

**K. Mohan Lal Vs. Rukmini Bai Alias Laxmi Bai and Others**

**K. Mohan Lal Vs. Rukmini Bai Alias Laxmi Bai and Others**

**SooperKanoon Citation :** [sooperkanoon.com/950201](http://sooperkanoon.com/950201)

**Court :** Andhra Pradesh

**Decided On :** Mar-20-2012

**Judge :** R. Kantha Rao

**Appeal No. :** REV.S.A.M.P.NO.1542 OF 2011 IN S.A.NO.1471 OF 2006

**Appellant :** K. Mohan Lal

**Respondent :** Rukmini Bai Alias Laxmi Bai and Others

**Judgement :**

This review second appeal miscellaneous petition is filed against the judgment dated 08.04.2007 passed by this Court in S.A.No.1471 of 2006 against the judgment and decree, dated 31.07.2006 passed by the III Additional Chief Judge, City Civil Court, Hyderabad in A.S.No.528 of 2005.

2. This Court by its judgment in the second appeal set aside the judgment and decree dated 31.07.2006 passed by the III Additional Chief Judge, City Civil Court, Hyderabad in A.S.No.528 of 2005 and confirmed the decree and judgment dated 02.08.2005 passed by the III Additional Rent Controller-cum-XV Junior Civil Judge, Hyderabad, which is the trial Court in O.S.No.1613 of 2000.

3. In the first place, it would like to make a mention about the facts and circumstances resulted in setting aside the judgment passed by the first appellate Court by the judgment of this Court in the second appeal by referring the parties to the lis as plaintiffs and the defendant.

4. The deceased first plaintiff Mr Shiv Raj filed a suit for permanent injunction in respect of an extent of 1500 sq.yards or 1254 sq. meters of land in municipal Ward No.18, Sultan Bagh, Jangummet, Faluknama, Hyderabad. He died pending suit and his legal representatives have been brought on record. The plaintiffs traced out their title to the schedule mentioned land through a registered sale deed dated 14.06.1998, marked as Ex.A.1 executed by one Dasarath Kumar in favour of the deceased first plaintiff. The plaintiffs' case is that Dasarath Kumar, their vendor purchased the site under Ex.A.2 sale deed dated 11.01.1960 from Md. Ulfat Ali Khan and that when the defendant tried to interfere with their possession of the schedule mentioned land without any manner of right, title or interest whatsoever, they were constrained by the conduct of the defendant to institute the suit for permanent injunction.

5. The suit was resisted by the defendant on the ground that the schedule mentioned land belongs to the defendant's vendor Makkaji, who was the owner and possessor of the said land. According to the defendant, the schedule mentioned land is in T.S.No.26 which is co-related to old Survey No.5/P. The original owner was said to be Smt. Kaneez Imtul Zabar Fathima from whom the father of the defendant allegedly purchased the entire land covered by the aforementioned survey number. The defendant also contended that the description of the property made by the plaintiffs in the schedule attached to the plaint is not correct, they do not have any right or interest in the said property and therefore, the suit which was instituted praying for the relief of permanent injunction is liable to be dismissed.

6. Before the learned Court below, the third plaintiff was examined as PW.1. and the plaintiffs marked Exs.A.1 to A.12, whereas the defendant himself was examined as DW.1 and marked Exs.B1 to B.13.

7. In proof of their title, the plaintiffs filed Ex.A.1-registered sale deed dated 14.06.1966 under which the deceased first plaintiff purchased the property from Dasarath Kumar. They also filed their vendors sale deed dated 11.01.1960 and the said document was marked as EX.A.2. The recitals of Ex.A.2-sale deed reveal that the vendor of the plaintiffs - Dasarath Kumar purchased schedule mentioned

