

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.1164 OF 2009
(Arising out of S.L.P. (C) No.24797 of 2007)

Parul Bala Ghosh and Ors.

...Appellant(s)

Versus

Bishnu Pada Ghosh and Ors.

...Respondent(s)

O R D E R

Leave granted.

Heard learned counsel for the parties.

The suit for declaration of title and permanent injunction filed by Narayan Chandra Ghosh (predecessor-in-interest of the appellants herein) was decreed by the trial court on 7th July, 1989. The appeal preferred against the judgment of the trial court was dismissed by Assistant District Judge, Kalna, District Burdwan vide his judgment and decree dated 30th April, 1991. However, when the matter was taken to the High Court in second appeal, the decree of injunction was set aside.

A reading of the impugned order shows that the High Court proceeded to decide the appeal on the premise that in terms of the order passed at the time of admission of the appeal, the grounds contained in the memorandum of appeal could be treated as substantial questions of law. We have carefully gone through the memo of appeal and find that the

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grounds taken therein do not specify the substantial questions of law. On its part, the High Court did not frame any substantial question of law as postulated under Section 100 of the Code of Civil Procedure. This being the position, the impugned order is liable to be set aside.

Accordingly, the appeal is allowed, impugned order is set aside and the matter is remitted to the High Court which shall first consider whether any substantial question of law arises in the second appeal or not. In case, the High Court is of the opinion that substantial question of law arises, it shall first frame the same and thereafter proceed to dispose of the second appeal on merits.

[B.N. AGRAWAL]J.

[G.S. SINGHVI]J.

New Delhi,
February 23, 2009.