

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 2179 OF 2009
(Arising out of SLP(C) No. 5390/2007)

Jarnail Singh (D) Thr. Lrs.

.. Appellant(s)

Versus

Dhanna Singh & Ors.

.. Respondent(s)

ORDER

Leave granted.

This appeal is directed against the judgment, dated 13th September, 2006, passed by a Single Bench of the High Court of Punjab & Haryana at Chandigarh in RSA No. 798/1983. By the impugned judgment, the High Court has allowed the appeal; reversed the decision of the First Appellate Court and has restored the finding recorded by the Trial Court in respect of Will dated 31st May, 1979.

At the time of issuing notice to the respondent on 2nd April, 2007, it was indicated in the order that the matter may have to be remitted back to the High Court on account of failure on its part to formulate the substantial question of law.

Accordingly, we have finally heard learned counsel for the parties at this stage itself.

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It is manifest from the impugned order, that although the learned Judge has referred to the issues framed by the trial court, but he proceeded to decide the appeal on merits without formulating any substantial question of law. It is now well settled by a series of decisions of this Court that in a second appeal under Section 100 of the Civil Procedure Code, 1908, if the High court is satisfied that the case involves a substantial question of law, then the High Court must frame the substantial question of law, and only thereafter dispose of the appeal on the basis of material before it. It is trite to state that allowing a second appeal without framing a substantial question of law is clearly contrary to the mandate of Section 100 C.P.C. Admittedly, in the present case, the learned Judge failed to formulate substantial question of law and thereby committed an error in allowing the second appeal. Therefore, the impugned judgment is liable to be set aside on this short ground alone.

Consequently, the appeal is allowed; impugned judgment is set aside and the matter is remitted back to the High Court for fresh decision in accordance with law after formulating the substantial question of law. There will be no order as to costs.

.....J.

[D.K. JAIN]

.....J.

[R.M. LODHA

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NEW DELHI,
APRIL 06, 2009.