

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.5632 OF 1999

PONNAPPAN
llant(s)

Appe

VERSUS

VELAYAUDHAN RAJAPPAN & ORS.

Respondent(s)

(With application for amendment of the petition adding addl. Grounds
and with office report)

With I.A.No.3(Application for Recording the Petitioner and respondent
No.4 as Ls. Of deceased Respondent No.3)

Date: 17/02/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE A.K.MATHUR

For Appellant(s)

Mr. M.P. Vinod, Adv.

Mr. Ajay K. Jain, Adv.

Mr. Aravind Kumar, Adv.

For Respondent(s)

Mrs. K.Sarada Devi, Adv.

UPON hearing the Court made the following

O R D E R

I.A. No. 3 is allowed. Necessary corrections in the memo of parties be carried out.

Appeal is allowed in terms of the signed order.

(Parveen Kr. Chawla)

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.5632 OF 1999

Ponnappan

Appellant (s)

Versus

Velayudhan Rajappan & Others

Respondent (s)

O R D E R

This appeal is directed against the judgment of a Single Judge of the High Court of Kerala at Ernakulam in Second Appeal No. 579 of 1995 dated 16th December, 1997. By the impugned order the High Court has set aside the judgments and decree passed by the courts

below without framing a substantial question of law, which is a pre-requisite for assumption of jurisdiction by the High Court under Section 100, Code of Civil Procedure.

We find from the record that the defendants, respondents herein, in their grounds of second appeal had framed the following two substantial questions of law:

"(A) Whether the lower appellate court went wrong in bypassing the presumption of possession of a co-owner not being adverse to the other sharers does not extend to possession of an alienee from one co-sharer of the entire property?

(B) In case the period of limitation prescribed under the Limitation Act terminates after 3 years of cessation of disability, whether any further extension of the period of Limitation available to the plaintiff."

The High Court on 19.9.1995 issued notice on the questions of law formulated by the respondents-defendants in their grounds of second appeal, referred to above. The High Court, after recording a satisfaction that a question of law is involved, has to formulate the question of law as required under Section 100, Code of Civil Procedure.

This apart, the High Court while disposing of the appeal did neither refer to the questions of law formulated by the respondents nor addressed itself to the questions of law formulated.

This Court in a number of judgments has held that the High Court is required to formulate a substantial question of law at the time of admission of the second appeal which could be supplemented by framing additional questions of law, if required under proviso to sub-

section 5 of Section 100, CPC. Without framing a question of law the High Court cannot assume jurisdiction under Section 100 CPC and interfere with the findings recorded by the court of fact. In view of the fact that the High Court has set aside the findings recorded by the court of fact without framing a substantial question of law contrary to the provisions of the Act and the law laid down by this Court the same is set aside and the case is remitted back to the High Court for a fresh decision in accordance with law. The High Court may either proceed to dispose of the appeal on the questions of law which had been formulated by the respondents in their grounds of second appeal or frame additional questions of law if the same arises from the findings recorded by the courts below.

Since the proceedings pertain to a suit having been instituted in the year 1984, we would request the High Court to dispose it off within six months of the receipt of a copy of this order and the records. Counsel for the parties would be at liberty to mention before the Hon'ble Chief Justice of the High Court for fixing an early date of hearing of the appeal.

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

The appeal stands allowed accordingly.

.....J
(ASHOK BHAN)

New Delhi;J.

February 17, 2005. (A.K. MATHUR)