

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2571 OF 2012
(Arising out of SLP(C) No. 20739 of 2008)

RULDU

Appellant

VERSUS

RISALA (D) BY LRS.& ORS.

Respondents

O R D E R

1. Delay condoned.

2. Leave granted.

3. This appeal arises out of the judgment and order passed by the Punjab and Haryana High Court in Civil Regular Second Appeal No. 1364 of 1985 dated 05.10.2007. By the impugned judgment and order, the High Court has reversed the judgment and order passed by the first appellate court.

4. We do not intend to notice the facts in detail for the simple reason that we intend to remand the matter to the High Court to frame the substantial question of law, as required under Section 100 of the Code of Civil Procedure, 1908 ('Code' for short) and decide the matter afresh.

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5. In the instant case, the appellant has been affected by a civil decree dated 25.10.1981 passed by the trial court in Civil Suit No. 120 of 1981, wherein, the respondents were declared as the owners in possession of the land in dispute. The appellant had challenged the said decree by filing a suit before the Trial Court, which was dismissed vide order dated 16.01.1984. This order came to be reversed by the first appellate court in favour

of the appellant, vide its order dated 14.1.1985. Aggrieved by the said order, the respondents herein had filed a regular second appeal before the High Court under Section 100 of the Code. The High Court has proceeded to decide the lis between the parties without framing the substantial question of law, as required under Section 100 of the Code.

6. The primary contention of the appellant before this Court is that the High Court, while reversing the finding of the first appellate court, ought to have complied with the mandatory requirement of Section 100 of the Code and since that has not been done, the learned counsel would submit that the matter requires to be remanded to the High Court for a fresh disposal in accordance with law after framing the substantial question of law that may arise in the second appeal.

7. Learned counsel appearing for the respondents sought to justify the impugned order by contending that this Court, even if such a question of law is not framed by the High Court, may consider the judgment and order passed by the High Court and, decide the appeal on merits. We are afraid that we can be doing such an exercise in this appeal. Time and again, this Court has observed that the High Court, in the second appeal, if it wants to reverse the findings of the trial court, is required to frame a substantial question of law as mandated under Section 100 of the Code.

8. We have gone through the order passed by the High Court. We notice that the High Court has failed to frame the substantial question of law, as required under Section 100 of the Code. In that view of the matter, we have no other alternative but to set aside the judgment and order passed by the High Court in Regular Second Appeal No. 1364 of 1985 dated 5.10.2007.

For Respondent(s) Mr. Neeraj Kumar Jain, Sr. Adv.
R.1 Mr. Aman Priye Jain, Adv.

 Mrs.K. Sarada Devi,Adv.
 Mr. Bhaskar Y. Kulkarni ,Adv

R.3 to 5 Ms. Nidhi, Adv.

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

Delay condoned.
Leave granted.
Appeal is allowed in terms of the signed order.

(NAVEEN KUMAR)
COURT MASTER

(SHARDA KAPOOR)
COURT MASTER

(Signed order is placed on the file)