

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7748 OF 2002

Allamma and Ors.

..Appellant(s)

Versus

Moulasa Goususa Maniyar 'D' by Lrs. & Ors.

..Respondent(s)

O R D E R

Heard learned counsel for the parties.

This appeal is directed against judgment and order dated 26.9.1997 passed by the High Court in Regular Second Appeal No. 681 of 1989. The dispute arose out of a suit for partition and separate possession which was filed in 1978. The High Court while entertaining the Second Appeal and deciding the same framed two questions of law. Those questions of law are reproduced as under:

"1. Whether the shares as allotted by the trial Court are erroneous and need modification?

2. Whether all the properties of the suit are available for partition?"

In our considered view, the above-mentioned questions of law cannot be called substantial questions of law within the meaning of Section 100 of Code of Civil Procedure.

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In view of the amendment of Code of Civil Procedure by Act 104 of 1976, the High Court's power to entertain and pass final judgment in Second Appeals is statutorily regulated under Section 100 of Code of Civil Procedure. Following the mandate of Section 100 CPC, it is obvious that substantial question of law would mean a question of law of considerable importance affecting the rights of the parties and it is incumbent on the part of the High Court to exercise its jurisdiction on the basis of such substantial

questions of law which it will frame. As noted above, none of the aforesaid two questions is a substantial questions of law or even a question of law.

Apart from that we find at page 15 of the impugned judgment, the High Court has proceeded virtually on surmises by stating " I am satisfied that all the suit properties are available for the partition and the modification made by the first appellate Court is prima facie wrong."

We are constrained to observe that we are unable to appreciate the aforesaid finding of the High Court. While finally deciding a Second Appeal, High Court should not just record 'prima facie' finding. There are similar such findings in other parts of the judgment rendered by the High Court in Second Appeal.

In our view, the High Court has not properly appreciated the scope of the Second Appeal under Section 100 of Code of Civil Procedure and, therefore, has exercised its jurisdiction not in a manner prescribed by the Code of Civil Procedure. The order of the High Court rendered in Second Appeal is accordingly set aside and

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the judgment of the first Appellate Court is affirmed. We are of the view no substantial question of law falls for decision in this Second Appeal. The appeal is thus allowed.

No order as to costs.

.....J.
(G.S. SINGHVI)

.....J.
(ASOK KUMAR GANGULY)

New Delhi
August 10, 2010

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ITEM NO.101

COURT NO.11

SECTION IVA

ALLAMMA AND ORS.

Appellant (s)

VERSUS

MOULASA GOUSUSA MANIYAR 'D'BY LRS & ORS

Respondent(s)

(With office report)
[For further arguments]

Date: 10/08/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Appellant(s) Ms.Rajani K.Prasad, Adv.
Mr. C.V. Subba Rao,A.O.R.

For Respondent(s) Mr. C. Balakrishna,A.O.R.

Mr.Mohan V.Katarki, Adv.
Mr. Ashok Kumar Sharma,A.O.R.
Ms.Gagan Deep Kaur, Adv.

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

The appeal is allowed in terms of the signed order.

No order as to costs.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed order is placed on the file)