

CASE NO.:
Appeal (civil) 4312 of 2007

PETITIONER:
CIDDAGUNTA SUBRAHMANYAM REDDY

RESPONDENT:
NAMAKARI MUNI REDDY & ORS

DATE OF JUDGMENT: 17/09/2007

BENCH:
Tarun Chatterjee & Dalveer Bhandari

JUDGMENT:
JUDGMENT

O R D E R

[Arising out of SLP [C] No.12079 of 2006]

TARUN CHATTERJEE, J.

1. Leave granted.

2. This appeal is directed against the judgment dated 3/2/2006 of the Andhra Pradesh High Court at Hyderabad in second appeal No. 536 of 1994 and second appeal No. 561 of 1994. By the impugned judgment, the High Court has allowed the two appeals filed by the respondent and set aside the judgment of the appellate court thereby restoring the judgment and decree passed by the trial court decreeing the suit of the respondent.

3. In our view, on a short question and without going into the merits, the judgment under appeal is liable to be set aside, as we find that the High Court, while entertaining the second appeal, has failed to frame the substantial question of law which is a mandatory requirement under section 100 of the Civil Procedure Code (for short \023CPC\024). It is true that the substantial question of law which arose for consideration, as observed by the High Court, was whether the lower appellate court was just and proper in throwing the burden against the plaintiff in O.S. No. 318/1981 to prove Exhibit \021B.1 agreement of sale executed in his favour. In our view, it was the duty of the High Court to specifically frame the question of law at the time of admission of appeal and thereafter, at the time of hearing of the second appeal, the question so framed should have been decided by the High Court. In our opinion, the question that was formulated at the time of hearing of the second appeal cannot be termed as a substantial question of law. (See Thiagarajan & Ors. V/s. Sri Venugopalaswami B. Koil & Ors (2004) 5 SCC 762)

4. In any view of the matter, the substantial question of law referred to by the High Court in its impugned judgment was not a substantial question of law that could justify interference of the High Court under Section 100 of the CPC.

5. For the reasons aforesaid, we have no alternative but to set aside the judgment of the High Court on the short question posed before us. Accordingly, the impugned judgment is set aside. The High Court is directed to frame the substantial questions of law before the second appeal is taken up for hearing and after framing such substantial questions of law, the High Court shall dispose of the same within a period of 3 months from the date of supply of a copy of this order after giving hearing to the parties and without granting any unnecessary adjournments to either of them. For the reasons aforesaid, the appeal is allowed to the extent indicated above. There will be no order as to costs.