt of a copy of this order and the records.

The Registry is directed to transmit the record of this case to the High Court forthwith.

The appeal stands allowed accordingly.

Interim stay, if any, granted by the High Court during the pendency of the Second Appeal shall continue to be in operation till the disposal of the Appeal.

.....J.
(ASHOK BHAN)

New Delhi;.....J.
September 29, 2004.(S.H. KAPADIA)