land from Md. Ulfat Ali Khan. The recitals of Ex.A.1 also reveal that the deceased first plaintiff purchased 1500 sq.yards of land in Jangummet, Falaknuma, Hyderabad in Ward No.18. The northern boundary of Ex.A.1 is the land of Makkaji, who is no other than the father of the defendant. In Ex.A.2 link document under which the plaintiffs' vendor purchased the property, the southern boundary is shown as the land of Makkaji. In Exs.A.1 and A2 sale deeds only municipal Ward No.18 is mentioned. The survey number or town survey number are not mentioned. Ex.B.1 is the sale deed dated 06.02.1961 under which the defendant is claiming rights. In the said document also the southern boundary is mentioned as the land of Mohd.Ulfat Ali Khan and northern boundary is mentioned as the land of Balabai W/o Makkaji Saheb. Ex.B.1 is an extent of 32000 sq. yards of non agricultural land of Ward No.18. Mohd. Ulfat Ali Khan is no other than the plaintiffs' vendor's vendor. In Ex.B.1 sale deed, Ward No.18 is mentioned.

8. DW.1 had specifically admitted in the cross-examination that the schedule mentioned land does not cover any land under Ex.B.1 and Ex.B.2 sale deeds. It is further admitted in the cross examination by him that it is so recited in Ex.B.1 sale deed also. As per Ex.B.1 sale deed the southern boundary is the land of Mohd. Ulfat Ali Khan and DW.1 further admitted in his evidence that Mohd. Ulfat Ali Khan is one of the attestors of Ex.B.1 and that his vendors property is situated on the northern side of the property covered under Exs.A.1 and A.2.

9. Ex.A.4 is a receipt dated 11.10.1999 relating to non agricultural land assessment tax which shows that the plaintiff paid NALA tax for the suit property from 1966 to 1999. Ex.A.11 is the certified copy of the town survey register dated 02.09.1993 which is filed by the plaintiffs. In column No.10 of the said document, the vendor's name of the defendant is mentioned as Makkaji. In Ex.A.1 though the name of Makkaji is mentioned in the pattedar column, the name of the plaintiffs' vendor Dasarath Kumar was also mentioned in the column relating to possessors.

10. The learned Trial Court considering the pleadings of both parties, the documents filed by them and more particularly, the admissions made by DW1/defendant in the cross examination held that absolutely there is no dispute about the identity of the schedule land, and the plaintiffs could be able to establish

that they have title to the schedule land and have been in possession and enjoyment of the same, decreed the suit filed by them for permanent injunction. It was contended before the learned trial Court that the defendant's father filed O.S.No.60 of 1968 for permanent injunction for part of the property in Survey No.5 in which Dasarath Kumar is defendant No.6 and ultimately the suit filed by the defendant's father was decreed and therefore, the present suit filed by the plaintiffs is barred by res judicata. The learned trial Court considering the evidence of DW.1, in the cross examination, which is to the effect that the property forming part of O.S.No.60 of 1968 is the western part of Survey No.5 and the property in Ex.B.1 is a different one to that of the schedule mentioned property in the present case and there being no proof that Dattari Kumar and Dasarath Kumar are one and the same persons, rightly held that the decision in O.S.No.60 of 1968 does not operate as res judicata.

11. But, the learned first appellate Court observing that the very fact that the name of Dasarath Kumar was not mentioned as owner of the property and despite the assertion made by the plaintiffs that the mutation had not been effected in the name of the plaintiffs took the view that since the names of the plaintiffs or their vendor Dasarath Kumar were not found in the relevant records as pattadars/owners, it cannot be said that Dasarath Kumar purchased the land under Ex.A.2 sale deed from Mohd. Ulfat Ali Khan and from him the deceased first plaintiff purchased the said property under Ex.A.1 sale deed. Arriving at the said conclusion, the learned first appellate Court went to the extent of recording a finding that entries made in Ex.A.11 would falsify the contention in one way or the other.

