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C.A.No. 1654 OF 1997
ITEM NO.102

COURT NO. 6

SECTION IX

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Civil Appeal No.1654 of 1997

Genubhau Gopala Dhore (dead) by Lrs.Appellant (s)

Versus

Deoji Bhiku Dhore (dead) by Lrs. & Ors.Respondent (s)

Dated:23-07-2003: This appeal was called on for hearing today.

CORAM

HON'BLE MR. JUSTICE Y.K. SABHARWAL
HON'BLE MR. JUSTICE G.P. MATHUR

For Appellant (s)Mr. Bhim Rao Naik, Sr.Adv.
Mr. CG. Solshe, Adv.

For Respondent (s)Mr. LN. Rao, Sr.Adv.
M/s MD. Adkar, Ejaz Maqbool,
Vinayak Abhyankar, Advs.

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

After hearing learned counsel for the parties for about 15 minutes, the Court allowed the appeal. Parties to bear their own costs.

(S. Thapar) (V.P. Tyagi)
PS to Registrar Court Master

The signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1654 OF 1997

Genubhau Gopala Dhore (dead) by Lrs. & Anr

Appellant (s)

Versus

Deoji Dhiku Dhore (dead) By Lrs. & Ors.

Respondent (s)

O R D E R

The High Court has allowed Second Appeal No.325 of 1982 by impugned judgment, as a result whereof, the judgment and decree of the First Appellate Court was set aside and that of the Trial Court restored. It is well settled that under Section 100 of the Civil Procedure Code, it is mandatory to formulate a substantial question of law [see Santosh Hazari Vs. Purushottam Tiwari (2001 (3) SCC 179)]. The decision in R. Lakshmi Narayan Vs. Santhi (2001 (4) SCC 688) relied upon by Mr. L. Nageshwar Rao, the learned senior counsel appearing for the respondents, on this aspect is also no different. In that case also it was observed that formulation of question of law is the mandatory requirement of Section 100. Section 100, sub-section (4), inter alia, provides that the High Court shall entertain Second Appeal if it is satisfied that the case involves substantial question of law and it shall formulate that question. The aforesaid decision in the case of Santosh Hazari is rendered by a three Judge bench of

-2-

this Court. Since the High Court in the present case, has not formulated any substantial question of law, we set aside the impugned judgment on this short ground without going into the merits of the controversy. Accordingly, we allow the appeal, set aside the impugned judgment and remand Second Appeal No. 325 of 1982 for its fresh decision by the High court in accordance with law. We expect and hope that the High Court will be able to dispose of this appeal in six months time as the appeal is of 1982 vintage. Parties to bear their own costs.

.....J
(Y.K. Sabharwal)

.....J
(G.P. Mathur)

New Delhi,
July 23, 2003