

§
C.A.No. 4805 OF 2000
ITEM NO.108

COURT NO.6

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 NO. 4805 OF 2000

P.M. RAMACHANDRAN NAIR

Appellant (s)

VERSUS

CHERUKATTIL M.AMMA AND ORS.

Respondent(s)

(With appln.(s) for permission to produce Annexures R-11 to R-14 and
office report)

Date: 03/08/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Petitioner(s)Mr. T.L.V. Iyer,Sr.Adv.
Mr. T.G. Narayanan Nair,Adv.

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

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

Heard the learned counsel for the parties from 2.35 p.m. to 2.50 p.m.

Application for permission to produce Annexures R-11 to R-14 are allowed.

At the request of the learned senior counsel for the appellant, the name of Respondent No.15 is
deleted from the array of parties at the risk and cost of the appellant.

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.4805 OF 2000

P.M. Ramachandran Nair

...Appellant(s)

Versus

Cherukattil M. Amma & Ors. ...Respondent(s)

O R D E R

Respondent Nos.1 to 11 herein filed a suit for permanent injunction which came to be dismissed by the trial court. The judgement and decree of the trial court stood affirmed by the first appellate court. In the second appeal, the High Court reversed the concurrent findings of fact and allowed the second appeal, decreeing the suit of the plaintiffs, as prayed for. While doing so, the High Court in the penultimate paragraph of the judgement stated thus:

"Therefore, according to me, a substantial question of law arises in this case as to whether in the light of Section 72K(2) of the Kerala Land Reforms Act Exts.A3 and A4 could be ignored to find that the plaintiffs were not in possession. From the discussion above I answer the question in favour of the plaintiffs. Consequently the lower appellate decree is set aside."

...2/-

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The fourth defendant is in appeal questioning the validity and correctness of the impugned judgement passed by the High Court.

Mr. T.L.V. Iyer, learned senior counsel for the appellant, contended that the High Court was not right and justified in interfering with the concurrent findings of fact; no substantial question or questions of law arose for consideration between the parties in the second appeal; and the substantial question of law indicated in the judgement was not even raised by the plaintiffs in the memorandum of appeal or in the grounds of appeal as one of the substantial questions of law.

In opposition, Mr. P.Krishnamoorthy, learned senior counsel for Respondent Nos.1 to 11, made submissions supporting the impugned judgement. He urged that it was open to the court to formulate a substantial question of law in view of the proviso to sub-section (5) of Section 100 of the Code of Civil Procedure, 1908.

This Court has repeatedly ruled that a party has to formulate substantial question or questions of law that arose for consideration between the parties. In the instant case, it appears to us that the appeal was not admitted on any substantial question of law. The learned counsel for the appellant contended that no substantial question of law was formulated but was only referred to in the impugned judgement at the end of the judgement itself. In that situation, the appellant did not know on what substantial question of law the argument was to be advanced. In this view, the High Court, in our opinion, was not right and justified in interfering with the concurrent findings of fact without formulating substantial question or

...3/-

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questions of law, if arose for consideration between the parties. Hence, the civil appeal is allowed. The impugned judgement is set aside. The second appeal is remitted to the High Court for consideration whether any substantial question or questions of law arise for consideration between the parties; if so, formulate the same and then dispose of the second appeal in accordance with law.

No costs.

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

.....J.
[B.N. SRIKRISHNA]

New Delhi,
August 03, 2004.