12. This Court had extensively dealt with the approach adopted by the first appellate Court in the appeal against the judgment and decree passed by the trial Court and arrived at the conclusion that even though there was sufficient material which enabled the trial Court to pass a decree for permanent injunction in favour of the plaintiffs, the learned first appellate Court by overlooking the established principles governing the burden of proof in civil cases and also the construction of documents, reversed the well considered judgment passed by the trial Court without any basis and this Court, therefore, held that the judgment rendered by the

first appellate Court is contrary to the evidence on record, admissions made by the defendants and also contrary to the settled legal principles governing the burden of proof and construction of documents. This Court took the view that the documents filed by the parties clearly reveal that there was no ambiguity in the description of the schedule mentioned land. Even according to the defendant, the property of the defendant and the plaintiffs are different and plaintiffs could be able to establish the identity of the property. The recitals of the documents as well as the other documents filed by the plaintiffs clearly establish that the plaintiffs have title to, and have been in possession and enjoyment of the schedule mentioned property and therefore, they are entitled for injunction. This Court also pointed out in its judgment in the second appeal that the learned first appellate court is wholly unjustified in brushing aside the entire evidence in proof of the title and possession on the ground that Ex.A.11 does not indicate the mutation of property in the name of the plaintiffs or their vendor as owners. This Court had emphatically held by going through the entire evidence on record that the approach adopted by the first appellate Court is misconceived, it's findings are contrary to the evidence on record and it's judgment is totally perverse which enables this Court to interfere with the findings of the trial Court under Section 100 CPC, though the said findings relate to facts.

13. It has been contended on behalf of the review petitioner/defendant that no substantial question of law has been formulated by this Court and without formulating the substantial question of law, the arguments were heard in the second appeal and this amounts to error apparent on the face of record attracting the provisions of Section 114 and Order XLVII of the Code of Civil Procedure and the judgment is therefore, liable to be set aside. It has also been contended that the respondents/plaintiffs filed another suit O.S.No.6324 of 2000 for correction of entries and extent in TLSR which is marked as Ex.A.11, the same is clear admission that the property in T.S.No.26 against which the defendant's father's name is recorded as owner of the said property for which injunction is sought in O.S.No.6324 of 2000, the finding of the trial Court and this Court in the second appeal, that the suit schedule property is different property mentioned in Ex.A.1 is contrary to the averments in O.S.No.6324 of 2000 and therefore, no injunction could have been granted in the light of Ex.A.11.

14. It has been submitted on behalf of the review petitioner/defendant that subsequent to the conclusion of the arguments in the second appeal, the judgment in A.S.No.382 of 2007 was rendered and therefore, the judgment of this Court in the second appeal is required to be reviewed in the light of the judgment of the appellate Court in A.S.No.382 of 2007. According to the review petitioner, the judgment could not be produced earlier as the same is decided subsequent to the hearing of arguments in the second appeal. Some other grounds which have been urged by the review petitioner relate to the correctness of the findings recorded by this Court to hold that the judgment of the first appellate Court is misconceived, contrary to the evidence on record and perverse which cannot be subjected to review and they need not be adverted in the review application.

15. The respondents/plaintiffs filed the counter affidavit contending that the review petition filed by the defendant under Section 114 and Order XLVII of the Code of Civil Procedure is not maintainable since this Court had already given a specific finding in its judgment in the second appeal on the issues raised in the grounds of review and they cannot be re-agitated. As regards the judgment in A.S.No.382 of 2007, the respondents contended that it was brought to the notice of the first appellate Court about the pendency of the present second appeal before this Court that the issue in O.S.No.6324 of 2000 filed by the plaintiffs which was also the subject matter of consideration in A.S.No.382 of 2007 was whether the plaintiffs are entitled for mandatory injunction for mutation of the entries made in the revenue records, and the first appellate Court did not touch the aspect of their title or possession relating to the schedule mentioned land and therefore, the judgment in A.S.No.382 of 2007 could not have been of any consideration while disposing of the second appeal by this Court. The respondents further contended that the first appellate Court in A.S.No.382 of 2007 also clearly observed in its judgment that the present second appeal was pending before this Court and therefore, it refrained from going into the question of title or possession of the parties in respect of the schedule mentioned site. It is also contended that against the judgment in A.S.No.382 of 2007, the respondents filed second appeal No.920 of 2011 and the said second appeal is now pending before the High Court and therefore, the judgment in A.S.No.382 of 2007 even if it is produced before this Court at the time of disposing of the second appeal, this Court need not consider

the said judgment against which the Second Appeal No.920 of 2011 is admitted by this Court and is still pending.

