

RAMAVILASOM GRANDHASALA AND ORS.

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v

N.S.S. KARAYOGAM

MAY 5, 2000

[V.N. KHARE AND N. SANTOSH HEGDE, JJ.]

B

*Code of Civil Procedure, 1908 :*

*S. 100—High Court deciding second appeal without formulating any substantial question of law as required under sub-section (4) of s. 100—Held, High Court is required to frame substantial question of law and only then it acquires jurisdiction to decide second appeal on merits—Judgment of High Court set aside—Matter sent back to it to decide appeal after framing substantial question of law.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3269 of 2000.

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From the Judgment and Order dated 19.12.98 of the Kerala High Court in S.A. No. 1155 of 1989.

S.V. Rajan, C.N. Sree Kumar and P. Sureshan for the Appellant.

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T.L.V. Iyer and Remesh Babu M.R. for the Respondent.

The following Order of the Court was delivered :

Leave granted.

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The plaintiff-respondent filed a suit for declaration and possession. The said suit was dismissed. An appeal against the said decree was also dismissed. Thereafter the plaintiff-respondent filed a second appeal before the High Court. The High Court without formulating any substantial question of law, as required under sub-section (4) of Section 100 of Code of Civil Procedure allowed the second appeal and decreed the suit. It is against the said judgment the defendant-appellant is in appeal. This Court on more than one occasion has held that under sub-section (4) of Section 100 of Code of Civil Procedure, the High Court is required to frame substantial question of law and only then it acquires jurisdiction to decide a Second Appeal on merits. In this case the

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A High Court without framing any substantial question of law has allowed the appeal and this in itself is a sufficient ground to set aside the judgment under appeal. We, accordingly, set aside the judgment under appeal and send the matter back to the High Court to decide the appeal only after framing substantial question of law which may arise in the case.

B The appeal is allowed. The High Court may decide the matter as expeditiously as possible. No costs.

R.P.

Appeal allowed.