

BOKKA SUBBA RAO

v.

KUKKALA BALAKRISHNA & ORS.

(Civil Appeal No. 1245 of 2008)

FEBRUARY 12, 2008

(TARUN CHATTERJEE & DALVEER BHANDARI, JJ.)

Code of Civil Procedure, 1908; S.100:

Second appeal – Allowed by High Court without formulating substantial question of law – Correctness of – Held: Incorrect – Matter remitted to High Court for formulating the substantial question of law and to decide on merits.

The issue which arose for determination in this appeal was as to whether the High Court was right in deciding the matter without formulating the substantial question of law in second appeal in terms of S.100 of the Code of Civil Procedure.

Partly allowing the appeal, the Court

HELD: 1.1 It is now well settled that the High Court in second appeal, before allowing the same, ought to have formulated the substantial questions of law and thereafter, to decide the same on consideration of such substantial questions of law. In this case, admittedly no such substantial question of law had been formulated by the High Court, and the second appeal was allowed. That being the position, the judgment of the High Court passed in second appeal is set aside and the matter is remitted to the High Court for fresh decision on merits after formulating the substantial questions of law. (Para – 4) [754-G; 755-A]

1.2 It is clarified that this Court has not gone into the merits of the appeal. (Para – 5) [755-C]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No 1245 of 2008.

From the Judgment and Order dated 26.07.2005 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Second Appeal No. 1665 of 2004.

B A.T.M. Sampath and T.S. Shamtha for the Appellant.

T.V. Ratnam for the Respondents.

The Judgment of the Court was delivered by

C **TARUN CHATTERJEE, J.** 1. Leave granted.

2. At the time of issuing notice to the special leave petition, this Court confined notice as to why the second appeal should not be remitted to the High Court for failure to formulate and decide the substantial question of law as required by Section 100 of the Code of Civil Procedure.

3. A suit was filed by the plaintiffs-respondents for declaration that Item No.2 of the plaint schedule property was their absolute property, and for a perpetual injunction, restraining the respondents from obtaining possession of the said item. The suit was dismissed, which was affirmed in appeal. However, by the impugned judgment of the High Court passed in second appeal, the suit was decreed. Feeling aggrieved by the aforesaid judgment of the High Court of Andhra Pradesh at Hyderabad, a special leave petition has been filed in respect of which leave has already been granted.

4. Having heard the learned counsel for the parties and after examining the judgment of the High Court passed in the second appeal, we are of the view that the judgment in second appeal of the High Court is liable to be set aside on a very short question. It is now well settled by catena of decisions of this Court that the High Court in second appeal, before allowing the same, ought to have formulated the substantial questions of law and thereafter, to decide the same on consideration of such substantial questions of law. In this case, admittedly no such

substantial question of law had been formulated and thereafter, the second appeal was allowed. That being the position, we set aside the judgment of the High Court passed in second appeal and remit the appeal back to the High Court for fresh decision after formulating the substantial questions of law and thereafter, to decide it on merits.

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5. For the reasons aforesaid, the judgment of the High Court is set aside. The second appeal is restored to its original file. The High Court is requested to dispose of the second appeal at an early date preferably within six months from the date of supply of a copy of this order to it. We make it clear that we have not gone into the merits of the appeal which shall be decided after formulating the substantial questions of law and then to decide the second appeal in accordance with law.

C

6. The appeal is, therefore, allowed to the extent indicated above. There will be no order as to costs.

D

S.K.S.

Appeal partly allowed.