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SLP(C)No. 1506 OF 2000

ITEM No.202

Court No. 4

SECTION XIV
A/N MATTER

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

Petition(s) for Special Leave to Appeal (Civil) No.1506/2000

(From the judgement and order dated 24/06/1997 in RSA 222/90
of The HIGH COURT OF H.P AT SHIMLA)

LEHNU RAM (DEAD) BY LRS.

Petitioner (s)

VERSUS

KRISHNI DEVI AND ORS.

Respondent (s)

(With appln(s) for c/delay in filing SLP and substitution of deceased
petitioner and c/delay in filing substitution appln.and with prayer
for interim releif)
(For Final Disposal)

Date : 16/03/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.T. THOMAS
HON'BLE MR. JUSTICE R.P. SETHI

For Petitioner (s) Mr. Ashok K. Chhabra, Adv.
Ms. Madhu Moolchandani,Adv.

For Respondent (s) Mr. Ashok K. Pathania, Adv.
Mr. Rajesh K. Sharma, Adv. for
Mr. Goodwill Indeevar,Adv.

UPON hearing counsel the Court made the following

O R D E R

.....L.....I.....T.....T.....T.....T.....T.....J
.SP2

Delay condoned.
Substitution application allowed.
Leave granted.
The appeal is disposed of.

.SP1

Hemalatha

(HK Bhatia)
Court Master

(signed order is placed on file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2103 OF 2001@@
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(Arising out of SLP(C) No.1506 of 2000)

LEHNU RAM (DEAD) BY LRS. .. APPELLANTS

VS.

KRISHNI DEVI & ORS. ..RESPONDENTS

O R D E R@@
CCCCCCCC

.PL55
.SP2

Delay condoned.
Leave granted.

The impugned order has been passed by a learned single judge of the High Court of Himachal Pradesh while disposing of the second appeal. The suit filed by the respondent for injunction happened to be dismissed by the trial court and when the respondents filed a regular first appeal that too was dismissed. When the learned single judge interfered with the concurrent finding on facts he has not chosen to find out whether there was any substantial question of law which alone would have given him the jurisdiction to entertain the second appeal as indicated Section 100 of the Code of Civil Procedure. While interfering with the concurrent finding of facts learned single judge has observed thus:-

.....L.....T.....T.....T.....T.....J.....
.SP1

"Ordinarily this Court would have been reluctant to interfere while considering the second appeal under Section 100 of

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the Code of Civil Procedure, but because it has been found that this is a case based not only on mis-reading and mis-appreciation of evidence both oral and documentary, but also on mis-construction of pleadings as well, as such this Court has deemed it just and proper to interfere with the findings recorded by the courts below. Needless to point out here that in such a situation, the Court would not remain a silent spectator."

.....L.....I.....T.....T.....T.....T.....T.....J.....
.SP2

Apparently he has not found out any question of law, much less any substantial question of law. Normally, we would have after interfering with the impugned order, closed the matter here itself. But learned counsel for the respondents invited our attention to the order passed on 26.8.91 when the second appeal was admitted. That order shows that second appeal was admitted on certain questions of law. We are not aware

whether those were substantial questions of law. Nonetheless, respondents must be given an opportunity point out to the High Court that there are substantial questions of law involved for the High Court to exercise jurisdiction under Section 100 of the CPC.

We, therefore, set aside the impugned judgment of the High Court and remit the second appeal back to the

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High Court for disposal of it afresh in accordance with law. This appeal is disposed of accordingly.

.SP1

.....J.
(K.T. Thomas)

New Delhi
March 16, 2001

.....J.
(R.P. Sethi)