IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 23RD DAY OF JANUARY 2024 / 3RD MAGHA, 1945

RSA NO. 3 OF 2024

AGAINST THE DECREE & JUDGMENT IN OS 50/2016 OF MUNSIFF COURT, NADAPURAM

DECREE & JUDGMENT IN AS 5/2021 OF ASSISTANT SESSIONS COURT/SUB COURT, VADAKARA

APPELLANTS/APPELLANTS IN AS/DEFENDANTS 2 TO 4 IN OS:

1 POYIL SALIM
AGED 53 YEARS
S/O POKKER HAJI, RESIDING AT VATAKKE PERUVANKANDY, EYYAMKODE POST, EYYAMKODE AMSOM, DESOM, VATAKARA TALUK, KOZHIKODE DISTRICT, PIN - 673504.

2 POYIL SIRAJ,
AGED 46 YEARS,
S/O POKKER HAJI, RESIDING AT VATAKKE PERUVANKANDY, EYYAMKODE POST, EYYAMKODE AMSOM, DESOM, VATAKARA TALUK, KOZHIKODE DISTRICT REPRESENTED BY HIS POA HOLDER POYIL SALIM (APPELLANT NO.1), PIN - 673504.

3 POYIL MAMI
AGED 63 YEARS
D/O AYISU, RESIDING AT POYIL HOUSE, EYYAMKODE POST, EYYAMKODE AMSOM, DESOM, VATAKARA TALUK, KOZHIKODE DISTRICT, PIN - 673504.

BY ADVS.
SABU GEORGE
P.B.KRISHNAN
P.B.SUBRAMANYAN
MANU VYASAN PETER

RESPONDENTS/RESPONDENTS 1, 3 TO 13/PLAINTIFF NO.1, DEFENDANT NO.1 & DEFENDANTS 5 TO 9 AND LRS OF PLAINTIFF NO.2:

1 THAZHE KANDOTH MARIYAM
AGED 80 YEARS
D/O KUNHAMMADKUTTY@CHEKKAN, VALAYAM AMSOM, CHERUMOTH DESOM, VATAKARA TALUK, KOZHIKODE DISTRICT, PIN - 673504.

2 KOYILANKANDI AYISU
AGED 83 YEARS
D/O SOOPPY, RESIDING AT VATAKKE PERUVANKANDY, EYYAMKODE POST, EYYAMKODE AMSOM, DESOM, VATAKARA TALUK, KOZHIKODE DISTRICT, PIN – 673504.

3 KOYILANKANDIYIL MUHAMMAD
AGED 43 YEARS
S/O ABDULRAHIMAN, RESIDING AT KOYILANKANDIYIL HOUSE, EYYAMKODE POST, EYYAMKODE AMSOM AND DESOM, VATAKARA TALUK, KOZHIKODE DISTRICT, PIN – 673504.

4 KOYILANKANDIYIL MUNEER
AGED 41 YEARS
S/O ABDULRAHIMAN, RESIDING AT KOYILANKANDIYIL HOUSE, EYYAMKODE POST, EYYAMKODE AMSOM AND DESOM, VATAKARA TALUK, KOZHIKODE DISTRICT, PIN – 673504.

5 SHAMEENA NISAR
AGED 39 YEARS
D/O ABDULRAHIMAN, RESIDING AT KUNNOTH HOUSE, CHULLIYODE ROAD, CIVIL STATION POST, KOZHIKODE DISTRICT, PIN – 673020.

6 SAFEERA NAVAS
AGED 36 YEARS
D/O ABDULRAHIMAN, RESIDING AT KALLIL HOUSE, VELLIYODE AMSOM, VANIMEL DESOM, KODIYURA POST, VATAKARA TALUK, KOZHIKODE DISTRICT, PIN – 673506.

7 KOYILANKANDIYIL MARIYAM
AGED 56 YEARS
W/O ABDULRAHIMAN, RESIDING AT VADAKKE PERUVANKANDIYIL, EYYAMKODE POST, EYYAMKODE AMSOM, DESOM, VATAKARA TALUK, KOZHIKODE DISTRICT, PIN – 673504.

8 SUHARA
AGED 63 YEARS
W/O MOIDU, RESIDING AT THAZHE KANDOTH, VALAYAM AMSOM, CHERUMOTH DESOM, VATAKARA TALUK, KOZHIKODE DISTRICT, PIN – 673504.

