

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.6249 OF 2009
(Arising out of S.L.P. (C) No.23723 of 2008)

Devarasu ...Appellant(s)

Versus

Veerasekaran & Anr. ...Respondent(s)

O R D E R

Leave granted.

The suit filed by the appellant for declaration of title and permanent injunction was decreed by the trial Court vide judgment dated 31.1.1995. The appeal preferred by the respondents was dismissed by District Judge, Villupuram but the second appeal filed by them has been allowed by the High Court and suit of the plaintiff-appellant dismissed. Hence, this appeal by special leave.

We have heard learned counsel for the parties and scrutinized the records. In our opinion, the impugned judgment is liable to be set aside only on the ground of violation of Section 100 of the Code of Civil Procedure. Sub-section(1) of Section 100 lays down that an appeal shall lie to the High Court from every decree passed in appeal by any court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law. Sub-section(4) lays down that where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. In terms of sub-section 5, the
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appeal is required to be heard on the question so formulated and respondent at liberty to argue that the case does not involve such question. Proviso to sub-section(5) empowers the High Court, for reasons to be recorded, to hear the appeal on any other substantial question of law which may not have been formulated in terms of sub-section(4). In the present case, no substantial question of law was framed by the High Court till the commencement of hearing. The substantial question enumerated in para 8 of the impugned judgment was formulated only during the course of argument. This is legally impermissible. Unless the question is formulated and the respondent is put to notice in relation to such question, he/she is deprived of the opportunity to make submissions with reference to the substantial question of law formulated by the High Court and also show that the case does not involve such question.

Accordingly, the appeal is allowed, impugned judgment is set aside and the matter is remitted to the High Court. Now, the High Court shall consider whether any substantial question of law arises in the second appeal or not. If it comes to the conclusion that the same arises, in that eventuality, the same shall be formulated. Thereafter, the appeal shall be heard and disposed of in accordance with law after giving opportunity of hearing to the parties.

.....J.
[B.N. AGRAWAL]

.....J.
[G.S. SINGHVI]

New Delhi,
September 14, 2009.