

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.4267 OF 1999

SUNDEARAMMAL
llant(s)

Appe

VERSUS

NATARAJAN & ORS.

Respondent(s)

(With office report)

Date: 27/01/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE A.K.MATHUR

For Appellant(s)

Mr. V. Krishna Murthy, Adv.

Mr. V.Ramasubramanian, Adv.

For Respondent(s)

Mr. N.Rajaraman, Adv.

Mr. K.L. Taneja, Adv.

Dr. V.P. Appan, Adv.

Mr. Rakesh Taneja, Adv.

UPON hearing the Court made the following

O R D E R

The Appeal is allowed in terms of the signed order.

(Parveen Kr. Chawla)

(Kanwal Singh)

Court Master

Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4267 OF 1999

Sundarammal

Appellant (s)

Versus

Natarajan & Ors.

Respondent (s)

O R D E R

Aggrieved against the order of the High Court in Second

Appeal No. 598/85, defendant No.1-appellant herein (herein-after

called "the appellant") who is the wife of plaintiff-respondent No.1,

has filed the present appeal by grant of special leave.

The High Court by the impugned judgment has accepted the

appeal filed by the plaintiff-respondent No.1 and set aside the findings

recorded by the first appellate court and decreed the suit filed by

respondent No.1. At the time of admission of the Second Appeal, the

following substantial question of law was framed:

"Whether the lower appellate Court, on the facts and circumstances of the case, erred in holding that the transaction was not benami"?

Although this question of law had been framed by the High Court but without referring to or noticing the same, the High Court, while disposing of the appeal on re-appreciation of evidence, has set aside the findings recorded by the first appellate court.

In R.Lakshmi Narayan v. Santhi [2001(4) SCC 688], M.S.V.Raja & Anr. v. Seeni Thevar & Ors. [2001(6) SCC 652, R.V.E. Venkatachala Gonder v. Arulmigu Viswesaraswami & V.P.Temple & Anr. [2003(8) SCC 752], M. Mohammad Ali (D) by L.Rs. v. Jagadish Kalita & Ors. [2004 (1) SCC 271], Thiagarajan & Ors. v. Sri Venugopaldaswamay B. Koil & Ors. [JT 2004(5) SC 54], this Court has held that the High Court can exercise its jurisdiction under Section 100 CPC to entertain the Second Appeal only on a substantial question of law framed at the time of admission or at a subsequent stage, and while deciding the same confine itself to the question (s) of law framed.

Since the High Court has failed to take notice of the question of law framed at the time of admission of the Second Appeal and decided the same as if it was hearing the First Appeal, the judgment under appeal cannot be sustained. Accordingly, the same is set aside and the case is

remitted back to the High Court for a fresh decision in accordance with law. The High Court would be at liberty to either decide the appeal on the question of law already framed or re-frame the question(s) of law if the same arise from the findings recorded by the Courts below.

Since the present proceedings pertain to a suit instituted in the year 1983, we would request the High Court to take up the appeal on priority basis and dispose it off as expeditiously as possible.

The Registry is directed to transmit the record of this case to the High Court forthwith.

The appeal is allowed accordingly.

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J

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(ASHOK BHAN)

New Delhi;
J.
January 27, 2005.

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(A.K. MATHUR)