9 HARIS
AGED 43 YEARS
S/O MOIDU, RESIDING AT THAZHE KANDOTH, VALAYAM AMSOM, CHERUMOTH DESOM, VATAKARA TALUK, KOZHIKODE, PIN – 673504.

10 AFSAL
AGED 35 YEARS
S/O MOIDU, RESIDING AT THAZHE KANDOTH, VALAYAM AMSOM, CHERUMOTH DESOM, VATAKARA TALUK, KOZHIKODE, PIN – 673504.

11 AFSATH
AGED 33 YEARS
D/O MOIDU, RESIDING AT THAZHE KANDOTH, VALAYAM AMSOM, CHERUMOTH DESOM, VATAKARA TALUK, KOZHIKODE, PIN – 673504.

12 ARIFA
AGED 30 YEARS
D/O MOIDU, RESIDING AT THAZHE KANDOTH, VALAYAM AMSOM, CHERUMOTH DESOM, VATAKARA TALUK, KOZHIKODE, PIN – 673504.

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 23.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R"

A. BADHARUDEEN, J.

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R.S.A No.3 of 2024

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Dated this the 23rd day of January, 2024

J U D G M E N T

Defendants 2 to 4 in O.S.No.50/2016 on the files of Munsiff Court, Nadapuram have filed this Second Appeal under Order XLII Rule 1 read with Section 100 of the Code of Civil Procedure assailing the decree and judgment in A.S.No.5/2021 on the files of Sub Court, Vadakara, whereby the learned Sub Judge confirmed the decree and judgment rendered by the trial court. The respondents are the plaintiffs as well as other defendants.

2. Heard the learned counsel for the appellants/defendants 2 to 4 on admission. Perused the verdicts under challenge and the relevant documents placed by the learned Senior Counsel appearing for the appellants.

3. I shall refer the parties in this appeal relegating their status before the trial court as `plaintiffs' and `defendants' hereafter for easy reference.

4. This is a Suit filed for recovery of possession of the plaint schedule property on the strength of title and the plaintiffs are the children of one Ayisha. According to the plaintiffs, Ayisha obtained leasehold right in respect of properties including the plaint schedule property as per registered assignment deed No.94/1953 executed by one Anthraman, who got right over the same, on the strength of another assignment deed No.21/1947. When the plaintiffs were minors, Ayisha died. Then one Soopy, the uncle of the minors, assumed their protection and the management of the properties of Ayisha. According to the plaintiffs, the plaint schedule property is the property originally belonged to Ayisha and, being sharers as per Mohammedan Law, they are entitled to get recovery of the same from the defendants, who claim the same from Soopy.

5. The 1st defendant filed separate written statement.

Similarly, the 4th defendant also filed separate written statement. The sum and substance of the contention in the written statements is that as per document No.11/1953 Soopy obtained janmam right over the entire property covered by document No.94/1953 and later he obtained patta in respect of the entire extent of property vide patta No.1329/1976 of Land Tribunal, Kunnummel. Thereafter Soopy gifted the property to his daughter as per Ext.B4 document No.1337/1976. So on the strength of Patta, the right of the plaintiffs were denied by the defendants.

6. The trial court ventured the matter. PW1 was examined and Exts.A1 to A13 were marked on the side of the plaintiffs. DW1 was examined and Exts.B1 to B19 were marked on the side of the defendants. Exts.C1 and C2 court exhibits were also marked. On appreciation of the evidence, after hearing both sides, the trial court decreed the Suit as under:

> *"1. Defendants are directed to surrender the plaint schedule property which was shown as A plot in Ext.C2 plan to the plaintiffs within one month from today.*
>
> *2. Defendants are directed to pay the costs of the suit to*

the plaintiffs.

3. Ext.C2 plan shall form part of the decree."

7. Challenging the verdict of the trial court, an appeal was preferred A.S.No.5/2021 by the defendants and the appellate court dismissed the same as per decree and judgment dated 26.09.2023.

