

MUTHU GOUNDER
v.
AMMAYEE AMMAL

A

JULY 9, 2002

[SYED SHAH MOHAMMED QUADRI AND S.N. VARIAVA, JJ.]

B

Code of Civil Procedure, 1908:

S.100—Second appeal—Substantial question of law—High Court deciding second appeal without framing substantial question of law though it formulated points which arose for its consideration—Held, it is manifest that High Court can entertain a second appeal only if it is satisfied that the case involves a substantial question of law—An obligation is cast on appellant to state precisely the substantial question of law involved in the case in the memorandum of second appeal and if the High Court is satisfied that a substantial question of law is involved in the case, it is required to formulate that question—Interference by High Court in second appeal without framing substantial question of law is impermissible and unsustainable—Case remanded to High Court for disposal in accordance with law.

C

D

Shankareppa M. Mutanki v. B.M. Mutanki, [2000] 9 SCC 254 and Birendera Kumar Dubey and Anr. Girja Nandan Dubey and Ors., [2001] 6 SCC 767, relied on.

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3717 of 2002.

F

From the Judgment and Order dated 20.8.2001 of the Madras High Court in SA. No. 1748 of 2000.

V. Prabhakar, Rakesh Garg and M.K.D. Namboodiri, for the Appellants.

S. Aravindh and V. Balachandran, for the Respondent.

G

The following Order of the Court was delivered :

Heard learned counsel for the parties.

Leave is granted.

H

A This appeal is directed against the judgment and order of the High Court of Judicature at Madras in Second Appeal No. 1748 of 2000 dated August 20, 2001.

B We have been taken through the judgment under challenge. It is evident that the learned Judge has disposed of the second appeal unmindful of the amended provisions of Section 100 C.P.C. inasmuch as no substantial question of law has been framed which is obligatory thereunder. Section 100 C.P.C. reads as under :

C “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.

D (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.

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

F 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.”

G From a perusal of the above provisions, it is manifest that the High Court can entertain a Second Appeal only if it is satisfied that *the case involves a substantial question of law*. An obligation is cast on the appellant to state precisely the substantial question of law involved in the case in the memorandum of Second Appeal and if the High Court is satisfied that a substantial question of law is involved in the Second Appeal it is required to formulate that question. The appeal has to be heard on that question though H the respondent is permitted to argue that no such question is involved in the

case. Nonetheless, the High Court has power to hear the appeal on any other substantial question of law not formulated by it provided it is satisfied that the case involves such other substantial question and in that event it has to record reasons. This Court reiterated the requirement of Section 100 C.P.C. on a number of occasions. [See : *Shankareppa M. Mutanki v. B.M. Mutanki*, [2000] 9 SCC 254 and *Birendera Mumar Dubey and Anr. v. Girja Nandan Dubey and Ors.*, [2001] 6 SCC 767.]

The learned Judge, in the instant case, failed to frame any substantial question of law though he formulated points which arose for his consideration and accordingly decided the appeal. It follows that interference by the High Court in Second Appeal without framing substantial question of law is impermissible and unsustainable.

In this view of the matter, we set aside the judgment and order under challenge, restore the Second Appeal (No. 1748 of 2000) to the file of the High Court and remand the case to the High Court for disposal in accordance with law.

The appeal is accordingly allowed. No costs.

R.P.

Appeal allowed.