16. It is settled law that the entries in the revenue records do not confer any title on the party whose name is found or entered in the revenue records. Therefore, even if the suit filed by the respondents/plaintiffs to mutate their names as pattedars in the revenue records is dismissed and is confirmed by the first appellate Court and if the said judgment is filed before this Court in the second appeal to receive as additional evidence and accepted would not have altered the judgment of this Court which is rendered considering the entire evidence on record with reference to the pleadings and admissions made by the defendant in the course of his cross examination. Further, the judgment in the first appeal in the aforementioned case is the subject matter of consideration in the second appeal before this Court, and therefore, the said aspect does not require any consideration while deciding the review petition.

17. The only question therefore, arises for consideration in the Review Petition relates to non-formulation of substantial question of law by this Court before hearing the parties in the second appeal.

18. Section 100 of the Code of Civil Procedure lays down that the second appeal is maintainable only when a substantial question of law is involved for consideration in the second appeal. Therefore, existence of substantial question of law for consideration is sine quo non for maintainability of the second appeal. Then, the further question which arises is that if the High Court disposes of the second appeal without framing a substantial question of law, whether it would amount to error apparent on the face of record requiring interference in review jurisdiction under Section 114 and Order XLVII of the Code of Civil Procedure.

19. I have heard Sri Gandra Mohan Rao, learned counsel appearing for the review petitioner and Sri Suresh Shiv Sagar, learned counsel appearing for the respondents elaborately on this point.

20. Learned counsel appearing for the review petitioner would submit that even the grounds raised in the second appeal consist substantial question of law,

unless the substantial question of law as required under Section 100 CPC is formulated by this Court before hearing the parties, it is an error apparent on the face of record and the judgment rendered by this Court without specifically formulating the substantial question of law is liable to be set aside under review jurisdiction.

21. On the other hand, the learned counsel appearing for the respondents would contend that the grounds raised in the second appeal which are part of the memorandum of grounds of appeal clearly demonstrate the existence of substantial question of law which are to the effect that the judgment rendered by the first appellate Court is in utter ignorance of the evidence on record, settled legal principles governing appreciation of evidence and burden of proof and they are in substance nothing but holding the judgment rendered by the first appellate Court is perverse which requires interference of this Court in the second appeal, the parties are aware of the said grounds raised in the memorandum of appeal, they participated in the hearing of the appeal, this Court heard the parties at length on the said question, non formulation of substantial question of law cannot be said to be error apparent on the face of record warranting interference in review jurisdiction and therefore, the well considered judgment of this Court cannot be reviewed on such technical plea.

22. Learned counsel appearing for the review petitioner/defendant however, laid stress on the issue that unless a substantial question of law has been formulated by this Court before hearing the second appeal, the judgment is liable to be set aside and he relied on the following judgments in support of his contention. In **PRAMILLA AND OTHERS v SEEMA AGARWAL AND OTHERS** (2011(4) ALT 1(SC))the Supreme Court held as follows:

“High Court ought to have formulated substantial questions of law before deciding the second appeal on merits. Not having done so, impugned judgment of High court, held not sustainable and is liable to be set aside and the Supreme Court remitted the matter to the High Court for disposal afresh after formulating substantial question of law.”

23. In **K.K.KANNAN (DEAD) BY LRS v KOOLIVATHUKKAL KARIKKAN MANDI AND OTHERS** (2010)2 SCC 239)the Supreme Court held as follows:

“On going through the impugned order of the High Court, we are of the view that the High Court has not fulfilled the mandates as provided in Section 100 CPC. The High Court has merely mentioned Grounds A to F as stated in the memorandum of second appeal but has not formulated the question after satisfying itself that a substantial question of law was involved in that appeal. Mere reference to the grounds as stated in the memorandum of second appeal would not satisfy the mandates prescribed in Section 100 more particularly when the High Court allowed the second appeal setting aside concurrent decisions of the courts below.

