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SLP(C)No.8739/1999

ITEM No.29

Court No. 5

SECTION XIIA
A/N MATTER

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.8739/1999

(From the judgement and order dated 18/01/1999 in SA 284/91
of The HIGH COURT OF A.P AT HYDERABAD)

RAMBILAS TAPADIA

Petitioner (s)

VERSUS

SHYAMALA & ORS

Respondent (s)

(With Appln(s). for bringing LRs on record the L.Rs. of deceased
respondent No.4 and c/delay in filing substitution appln.)
(With prayer for interim relief)(With office report)

Date : 22/01/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.N. KHARE
HON'BLE MR. JUSTICE N. SANTOSH HEGDE

For Petitioner (s) Mr. PS Narasimha, Adv.
Mr. P Sridhar, Adv.
Mr. Sudhir Nandrajog, Adv.

For Respondent (s) Mr. K Ram Kumar, Adv.
Mr. Y Subba Rao, Adv.
Mr. B Sridhar, Adv.

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

I.A. Nos. 1-2 allowed.

Leave granted.

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

.SP1

(Alka Dudeja)
Court Master

(S. Krishnan)
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. 760 OF 2001
(Arising out of SLP @ No. 8739 of 1999)

Rambilas Tapadia

Appellant

-versus

Shyamala & ors.

Respondents

O R D E R

.....L.....I.....T.....T.....T.....T.....J
It is a plaintiff's appeal. The plaintiff filed a suit for declaration that he is the owner of the property and also for cancellation of the sale deed. The suit was dismissed. The appeal filed by the plaintiff was allowed and the suit was decreed. The second appeal filed by the defendants-respondents was allowed by the High Court. It is against the said judgment the plaintiff has preferred this appeal.

This Court has repeatedly held that the High Court acquires jurisdiction to decide the second appeal on merits under Section 100 of the Code of Civil Procedure only when it frames substantial question of law. In the present case what we find is that the High Court without framing any question of law has allowed the second appeal filed by the defendants-respondents, which is contrary to the mandate enshrined in Section 100 C.P.C. On this short ground, this appeal deserves to be allowed. We, therefore, set aside the judgment under appeal and send the case back to the High Court to decide the second appeal on merits only after framing question of law, if any, arises in the case.

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

& ..& & & & & & & & .. J.
(V.N. KHARE)

& & & & & & & & ..J.
(N. SANTOSH HEGDE)

New Delhi;
January 22, 2001