

BIRENDERA KUMAR DUBEY AND ANR.

A

v.

GIRJA NANDAN DUBEY AND ORS.

AUGUST 31, 2001

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

B

*Code of Civil Procedure, 1908 :*

*Ss. 100 and 101—Second appeal—High Court deciding second appeal on facts without framing substantial question of law, and setting aside judgment and decree of first appellate court—Held, High Court can entertain second appeal only when a substantial question of law arises from the judgment of the first appellate court—Second appeal restored to file of High Court—High Court would consider whether any substantial question of law arises from judgment and decree of first appellate court and, if so, to frame the question and dispose of that question.*

C

D

*Panchugopal Barua and Ors. v. Umesh Chandra Goswami and Ors., [1997] 4 SCC 713; Kshitesh Chandra Parkait v. Santosh Kumar Parkait and Ors., [1997] 5 SCC 438; The Tehsildar and Ors. v. G.V. Gopalakrishnappa and Ors., (disposed of on 25.9.2000) and Dyamappa H. Gondar v. Ganeshappa S. Sudambi and Anr., [2001] Vol. 6 SCC 768.*

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6060 of 2001.

From the Judgment and Order dated 16.5.2000 of the Patna High Court in S.A. No. 353 of 1993.

F

Atul K.Sinha and Devendra Singh for the Appellants.

S.K. Sinha for the Respondents.

The following Order of the Court was delivered :

G

Heard the learned counsel for the parties

Delay is condoned.

H

A Leave is granted.

This appeal is directed against the judgment and decree of the High Court of Patna in Second Appeal No. 353/1993 dated May 16, 2000. By the impugned judgment, the High Court set aside the judgment and decree of the first Appellate Court and restored that of the Trial Court.

B

A perusal of the judgment shows that the High Court has not framed any substantial question of law before proceeding to dispose of the Second Appeal. This Court has in *Panchugopal Barua and Ors., v. Umesh Chandra Goswami and Ors.*, [1997] 4 SCC 713; *Kshitesh Chandra Parkait v. Santosh Kumar Parkait and Ors.*, [1997] 5 SCC 438; *The Tehsildar and Ors. v. G.V.*

C

*Gopalakrishnappa and Ors.* disposed of on 25.9.2000 and *Dyamappa H. Gondar v. Ganeshappa S. Sudambi and Anr.*, disposed of on 28.9.2000, held that having regard to the provisions of Sections 100 and 101 C.P.C., the High Court can entertain the Second Appeal only when a substantial question of law arises from the judgment of the first Appellate Court. As the High Court

D

has not framed such a question but decided the Second Appeal on fact and reversed the first Appellate Court's judgment and decree, we have no option except to set aside the judgment and decree under appeal and remand the case to the High Court for fresh disposal according to law.

E

The judgment and decree, under appeal, are set aside, the Second Appeal is restored to the file of the High Court. The High Court will now consider whether any substantial question of law arises from the judgment of the first Appellate Court and if so, to frame the question and dispose of the appeal on that question. The appeal is accordingly allowed. There shall be no order as to costs.

F

R.P.

Appeal allowed.