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C.A.No. 2045-2046 OF 1999  
ITEM No. 114  
Court No. 3  
SECTION XIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NOS. 2045-2046 OF 1999

KELOTH UTHAMANDIL GOVINDA PODUVAL & ORS.  
.....  
APPELLANT (S)

VERSUS

ANDRA UTHAMANDIL RAGHAVA PODUVAL & ORS.  
.....  
RESPONDENT (S)

(With appln. for permission to place addl. Documents on record and exemption from filing O.T.)

Date : 16/03/2004  
This/These Appeal(s) was/were mentioned today.

CORAM :  
HON'BLE MR. JUSTICE R.C. LAHOTI  
HON'BLE MR. JUSTICE BRIJESH KUMAR  
HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant (s)Mr. T.L.V. Iyer, Sr. Adv.  
Mr. S. Balakrishnan, Sr. Adv.  
Mr. Gopalakrishnan, Adv.  
Mr. S.N. Jha, Adv.  
Mr. Subramonium Prasad, Adv.  
Mr. Abhay Kumar, Adv.

For Respondent (s)Mr. B.V. Deepak, Adv.

UPON hearing counsel, the Court made the following  
O R D E R  
The appeals are allowed in terms of the signed order.  
The parties through their respective counsel are directed to appear before the High Court on 24th May, 2004.

KALYANI  
(RADHA R. BHATIA)  
COURT MASTER

(SIGNED ORDER IS PLACED ON THE FILE.)

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2045-2046 OF 1999

KELOTH UTHAMANDIL GOVINDA PODUVAL & ORS.  
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APPELLANT (S)

VERSUS

ANDRA UTHAMANDIL RAGHAVA PODUVAL & ORS.

.....

RESPONDENT (S)

O R D E R

A suit for recovery of possession based on title was decreed by the trial court. However, on appeal, the First Appellate Court reversed the judgment and decree of the trial court and directed the suit to be dismissed. The plaintiff preferred a Second Appeal which has been allowed by the High Court. The appellants filed a review petition which was dismissed by the High Court. Feeling aggrieved by the judgment of the High Court reversing the judgment of the First Appellate Court and the order dismissing the review petition, these two appeals have been filed by special leave.

Having heard the learned counsel for the parties, we are satisfied that the judgment of the High Court under appeal suffers from a serious infirmity. The judgment of the High Court shows that the provisions of Section 100 of the Code of Civil Procedure, 1908 (as amended by Act No. 104/1976) [for short "the CPC"] having been given a complete go by. Under Section 100 of the CPC, as it stands now, the Memorandum of Appeal shall state substantial questions of law involved in the appeal and when the High Court is satisfied that a substantial question of law is involved in the case, then it shall formulate that question. The hearing in the appeal has to remain confined to the question so formulated. A new question of law not formulated earlier may be formulated at the hearing subject to the High Court being satisfied that the case involves such question.

The judgment does not show any substantial question of law having been formulated or dealt with by the High Court. The failure on the part of the High Court to discharge a statutory duty cast on it by Section 100 of the CPC has occasioned a failure of justice more so when it is a judgment of reversal.

For the above said reason, the appeals are allowed, the judgment and order under appeal are set aside and the second appeal is remanded to the High Court for hearing and decision afresh subject to compliance with the provisions of Section 100 of the CPC and the observations made hereinabove.

The parties through their respective counsel are directed to appear before the High Court on 24th May, 2004.

.....J  
(R.C. LAHOTI)

.....J  
(BRIJESH KUMAR)

.....J  
(ARUN KUMAR)

NEW DELHI;  
MARCH 16, 2004.