

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.932 OF 2002

GURUDWARA SINGH SABHA & ANR.
)

Appellant(s)

VERSUS

RAMJI DASS CHELA A.DASS @ MEHLA RAM

Respondent(s)

(with application for exemption from filing O.T. with office report)

Date: 05/10/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE ALTAMAS KABIR

For Appellant(s)

Mr.A.D.N.Rao, Adv.

Ms.Rita Gupta, Adv.

For Respondent(s)

Mr.Sarad Singhania, Adv. for

Ms. Mridula Ray Bharadwaj, Adv.

UPON hearing counsel the Court made the following

O R D E R

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. 932 OF 2002

Gurudwara Singh Sabha & Anr.

Appellant (s)

)

Versus

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Ram

Respondent (s)

O R D E R

The High Court has interfered with the concurrent findings recorded by

the courts below without framing a substantial question of law, as enjoined by

Section 100 of the Code of Civil Procedure (for short "CPC"). This Court in a

catena of decisions has held that the High Court can exercise its jurisdiction

under Section 100 CPC in second appeal only on the basis of substantial question

of law framed at the time of admitting the appeal or modified or substituted later

and the second appeal has to be heard and decided only on the basis of such duly framed substantial question of law, if any. Judgment rendered by the High Court in second appeal without following the aforesaid procedure is not sustainable in law.

Reference may be made to R.Lakshmi Narayan v. Santhi [2001 (4) SCC 688], M.S.V.Raja & Another v. Seeni Thevar & Others [2001 (6) SCC

652], Kanhaiyalal & Others v. Anupkumar & Others [2003 (1) SCC 430], R.V.E.Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P.Temple & Another [2003 (8) SCC 752], Md.Mohammad Ali (Dead) by Lrs. V. Jagadish Kalita & Others [2004 (1) SCC 271], Thiagarajan & Ors. v. Sri Venugopalaswamay B. Koil & Ors. [JT 2004 (5) SC 54].

In all the aforesaid cases, this Court has held that the High Court can hear the second appeal only on the substantial questions of law. The appeal can be decided only on the basis of duly framed substantial questions of law, if any. A judgment rendered by the High Court under Section 100 CPC without following the aforesaid procedure is not sustainable in law.

As indicated above, in the present case, the High Court has assumed jurisdiction under Section 100 CPC and, without framing a substantial question of law interfered with the concurrent findings of fact recorded by the courts below. On this ground alone, the appeal

is

accepted. The impugned order of the High Court is set aside and the case

is remitted back to the High Court for disposal afresh in accordance with

law. The High Court will first frame questions of law, if any, and then

proceed with the matter and decide the same in accordance with law.

Since the proceedings pertain to a suit having been instituted in

list the year 1983, we would request the Hon'ble Chief Justice to

second appeal out of turn and, if possible, dispose it off within four months

of the receipt of a copy of this order and the records.

The Registry is directed to transmit the record of this case to the

High Court forthwith.

The appeal stands allowed accordingly.

.....J.

.....
(ASHOK BHAN)

New Delhi;

.....J.

October 05, 2005.

.....
(ALTAMAS KABIR)