In order to fulfill the conditions mentioned in Section 100 if the High Court is satisfied that the substantial question of law is involved, it is to formulate that question, then hear the second appeal on the question so formulated. In the event of formulating such question, it is also the duty of the Court to permit the respondent to argue that the case does not involve any such question. In the case on hand, such recourse has not been adopted by the High Court.”

24. Thus, in both the cases above cited, the Supreme Court in the appellate jurisdiction without deciding merits of the cases remitted them to the High Court with a direction to formulate the substantial question of law and then to hear the second appeals.

25. In **HERO VINOTH (MINOR) v SESHAMMAL** ((2006)5 SCC 545)the Supreme Court pointed out that the substantial question of law on which a second appeal can be heard need not necessarily be a substantial question of law of general importance, but, may only the substantial question of law which was involved in the case. The Supreme Court clarified that a question of law which affects rights of the parties to the suit will be substantial, if it is not covered by any specific provisions of law, or settled legal principles emerging from binding precedents of the High court concerned, Privy Council or Supreme Court and involves a debatable legal issue. The Supreme Court held that it will depend on facts and circumstances of each case when a question of law is a substantial one and involved in the case or not, the paramount overall consideration being to strike a

judicious balance between the indispensable obligation to do justice and the impelling necessity of avoiding prolongation in life of any lis. The Supreme Court further clarified that it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate Court. It is true that the lower appellate Court should not ordinarily reject witnesses accepted by the trial Court in respect of credibility but even where it has rejected the witnesses accepted by the trial Court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences of fact are possible, the one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible. The High Court will, however, interfere where it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at by ignoring material evidence.(Emphasis supplied)

26. Similarly, in **RAJAPPA HANAMANTHA RANOJI v MAHADEV CHANNABASAPPA AND OTHERS** ((2000)6 SCC 120)the Supreme Court held as follows:

“Though the High Court has observed that findings arrived at by the first appellate Court are not based on proper appreciation of the evidence on record and the same are set aside but for all intents and purposes and in substance the conclusion of the High Court is that the decision of the first appellate Court is based on no evidence and is perverse. The High Court has rightly drawn an adverse inference on account of non-examination of respondent No.4, the tenant, as a witness by the appellant. On the facts and circumstances of the case that was vital and was rather the heart of the entire matter going to the root of the whole case. There was no explanation for non-examination of respondent 4. Clearly, the decree of the first appellate court is based on no evidence and is perverse and the High Court had drawn adverse inference on account of the non-examination of the key witness and the High Court order allowing the second appeal deserves to be

affirmed by the Supreme Court.

27. In **KANNAN (DEAD) BY LRS AND OTHERS v V.S.PANDURANGAM (DEAD) BY LRS AND OTHERS (2008(1) ALT 13(SC))** the Supreme Court held as follows:

“It is true that in this case no substantial question of law has been formulated by the High Court. However, in our opinion, merely because no substantial question of law has been formulated by the High Court that does not mean that the judgment of the High Court automatically becomes a nullity or that it must necessarily be set aside by this Court on that ground alone. The appellant before us must also show prejudice to him on this account.”

The Supreme Court clarified that:

“When the parties knew that the question involved was whether the defendant had been able to prove his title by adverse possession. Evidence was led on that issue, no prejudice has been caused to the appellants by non-framing of substantial question of law by the High Court.” (Emphasis supplied)

28. This Court is now dealing with the application filed by the review petitioner/defendant under review jurisdiction in exercise of its powers conferred under Section 114 and Order XLVII of the Code of Civil Procedure. Therefore, unless non framing of substantial question of law specifically amounts to error apparent on the face of the record and unless the judgment of this Court results in prejudice to the review petitioner or if the judgment of this Court if allowed to stand, will lead to failure of justice, the review of the judgment need not be undertaken by this Court. Power of review is different from that of the appellate power. Under the appellate power, the appellate Court can correct all errors of the subordinate Court. But under review jurisdiction, only if the error or mistake is apparent on the face of record and only when it causes prejudice to the opposite party, then only the court undertakes the review of the judgment. Even, if the judgment rendered by the Court is erroneous or incorrect, the matter cannot be re-heard under the guise of review jurisdiction. Therefore, the party is not permitted to contend in a review petition that the order or judgment requires review since it is erroneous. The object of review is not to make the Court to write a second

judgment but only to correct a mistake or error which is apparent on the face of record.