8. At the time of admission hearing, the learned Senior Counsel vehemently argued that as per Ext.A1 assignment deed No.94/1953, Ayisha obtained right over the property in `kole' measures coming to 25 X 35. Thereafter, as per Ext.A3, Kuzhikanam deed No.11/1953 Ayisha assigned her right in respect of the entire property covered by Ext.A1. Thereafter, Soopy obtained patta in respect of the entire property covered by Ext.A1, as per Ext.B5 purchase certificate dated 28.06.1976. According to the learned counsel, patta issued by the Land Tribunal under Section 72K of the Land Reforms Act is conclusive proof of title and therefore the plaintiffs should have filed a Suit to declare Ext.B5 purchase certificate as null and void or not binding upon them and without such prayer and allowing such prayer, recovery of possession, ignoring the purchase certificate, could not be

granted and the trial court went wrong in granting relief without such a prayer, ignoring the patta. The learned counsel placed a decision of this Court reported in [2016 2 KLT (SN 69) 57)], ***Madayi Syamala v. Sudha Sundareswaran & Ors.***, in support of his contention. It is argued further that when the plaintiffs allege fraud in obtaining the purchase certificate, they should have filed a Suit to declare Ext.B5 purchase certificate as null and void or not binding upon them.

9. In so far as the legal effect of purchase certificate is concerned, in the decision reported in [2023 KHC OnLine 886 : 2023 KHC 886 : 2023 KER 81498], ***Thayukutty v. Manikandan*** this Court held as under:

> *"12. Coming to the substantial questions of law, the same is specifically centered as regards to the nature of purchase certificate in the matter of title. In this connection, S.72K of the Kerala Land Reforms Act, 1963, required to be extracted. S.72K deals with issuance of certificate of purchase and the same is extracted hereunder:*
>
> *72K. Issue of certificate of purchase.-- (1) As soon as may be after the determination of the purchase price under S.72F or the passing of an order under sub-section (3) of S.72MM the*

Land Tribunal shall issue a certificate of purchase to the cultivating tenant, and thereupon the right, title and interest of the landowner and the intermediaries, if any, in respect of the holding or part thereof to which the certificate relates, shall vest in the cultivating tenant free from all encumbrances created by the landowner or the intermediaries, if any.

Explanation.-- For the removal of doubts, it is hereby declared that on the issue of the certificate of purchase, the landowner or any intermediary shall have no right in the land comprised in the holding, and all his rights including rights, if any, in respect of trees reserved for his enjoyment shall stand extinguished.

(2) The certificate of purchase issued under sub-section (1) shall be conclusive proof of the assignment to the tenant of the right, title and interest of the landowner andthe intermediaries, if any, over the holding or portion thereof to which the assignment relates.

(3) The purchase price payable by the cultivating tenant shall be a first charge on the land comprised in the holding or part thereof to which the assignment relates and shall be recoverable together with interest as provided in sub-section (3) of S.72M, under the provisions of the Revenue Recovery Act for the time being in force.

13. The impact of S.72K of the Act is subject matter of discussion by this Court as well as the Hon'ble Apex Court, since its introduction in the statute book. In this connection, I am inclined to refer one decision in ***Chandran Nair v. Kunhambu Nair****, reported in (1981 KHC 262 : 1981 KLT SN 150), where a learned single Judge of this Court while considering a case where purchase certificate was issued without the presence and without notice to the opposite party,*

behind his back, and held that the purchase certificate issued without notice to the other side and one obtained behind his back has no evidentiary value.

14. In the decision of the Apex Court in ***Mathew v. Taluk Land Board****, reported in (1979 KLT 601), where the Apex Court stated that the evidentiary value of certificate of purchase could not be disregarded except where it was inaccurate on its face or obtained by fraud. The Apex Court in the decision, observed as under:*

> *"It would thus appear that even though the certificate of purchase issued under sub-s. (1) of S.72K is conclusive proof of the assignment of the right, title and interest of the landowner in favour of the holder in respect of the holding concerned under sub-s.(2), that only means that no contrary evidence shall be effective to displace it, unless the so - called conclusive effective proof is inaccurate on its face, or fraud can be shown (Halsbury's Laws of England, fourth edition, Vol. 17, page 22 Para.28).*
>
> *It may be stated that 'inaccuracy on the face' of the certificate is not as wide in its connotation as an 'error apparent on the face of the record'. It will not therefore be permissible for the Board to disregard the evidentiary value of the certificate of purchase merely on the ground that it has not been issued on a proper appreciation or consideration of the evidence on record, or that the Tribunal's finding suffers from any procedural error. What sub-s.(2) of S.72K provides is an irrebuttable presumption of law, and it may well be regarded as a rule of substantive law. But even so, for reasons already stated, it does not thereby take away the jurisdiction of the Taluk Land Board to make an order under S.85(5) after taking into consideration the 'conclusive'*

evidentiary value of the certificate of purchase according to S.72K(2) as far as it goes."

