

K.K. KANNAN (D) BY LRS.
v.
KOOLIVATHUKKAL KARIKKAN MANDI & ORS.
(Civil Appeal No. 612 of 2003)

DECEMBER 10, 2009

[P. Sathasivam and Asok Kumar Ganguly, JJ.]
2009 (16) SCR 362

The Order of the Court was delivered

ORDER

Heard learned counsel for both sides.

Legal representatives of defendant No.1 and defendant No.2 are the appellants before us. Even at the outset, learned counsel appearing for the appellants pointed out that the High Court while reversing the concurrent decisions of both the Courts below, committed an error in not adhering to the mandates prescribed in Section 100 of the Code of Civil Procedure. Apart from the said contention, he also pointed out that the High Court went wrong in interfering with the factual decisions arrived at by both the Courts.

With regard to the first contention in para 3 of the impugned judgment, the High Court has merely referred the grounds A to F raised in the memorandum of second appeal as substantial questions of law for consideration. After referring the same, the High Court without considering and formulating the substantial question of law allowed the second appeal and set aside the conclusion arrived at by the Courts below.

It is useful to refer Section 100 of the Code of Civil Procedure which reads as under:

“100. *Second appeal*.- (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, 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.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the

(6) hearing of the appeal, be allowed to argue that the case does not involve such question:

provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.”

While considering the above provision this Court in series of decisions held that before entertaining the second appeal, the High Court has to satisfy that the case involves a substantial question of law. As per sub-section (3), the memorandum of appeal should state the substantial question of law involved in the second appeal. Sub-section (4) mandates that on satisfying that a substantial question of law is involved, the High Court should formulate the said question for consideration. As per sub-section (5), the High Court has to hear the question so formulated and take a decision one way or the other. (vide *Kanhaiyalal & Ors. Versus Anupkumar & Ors.*, (2003) 1 SCC 430, *Chadat Singh Versus Bahadur Ram & Ors.*, (2004) 6 SCC 359, *Sasikumar & Ors. Versus Kunnath Chellappan Nair & Others*, (2005) 12 SCC 588, *Joseph Severance & Ors. Versus Benny Mathew & Ors.*, (2005) 7 SCC 667 and *Gian Dass Versus Gram Panchayat, Village Sunner Kalan & Ors.*, (2006) 6 SCC 271.

On going through the impugned order of the High Court, we are of the view that the High Court has not fulfilled the mandates as provided in Section 100 C.P.C. The High Court has merely mentioned grounds A to F as stated in the memorandum of second appeal but has not formulated the question after satisfying that a substantial question of law involved in that appeal. Mere reference to the grounds as stated in the memorandum of second appeal would not satisfy the mandates prescribed in Section 100 more particularly when the High Court allowed the second appeal setting aside concurrent decisions of the Courts below. In order to fulfill the conditions mentioned in Section 100 if the High Court is satisfied that the substantial question of law is involved, it is to formulate that question, then hear the second appeal on the question so formulated. In the event of formulating such question, it is also the duty of the Court to permit the respondent to argue that the case does not involve any such question. In the case on hand, such recourse has not been adopted by the High Court.

We are satisfied that the procedure adopted by the High Court is not in accordance with Section 100 of the C.P.C. Without going into the merits of the claim made by both the parties, we set aside the impugned judgment of the High Court and remit the same for fresh disposal as indicated above. We make it clear that we have not expressed anything on the merits of the claim of both parties. We request the High Court to consider and pass fresh orders expeditiously. Both the appeals are allowed on the above terms. No costs.