29. The contention that the judgment rendered by the first appellate Court is not based on evidence and contrary to the settled principles relating to burden of proof and construction of documents has been raised in the grounds of appeal. But, my learned predecessor while admitting the second appeal did not specifically formulate the substantial question of law. Subsequently, the appeal was heard by this Court without noticing the fact that the substantial question of law has not been formulated by my predecessor while admitting the second appeal. However, the parties were heard on the issue whether the judgment passed by the trial Court is not based on evidence available on record and that whether it is perverse. Both parties advanced arguments on the said issue. This Court, therefore, upon considering the arguments of both the learned counsel arrived at the decision aforementioned that the findings recorded by the first appellate Court are not based on evidence, contrary to the settled principles of law governing burden of proof, appreciation of evidence and construction of documents. Therefore, the parties were not taken by surprise as to the substantial question of law which was actually involved in the case and no prejudice has been caused to the review petitioner by the judgment of the Court which held that the judgment of the first appellate Court is not based on evidence and it is misconceived and perverse. If the judgment of this Court is wrong or erroneous, that is not a ground for agitating in review jurisdiction. If the review petitioner thinks that the judgment of this Court is incorrect, he can only file an appeal against the judgment of this Court, but cannot seek the review of the judgment and ask the Court to re-write the judgment.

30. In the two cases referred above relied on by the learned counsel appearing for the review petitioner, the Supreme Court was exercising appellate jurisdiction and without going into the merits of the case remitted the matters back to the first appellate Court with a direction to formulate substantial question of law, hear the parties and decide the said question. But, this Court is now dealing with the application filed by the review petitioner/defendant under review jurisdiction. Unless non formulating substantial question of law amounts to error apparent on

the face of record, this Court is not supposed to review its own judgment merely because the review petitioner contends that the judgment is erroneous. This Court did not hear the second appeal on an entirely new point which was not raised in the grounds of appeal by the respondents/plaintiffs. In **Rajappa Hanamantha Ranoji case** (4<sup>th</sup> supra), the Supreme Court clarified that if in substance, the conclusion of the High Court is that the lower Court's decision was based on no evidence and was perverse, the High Court can interfere with the same in the second appeal. In the said case before the Supreme Court, the High Court in the second appeal held that by non-examination of a key witness, the first appellate Court ought to have drawn adverse inference against the party, who was under a duty to examine the said witness. On the said ground alone, the High Court set aside the judgment of the first appellate Court by its judgment in the second appeal and the same was confirmed by the Supreme Court. The High Court in the said case, merely observed that the findings arrived at by the first appellate Court are not based on proper appreciation of evidence on record and the same are set aside. When the said judgment of the High Court was challenged before the Supreme Court, the Supreme Court took the view that for all intents and purposes and in substance the conclusion of the High Court is that the decision of the first appellate Court is based on no evidence and is perverse.

31. Whereas in the instant case, this Court had elaborately dealt with the evidence on record with reference to the pleadings of parties and admissions of the review petitioner/defendant and had recorded categorical findings as to how the judgment of the first appellate Court is not based on evidence and is perverse.

32. This Court in exercise of power under Section 100 CPC, if the judgment is perverse or not based on evidence on record it can set aside the same in the second appeal provided the parties are made aware that this Court is proceeding to deal with the said issue. In the instant case the respondents/plaintiffs specifically mentioned in the grounds of appeal that the judgment of the first appellate Court is not based on evidence and as a result of non-consideration of settled principles of law governing burden of proof and construction of documents. Therefore, non framing of substantial question of law specifically is only technical and in the instant case, it did not cause prejudice to the review petitioner since he

is very well aware of the fact that this Court is going to hear the arguments on the said issue, actually heard the arguments as such and rendered the judgment in consideration thereof.