The ratio in ***Mathew****'s case (supra) is reiterated in* ***Lakshmi Bai v. Taluk Land Board*** *reported in (1986 KHC 86 : 1986 KLT 332).*

15. In another decision in ***Mohammed Koya v. Bichikoya****, reported in (2004 KHC 812 : 2004 (2) KLT SN 76 : ILR 2004 (2) Ker. 223), a learned single Judge of this Court held that, certificate of purchase issued by the Land Tribunal during pendency of the suit without the landlord being a party is not conclusive evidence of possession in a suit for injunction.*

16. In the decision in ***Hamza Haji v. State of Kerala and Another****, reported in (2006 KHC 1248 : 2006 (3) KLT 941), the Apex Court considered claim of exemption under S.3(2) and S.3(3) of the Kerala Private Forests (Vesting and Assignment) Act, 1971, where the Tribunal upheld the claim under S.3(3), which was interfered by the High Court for the reason that the appellant obtained the decision from the Tribunal in his favour by playing fraud on the Tribunal and the Apex Court confirmed the finding of the High Court.*

17. In the decision in ***Chinnayya Mudaliyar and Others v. Vasudevan*** *reported in (2010 (3) KHC 200 : 2010 (3) KLT SN 30), this Court considered the same issue in the light of the decision in* ***Patinhare Purayil Nabeesumma v. Miniyatan Zacharias****, reported in (2008 KHC 6089 : 2008 (2) KLT SN 12) rendered by the Apex Court, where the Apex Court considered a situation when two purchase certificates were issued in favour of different persons and it was held by this Court that the purchase certificate issued prior in point of time prevails over the purchase certificate issued thereafter and it binds on including the Land Tribunal and therefore, subsequent purchase certificate had no legal effect. It was also held in the decision that, if a*

tenant constructs a building immediately after lease of property and puts it for commercial use, he is not a 'cultivating tenant'.

18. In the decision in ***Mathilakath Skaria and Another v. Mathilakath Joseph and Another*** *reported in (2013 (1) KHC 293 : 2013 (1) KLT SN 28 : 2013 (1) KLJ 410), this Court held that, Civil courts cannot be mute spectators to such material alterations made; without power or authority and with abject impunity. The corrected Purchase Certificates are inaccurate on its face and are issued in violation of the provisions of the Act and Rules. With respect to the question as to whether a challenge on the validity of the Purchase Certificates could be maintained in a Civil Court under S.72K, this Court has no hesitation to find that S.72K applies only to valid Purchase Certificates issued by the Land Tribunals, respectfully following the Full Bench cited supra. Material irregularities have been found in the Purchase Certificates. Corrections have been made thereon without the seal of authority conferred under the KLR Act and the Rules framed thereunder; and substantially altering the boundaries, which, forms the essence of identification of the 'holding' as specified under the Act.*

19. In the decision in ***Viswambaran P. N. v. T. P. Sanu and Others****, reported in (2018 (3) KHC 73 : 2018 (2) KLT 947 : 2018 (3) KLJ 227), a Full Bench of this Court considered the impact of S.72K(1) of the Act and held that, benefit obtained by one of the co - sharers in the form of certificate of purchase shall be held by him also for the advantage of the other co - owners and certificate of purchase obtained by him shall enure to the benefit of the other co - owners also. In the said decision, it was also held as under:*

