

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.6686 OF 1999

ABRAR SADUR REHAMAN  
t(s)

Appellan

VERSUS

MOHD. ABDUL REHMAN & OTHERS.  
nt(s)

Responde

(With application for permission to place additional documents on  
record and with office report)

Date: 03/03/2005 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. T.L.V.Iyer, Sr. Adv.

Mr. K.Maruthi Rao, Adv.

Mrs. K. Radha, Adv.

Mr. D.Mahesh Babu, Adv.

For Respondent(s)

Mr. Raja Venkatappa Naik, Adv.

No.1

Mrs. Sonia Mathur, Adv.

Mr. Sanjeev Sharda, Adv.

Mr. Vijay Kumar Ravi, Adv.

Mr. Vinod Bhasker, Adv.

Mr. K.K. Misra, Adv.

Mr. Rameshwar Prasad Goyal, Adv.

Mr. M.M. Kashyap, Adv. (N.P.)

UPON hearing counsel the Court made the following

O R D E R

The Appeal is allowed in terms of the signed order.

(Parveen Kr. Chawla)

(Kanwal Singh)

Court Master

Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6686 OF 1999

Abrar Sadur Rehaman

Appellant(s)

Versus

Mohd. Abdul Rehman & Ors.

Respondent (s)

O R D E R

Aggrieved against the order of the High Court in Second Appeal

No. 447 of 1992, one of 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 plaintiff-respondent No.1(herein-after called "the respondent")

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 was framed:

"Whether the appellate court was justified in reversing the finding of the trial court as to the identity of the property involved in O.S. No.63/1/54-55 and the two gift deeds."

Although the afore-mentioned question 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 Venugopalaswamay 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 cannot

be sustained. 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 question of law, already framed, or re-frame the question of law if the same arises from the findings recorded by the first appellate court.

As the present proceedings pertain to a suit instituted in the year 1976, 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;  
March 03, 2005.

.....J.  
(A.K. MATHUR)