

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. 6296 OF 1999

Somanagouda
nt(s)

Appella

Versus

Lakkawwa & Ors.
ndent (s)

Respo

(With appl(s) for raising additional grounds and with office report)

Date: 02/03/2005 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. G.V. Chandrashekhar, Adv. for
Mr. P.P. Singh, Adv.

For Respondent(s)

Mr. T.N. Rao, Adv.

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

The appeal is allowed in terms of the signed order.

(J.S. Rawat)
gh)
Court Master
Master

(Kanwal Sin
Court

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6296 OF 1999

Somanagouda

Appellant(s)

Versus

Lakkawwa & Ors.

Respondent (s)

O R D E R

Aggrieved against the order of the High Court in Second Appeal

No. 590/91, the defendant-appellant (herein-after called "the appellant") has filed the present appeal by grant of special leave.

The High Court by the impugned judgment has accepted the appeal

filed by the plaintiffs-respondents (herein-after called "the respondents")

and set aside the findings recorded by the first Appellate Court. At the time

of admission of the Second Appeal, the following substantial questions of

law were framed:

"1. Whether the Judgment of the I appellate Court of facts is not according to law as no points for determination have been set down by the Court and no findings given?

2. Whether in the absence of the evidence with

regard to antecedent debts and pressing needs of the family pleaded by the 2nd defendant, the I appellate Court should have reversed the decree of the trial Court?."

Although the afore-mentioned questions of law had been framed by

the High Court at the time of admission of the appeal, but without referring

to or noticing the same, the High Court, while allowing the appeal on re-

appreciation of evidence, has set aside the findings recorded by the first

Appellate Court.

In R.Lakshmi Narayan v. Santhi [2001(4) SCC 688], M.S.V.Raja & Anr. v. Seeni Thevar & Ors. [2001(6) SCC 652, R.V.E. Venkatachala Gonder v. Arulmigu Viswesaraswami & V.P.Temple & Anr. [2003(8) SCC 752], M. Mohammad Ali (D) by L.Rs. v. Jagadish Kalita & Ors. [2004 (1) SCC 271], Thiagarajan & Ors. v. Sri Venugopalaraswami B. Koil & Ors. [JT 2004(5) SC 54], this Court has held that the High Court can exercise its jurisdiction under Section 100 CPC to entertain the Second Appeal only on a substantial question of law framed at the time of admission or at a subsequent stage, and while deciding the same confine itself to the questions of law framed.

Since the High Court has failed to take notice of the questions of law framed at the time of admission of the Second Appeal and decided the same as if it was hearing the First Appeal, the judgment under appeal is unsustainable. Accordingly, 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 would be at liberty to either decide the appeal on the questions of law already framed or re-frame the questions of law if the same arise from the findings recorded by the Courts below.

As the present proceedings pertain to a suit instituted in the year 1987, we would request the High Court to take up the appeal on priority basis and dispose it off as expeditiously as possible.

The Registry is directed to transmit the record of this case to the

High Court forthwith.

The appeal is allowed accordingly.

.....J

(ASHOK BHAN)

New Delhi;
J.
March 02, 2005.

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(A.K. MATHUR)