"The principle of res judicata would apply only when the matter directly and substantially in issue in a suit has been

directly and substantially in issue in a former suit or proceedings between the same parties, or between parties under whom they or any of them claim litigating under the same title. When the Land Tribunal decides the question of tenancy and passes an order in favour of one of the co heirs of cultivating tenant, it does not decide whether the certificate of purchase to be issued pursuant to such order would enure to other co heirs. The Division Bench in ***Paul****'s case (supra) has held that for the issue of the purchase certificate the inter se rights of the co tenants need not be gone into by the Land Tribunal and how far the benefit of such certificate of purchase will devolve on the other co heirs is not a matter to be gone into by the Land Tribunal. Another Division Bench of this Court has concurred with this view in* ***Balakrishnan Nair v. Radha Amma****, 1987 KHC (1) KLT 195 : 1987 KLN 117. We agree with the aforesaid view taken by the two Division Benches of this Court. It then follows that when the Land Tribunal decides the question of tenancy and passes an order in favour of one of the co heirs of a cultivating tenant for issuing certificate of purchase, no finding is entered by it with regard to the inter se rights of the co heirs / co tenants or whether the certificate of purchase enures to the other co heirs / co tenants. If that be so, the principle of res judicata does not apply and the Civil Court is not precluded from trying and deciding such issue."*

20. In the decision in ***State of Kerala and Another v. Mohammed Basheer****, reported in (2019 (1) KHC 750 : 2019 (1) KLT 386 : 2019 (2) KLJ 60), the Apex Court also considered the impact of S.72K. In the said decision, it was held as under:*

"Certificate of purchase was issued by the Land Tribunal,

under sub section (1) of S.72K. Sub section (2) of S.72K of the Land Reforms Act clearly states that the certificate of purchase issued under sub section (1) shall be a conclusive proof of the assignment to the tenant of the right, title and interest of the landlord and the intermediaries, if any, over the holding or portion thereof to which the assignment relates. Thus whatever right, title and interest, the landlord had in the land, has been assigned in favour of the respondent under the certificate of purchase. Therefore, it can safely be concluded that the respondent is the owner of the land as he has legal title to hold the said land. As noticed above, the certificate is also a conclusive proof of the fact that the respondent has been in possession of the land as a cultivating tenant right from the date of vesting of the land under the Kerala Land Reforms Act. In our view, the land in question is exempted from vesting in the State under sub section (2) of S.3 of the KPF Act."

21. Thus, the legal position is that certificate of purchase shall be conclusive proof of the assignment to the tenant of the right, title and interest of the landlord and the intermediaries, if any, over the holding or portion thereof to which the assignment relates, subject to condition that the order led to issuance of the purchase certificate is one passed with notice to the land owner, with opportunity of hearing and the same is not the outcome of fraud or inaccurate. The remedy of the aggrieved person when the certificate of purchase is issued in a proceedings without notice to the landlord or by fraud or the same is inaccurate, the aggrieved can file an appeal before the appellate Tribunal, as provided under the Kerala Land Reforms Act, 1963. It is true that when the purchase certificate is inaccurate on its face, or obtained by fraud,

the evidentiary value of the purchase certificate could not be disregarded. Doubtlessly, a purchase certificate shall not bind a party, who is not party to the proceedings before the Land Tribunal, having better title over the property covered by the purchase certificate."

10. Summing up the legal position as regards to purchase certificate obtained by one of the co-owners of the property, the same shall be held as one obtained for all co-owners and the said purchase certificate shall enure to the benefit of all the co-owners as held by the Full Bench of this Court in ***Viswambaran P. N. v. T. P. Sanu and Others***' case (*supra*). In this matter, the courts below meticulously analysed the property covered by Ext.A1 assignment deed in the name of Ayisha, and found its extent as 25 ½ X 35 in `kole' measurements. The courts below also found that as per Ext.A3/B6 executed by Ayisha in favour of Soopy, she had transferred property having 25 ½ X 12 ½ `kole' measurements. Thus it was found that the entire extent of property Ext.A1 was not transferred in the name of Soopy as per Ext.A3/B6. Coming to the legality of Ext.B5, the same, according to the plaintiffs, is one generated as a result of fraud and, therefore; the same would not

confer title upon Soopy in any manner. Thereby, the trial court as well as the appellate court ignored Ext.B5 to confer title upon Soopy in relation to the entire extent of property and the trial court as well as the appellate court found that Soopy would get property as per Ext.B5 purchase certificate in relation to the property covered by Ext.A3/B6 excluding the remaining property left by Ayisha, obtained as per Ext.A1.

