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C.A.No. 5219 OF 1998

ITEM No.106

Court No. 9

SECTION IVA

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. 5219 of 1998

GOUSKHAN S. PATHAN Appellant (s)

VERSUS

RASHANBI & ORS.Respondent (s)

(With office report)

Date : 09/03/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr. R. Jagannath Gouley,Adv.
Ms. Abha Jain,Adv.

For Respondent (s)Mr. S.K. Kulkarni,Adv.
Mr. M. Gireesh Kumar,Adv.
Mr. Ankur S. Kulkarni,Adv.
Ms. Sangeeta Kumar,Adv.

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

Heard the learned counsel for the parties for a while.

The civil appeal is allowed.

No costs.

[T.I. Rajput][Shelly Sengupta]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5219 OF 1998

Gouskhan S. Pathan

...Appellant(s)

Versus

Rashanbi & Ors. . . . Respondent(s)

O R D E R

This appeal is filed by the plaintiff assailing the validity and correctness of the judgement made by the High Court in a second appeal. The suit filed by the plaintiff for declaration, injunction and for rectification of entries in the Revenue records was decreed by the trial court. The first appeal filed by the respondents-defendants was dismissed affirming the judgement and decree passed by the trial court. In the second appeal filed by the defendants, the High Court, by the impugned judgement, reversed the judgement and decree passed by the first appellate court, affirming the judgement and decree passed by the trial court.

The learned counsel for the appellant, at the outset, urged that the impugned judgement suffers from legal infirmity, apart from the fact that on facts also the judgement cannot be sustained. According to the learned counsel, the High Court did not formulate substantial question or questions of law that arose for consideration, although, in the judgement, the High Court has stated that two questions of law were raised before it.

The learned counsel for the respondents submitted that although the impugned judgement can be sustained on

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merits but he is not in a position to contend that substantial questions of law were formulated and that the matter was examined appropriately on that basis.

A perusal of the impugned judgement shows that the High Court did not formulate any substantial question or questions of law, that arose for consideration between the parties, as mandatorily required under Section 100 of the Code of Civil Procedure, 1908 [for short, "the Code"]. In paragraph (7) of the impugned judgement, the High Court has stated that the following two questions of law have been raised:

"(1) Whether the Courts below were justified in not relying on Exs.D.2 to D.5?

(2) Whether the suit of the plaintiffs was barred by limitation?

This did not satisfy the requirement of Section 100 of the Code. It was for the High Court to formulate substantial question or questions of law if arose for consideration between the parties. Even otherwise, the discussion made in the impugned judgement is not satisfactory in dealing with those questions of law raised by the parties. In the view we propose to take, we do not wish to deal with the merits of the respective contentions. This appeal is entitled to succeed on the short ground, namely, the impugned judgement cannot be sustained for want of formulation of substantial question or questions of law before deciding the second appeal. Hence, the civil appeal is allowed. The impugned judgement and decree are set aside. The second appeal is remitted to the High Court for formulation of substantial question(s) of law that may arise for consideration between the parties and then dispose of the second appeal.

No costs.

.....J.
[SHIVARAJ V. PATIL]

.....J.
[D.M. DHARMADHIKARI]

New Delhi,
March 09, 2004.