

C.A.No. 6474 OF 1998

ITEM No. 116

Court No. 10

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. 6474 of 1998

M.S. Mahaboob ShariffAppellant (s)

VERSUS

H. BabannaRespondent (s)

(With office report)

Date : 19-02-2004 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant (s)Mr. Girish Ananthamurthy, Adv.
for Mr. P.P. Singh, Adv.

For Respondent (s)Mr. E.C. Vidya Sagar, Adv.

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

The appeal is allowed. No costs.

[Alka Dudeja] [Janki Bhatia]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6474 OF 1998

M.S. Mahaboob Shariff...Appellant (s)

Versus

H. Babanna...Respondent(s)

O R D E R

The plaintiff-respondent filed a suit for possession based on title with a prayer for mandatory injunction to remove the construction put up by the defendant-appellant. The suit was decreed by the trial court. The first appeal filed by the defendant-appellant was accepted. The judgment and decree of the trial court was set aside and the suit was ordered to be dismissed. Aggrieved against the aforesaid order, the plaintiff-respondent filed a second appeal before the High Court. The High Court, without framing any substantial question(s) of law, accepted the appeal, set aside the order of the first appellant court and restored that of the trial court. The order passed by the High Court is contrary to the provision of Section 100 of Code of Civil Procedure, 1908. This Court in number of judgments has held that the High Court cannot acquire jurisdiction to entertain the second appeal without framing substantial question of law. (For reference see Panchugopal Barua and Ors. Vs. Umesh Chandra Goswami and Ors, reported in 1997 (4) SCC 713). The

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judgment of the High Court, being contrary to law, laid down by this Court, is set aside. The case is remitted back to the High Court for a fresh decision. The High Court would frame substantial question of law, if any, arising in the appeal and proceed to hear the appeal only thereafter.

The appeal is, accordingly, allowed. No costs.

Since the second appeal in the High Court pertains to the year 1993, we would request the High Court to expedite the hearing of the appeal.

.....J.
(Ashok Bhan)

.....J.
(S.H. Kapadia)

New Delhi,
February 19, 2004.