11. On analysis of the specific contention raised by the plaintiffs that the mother of the plaintiffs, Ayisha, died earlier at the time when the plaintiffs were minors, thereafter, their uncle Soopy looked after them and also managed the entire property covered by Ext.A1, subsequently, Soopy, by playing fraud, obtained purchase certificate in respect of the entire property covered by Ext.A1, it is discernible that Soopy, in fact, got the control over the entire property covered by Ext.A1, though his right in respect of the same is confined to the extent of property given to him as per Ext.A3/B6 and nothing more and as such Soopy managed the property as a co-owner for himself and on

behalf of the other co-owners, the plaintiffs herein. If so, the purchase certificate Ext.B5, obtained by Soopy, in the facts of the given case would enure to the benefit of the plaintiffs also. Therefore, though as per Ext.B5, Soopy obtained purchase certificate in respect of the entire property, Ext.B5 purchase certificate should enure to the benefit of Soopy and the plaintiff's and Ext.B5 purchase certificate in the name of Soopy conferred absolute title upon Soopy in relation to the extent of property covered by Ext.A3/B6 and conferred absolute right on the plaintiff's in relation to the remaining property in the name of Ayisha, available as per Ext.A1, i.e the plaint schedule property.

12. In view of the matter, it is held that the Suit filed by the plaintiffs, being successors of Ayisha, to get recovery of possession of the property as per Ext.A1 is liable to succeed as rightly found by the trial court and confirmed by the appellate court. Therefore, the concurrent verdicts do not require any interference at the hands of this Court and no substantial question of law arises to admit and maintain this Second Appeal.

13. In order to admit and maintain a Second Appeal, substantial question of law necessarily to be formulated by the High Court within the mandate of Order XLII Rule 2 Read with Section 100 of C.P.C.

14. In the instant case, the learned counsel for the appellants failed to raise any substantial question of law warranting admission of the Second Appeals. Order XLII Rule 2 provides thus:

> ***"2. Power of Court to direct that the appeal be heard on the question formulated by it.-****At the time of making an order under rule 11 of Order XLI for the hearing of a second appeal, the Court shall formulate the substantial question of law as required by section 100, and in doing so, the Court may direct that the second appeal be heard on the question so formulated and it shall not be open to the defendant to urge any other ground in the appeal without the leave of the Court, given in accordance with the provision of section 100."*

15. Section 100 of the C.P.C. provides that, (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court

subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law. (2) An Appeal may lie under this section from an appellate decree passed ex parte. (3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal. (4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. (5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question. Proviso says that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.

16. In the decision in [2020 KHC 6507 : AIR 2020 SC 4321 : 2020 (10) SCALE 168], ***Nazir Mohamed v. J. Kamala and Others*** reported in the Apex Court held that:

> *The condition precedent for entertaining and deciding a second appeal being the existence of a substantial question of law, whenever a question is framed by the High Court, the High Court will have to show that the question is one of law and not just a question of facts, it also has to show that the question is a substantial question of law referring* ***Kondiba Dagadu Kadam v. Savitribai Sopan Gujar, [(1999) 3 SCC 722.***

17. In a latest decision of the Apex Court reported in [2023 (5) KHC 264 : 2023 (5) KLT 74 SC], ***Government of Kerala v. Joseph***, it was held as under:

> *For an appeal to be maintainable under Section 100, Code of Civil Procedure ('CPC', for brevity) it must fulfill certain well – established requirements. The primary and most important of them all is that the appeal should pose a substantial question of law. The sort of question that qualifies this criterion has been time and again reiterated by this Court.*

18. The legal position is no more *res-integra* on the point that in order to admit and maintain a second appeal under Section 100 of the C.P.C, the Court shall formulate substantial question/s of law, and the said procedure is mandatory. Although the phrase 'substantial question of law' is not defined in the Code, 'substantial

question of law' means; of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with – technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as S.109 of the Code or Art.133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. As such, second appeal cannot be decided on equitable grounds and the conditions mentioned in Section 100 read with Order XLII Rule 2 of the C.P.C. must be complied to admit and maintain a second appeal.

19. In view of the elaborate discussion, no substantial question of law arises in this Second Appeal to be decided by admitting the same.

In the result, this appeal is found to be meritless and the same

is dismissed without being admitted.

All pending Interlocutory Applications stand dismissed.

Sd/-

(A.BADHARUDEEN, JUDGE)

rtr/