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C.A.No. 1539 OF 1999

ITEM No. 105

Court No. 9

SECTION IVA

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.1539/1999

BASAPPA N. GURADDI APPELLANT(S)

VERSUS

MOULASAB RESPONDENT(S)
(With office report)

Date : 01/04/2004 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Appellant (s)Ms. Shilpa Chohan, Adv.
for Ms. Lalita Kaushik, Adv.

For Respondent (s)Mr. Shantha Kumar V. Mahale, Adv.
Mr. Rajesh Mahale, Adv.
for Mr. Manoj Swarup, Adv.

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

Heard learned counsel for the parties for five minutes.
The appeal is allowed with no costs in terms of the signed order.

Sarita (Shelly Sengupta)
Court Master

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1539 OF 1999

BASAPPA N. GURADDI ... APPELLANT

VERSUS

MOULASAB ... RESPONDENT

O R D E R

This appeal is by the defendant No.5 questioning the validity and correctness of the impugned judgment passed by the High Court in a second appeal. The plaintiff filed suit for declaratio n that the 5th defendant had not acquired any title or interest over the suit property by virt ue of sale deed dated 10.5.1982 executed by defendant No.1 to 4 for and consequential injuncti on restraining the 5th defendant from interfering with his possession. The trial court dismis sed the suit. The first appellate court, concurring with the finding recorded by the trial co urt, dismissed the first appeal. The High Court, in the second appeal, by the impugned judgme nt interfered with the concurrent findings of fact recorded by both the courts below and decre ed the suit.

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The learned counsel for the appellant contended that the impugned judgment suffers from infirm ity both on facts and law. The learned counsel further submitted that the High Court was not right and justified in allowing the second appeal without formulating any substantial question or questions of law, if arose for consideration b etween the parties, as mandatorily required under Section 100 of the Code of Civil Procedure ('CPC' for short). The learned counsel also made few more submissions in support of her argume nt on merits.

Per contra, the learned counsel for the respondent argued in support of the impugned judgment.

The learned counsel was not in a position to say that the High Court formulated any substant ial question or questions of law.

This court has repeatedly ruled that the High Court has to essentially formulate substantial q uestion or questions of law before disposing of a second appeal, if such substantial question or questions of law arise for consideration between the parties, as required under Section 100 of CPC. This having not been done, the High Court committed a serious error in upsetting the concurrent findings of fact recorded by both the courts below.

Since we are proposing to set aside the impugned judgment and remit the second appeal to the High Court for

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disposal in accordance with law, we do not wish to express one way or the other on the merits of the contentions urged on behalf of the parties. In the result, the impugned judgment is se t aside, the second appeal is remitted to the High Court for formulating substantial question or questions of law, if arise for consideration between the parties, and to dispose of the se cond appeal. All the contentions of the parties are left open to be urged before the High Co urt.

The appeal is allowed accordingly. No costs.

[SHIVARAJ V. PATIL]

.....J.

New Delhi,
April 1, 2004.

[Dr. AR. LAKSHMANAN]

.....J.