

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2771 OF 2020
(Arising out of SLP(C) No. 22424 of 2017)

KUNJUMHAMMED & ANR.

Appellant(s)

VERSUS

MARIYUMMA

Respondent(s)

O R D E R

Leave granted.

This appeal takes exception to the judgment and order dated 31.01.2017 passed by the High Court of Kerala at Ernakulam in Second Appeal No. 209 of 2003, whereby the High Court allowed the Second Appeal without formulating substantial question of law.

After having heard learned counsel for the parties and noticing the fact stated in paragraph 4 of the impugned order, it is apparent that no substantial question of law was formulated and the appeal was placed for consideration before the Court on the basis of question of law in the memorandum of appeal. The Court ought to have formulated substantial question of law and proceeded with the arguments thereafter. A mere mention about the question having been formulated in the memorandum of appeal is not enough. That is not in accord with the settled law. It is possible that more

than one question of law had been formulated in the appeal memo, as substantial question of law. The Court ought to advert to the question which it thinks appropriate to examine and then answer the same, as is mandated in terms of the settled legal position, including in *Bokka Subba Rao Vs. Kukkala Balakrishna and Others* (2008) 3 SCC 99.

Accordingly, we set aside the impugned order and relegate the parties before the High Court for re-consideration of the Second Appeal on its own merits and in accordance with law.

All contentions available to the parties are left open, to be decided on its own merits.

We request the High Court to take up the Second Appeal for hearing expeditiously.

The civil appeal is disposed of accordingly.

Pending applications, if any, stand disposed of.

.....J
(A.M. KHANWILKAR)

.....J
(DINESH MAHESHWARI)

.....J
(SANJIV KHANNA)

New Delhi
July 17, 2020

ITEM NO.1

Virtual Court 3

SECTION XI-A

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

Petition(s) for Special Leave to Appeal (C) No(s). 22424/2017

(Arising out of impugned final judgment and order dated 31-01-2017
in SA No. 209/2003 passed by the High Court Of Kerala At Ernakulam)

KUNJUMHAMMED & ANR.

Petitioner(s)

VERSUS

MARIYUMMA

Respondent(s)

(ONLY I.A NO. 60401/2020 AND 60403/20 TO BE LISTED
IA No. 60401/2020 - CLARIFICATION/DIRECTION
IA No. 60403/2020 - EXEMPTION FROM FILING O.T.)

Date : 17-07-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE DINESH MAHESHWARI
HON'BLE MR. JUSTICE SANJIV KHANNA

For Petitioner(s)

Mr. V. Giri, Sr. Adv.
Mr. K. Parameshwar, AOR
Mr. M.V. Mukunda, Adv.

For Respondent(s)

Mr. Gaurav Agrawal, Adv.
Mr. Mohammed Sadique T.A., AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The Civil Appeal is disposed of in terms of the signed order.

Pending applications, if any, stand disposed of.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)

[Signed order is placed on the file]