33. Similarly in **KANNAN case** (2<sup>nd</sup> supra) the Supreme Court has specifically dealt with the question as to what happens when a substantial question of law has not been specifically framed by the High Court before hearing the second appeal. The Supreme Court held that merely because no substantial question of law has been formulated by the High Court, it does not mean that the judgment of the High Court automatically becomes a nullity or it must be set aside on that ground alone. Therefore, unless it is shown that prejudice has been caused to the review petitioner by non formulation of substantial question of law specifically by this Court, such an omission cannot constitute an error or mistake apparent on the face of record which attracts review jurisdiction under Section 114 and Order XLVII of the Code of Civil Procedure.

34. The crucial point is that the review petitioner must be able to prove that non formulation of substantial question of law had resulted in prejudice to him.

35. The idea underlying the requirement of formulating substantial question of law before hearing the second appeal is aimed to curtail the protraction of litigation on unnecessary, flimsy and vexatious grounds. It is also the object of law that the litigant shall not be allowed to agitate on the same issue again and again in different forums. However, the endeavour of the court should always to do justice to the parties and in that process if it finds that the judgment of the first appellate Court is either perverse or not based on evidence on record, it can certainly interfere with such findings in the second appeal to render justice to the parties though the High Court is only required to hear and dispose of the appeal on a substantial question of law.

36. In **HERO VINOTH case** (3<sup>rd</sup> supra), the Supreme Court held that whether a question of law is a substantial one and involved in the case or not, the paramount overall consideration being to strike a judicious balance between the indispensable obligation to do justice and the impelling necessity of avoiding prolongation in life of any lis.

37. It would be very much relevant to mention in this context that the Hon'ble Supreme Court while rendering judgments in **Pramilla and others (first cited) and K.K.Kannan (dead ) by LRs (second cited)** had no occasion to notice and consider the ratio laid down in the previous pronouncements of the co-ordinate Benches of the Supreme Court in **Hero Vinoth (minor) (third cited) and Rajappa Hanamantha Ranoji (fourth cited)** which in its essence and substance is that the High Court in second appeal can interfere if the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or settled legal position or was based on inadmissible evidence or arrived at by ignoring evidence and also more importantly that merely because no substantial question of law has been formulated by the High Court, that does not mean that the judgment of the High Court automatically becomes nullity or it must be necessarily be set aside by the Supreme Court on that ground alone and that the appellant must also show prejudice to him on this count. The Supreme Court in **Pramilla and others (first cited) and K.K.Kannan (dead ) by LRs (second cited)** in exercise of its appellate jurisdiction merely remanded the matters to the High Court for formulating substantial question of law before hearing second appeal without deeply going into the question as to the consequences that would follow for not framing substantial question of law by the High Court before hearing the second appeal. Therefore, the review petitioner basing on the said judgments cannot ask this Court to review its judgment on the mere ground that no substantial question of law has not specifically been formulated.

38. From the legal position above discussed, it is therefore, obvious that on mere technical ground that a substantial question of law had not been specifically formulated by the High Court before hearing the second appeal, the judgment rendered by the High Court shall not be necessarily set aside on that count alone. The party can urge to set aside such a judgment only if he is able to show that non-formulating the substantial question of law occasioned in prejudice to him. Non formulating substantial question of law does not invariably result in injustice to the party. In the instant case, while addressing arguments before this Court both parties were aware that this Court was hearing the second appeal on the question whether the findings recorded by the first appellate Court are not based on evidence and whether they are contrary to the settled principles governing the

burden of proof and construction of documents. Therefore, absolutely no prejudice has been caused to the review petitioner. The other questions raised by him in the grounds of appeal are nothing but asking the Court to reconsider its findings which cannot be permitted to be raised in review jurisdiction. This Court is of the considered view that mere non formulation of substantial question of law unless prejudice is shown to have been caused to the review petitioner, cannot be said to be an error apparent on the face of the record which requires interference by this Court under review jurisdiction.

39. For the foregoing reasons, I absolutely see no merit in the review petition and accordingly dismiss the same. There shall be no order as to costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**