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JAWALA SINGH (D) BY LRS. AND ORS.

v.

JAGAT SINGH (D) BY LRS. AND ORS.

SEPTEMBER 6, 2006

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[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Code of Civil Procedure, 1908—Section 100—Second appeal—Maintainability of, when substantial question of law not formulated—Held: Not maintainable.

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The question which has arisen for consideration in these appeals is whether High Court erred in allowing the second appeal without formulating any question of law for adjudication.

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Respondent contended that though specific question of law was not formulated, the High Court had analyzed the evidence and kept to the correct conclusion.

Disposing of the appeals and remitting the matter to High Court so far as it relates to Second Appeal No.1832 of 1979, the Court

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HELD: 1. The memorandum of appeal shall precisely state substantial question or questions involved in the appeal as required under sub-section (3) of Section 100 of the Code of Civil Procedure, 1908. Where the High Court is satisfied that in any case any substantial question of law is involved, it shall formulate that question under sub-section (4) and the second appeal has to be heard on the question so formulated as stated in sub-section (5) of Section

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100. [757-E]

2. A perusal of the impugned judgment passed by the High Court does not show that any substantial question of law has been formulated or that the second appeal was heard on a question, if any, so formulated. That being so, the judgment cannot be maintained. [756-D]

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Ishwar Dass Jain v. Sohan Lal, [2000] 1 SCC 434; *Kanhaiyalal v. Anupkumar*, [2003] 1 SCC 430; *Chadat Singh v. Bahadur Ram*, [2004] 6 SCC 359; *Joseph Severane and Ors. v. Benny Mathew and Ors.*, [2005] 7 SCC 667; *Sasikumar and Ors. v. Kunnath Chellappan Nair and Ors.*, [2005] 12 SCC 588 and *Gian Dass v. The Gram Panchayat Village Sunner Kalan and Ors.*,

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(2006) 5 Supreme 776, relied on.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1004 of 2003.

From the Judgment and Order dated 16.5.2002 of the High Court of Punjab and Haryana at Chandigarh in R.S.A. No. 1832/1979.

WITH

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Civil Appeal No. 3938 of 2006.

Dr. Kailash Chand, Keshav Kaushik and Asha Gopalan Nair for the Appellants.

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M.H. Humayunisa and R. Nedumaran for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. In these appeals challenge is to the judgment rendered by a learned Single Judge of the Punjab and Haryana High Court allowing the Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 (in short the 'CPC'). The Second appeal was partially allowed by setting aside the judgment and decree of the First appellate Court in the plaintiff's suit for possession to the extent of land measuring 36 kanals comprised in Khasra Nos. 646, 647 and 648.

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Though many points were urged basically it was urged that the Second appeal was allowed without formulating any question of law for adjudication. This according to appellants rendered the judgment vulnerable.

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Learned counsel for the respondents submitted that though specific question of law was not formulated, the High Court analysed the evidence and kept to the correct conclusion.

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Section 100 of the Code deals with "second appeal". The provision reads as follows:

"100(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.

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(2) An appeal may lie under this section from an appellate decree

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A 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.

B (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:

C Provided 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.”

D A perusal of the impugned judgment passed by the High Court does not show that any substantial question of law has been formulated or that the second appeal was heard on a question, if any, so formulated. That being so, the judgment cannot be maintained.

In *Ishwar Dass Jain v. Sohan Lal*, this Court in para 10 has stated

E “10. Now under Section 100 CPC, after the 1976 Amendment, it is essential for the High Court to formulate a substantial question of law it is not permissible to reverse the judgment of the first appellate court without doing so.”

F Yet again in *Roop Singh v. Ram Singh* this Court has expressed that jurisdiction of a High Court is confined to appeals involving substantial question of law. Para 7 of the said judgment reads: (SCC p. 713, para 7)

G “7. It is to be reiterated that under Section 100 CPC jurisdiction of the High Court to entertain a second appeal is confined only to such appeals which involve a substantial question of law and it does not confer any jurisdiction on the High Court to interfere with pure questions of fact while exercising its jurisdiction under Section 100 CPC. That apart, at the time of disposing of the matter, the High Court did not even notice the question of law formulated by it at the time of admission of the second appeal as there is no reference of it in the impugned judgment. Further, the fact-finding courts after appreciating the evidence held that the defendant entered into the possession of

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the premises as a batai, that is to say, as a tenant and his possession was permissive and there was no pleading or proof as to when it became adverse and hostile. These findings recorded by the two courts below were based on proper appreciation of evidence and the material on record and there was no perversity, illegality or irregularity in those findings. If the defendant got the possession of suit land as a lessee or under a batai agreement then from the permissive possession it is for him to establish by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of the real owner. Mere possession for a long time does not result in converting permissive possession into adverse possession. *Thakur Kishan Singh v. Arvind Kumar*, [1994] 6 SCC 591 Hence, the High Court ought not to have interfered with the findings of fact recorded by both the courts below.”

The position has been reiterated in *Kanhaiyalal v. Anupkumar*, [2003] 1 SCC 430.

In *Chadat Singh v. Bahadur Ram*, [2004] 6 SCC 359 it was observed thus: (SCC p. 360)

“6. In view of Section 100 of the Code the memorandum of appeal shall precisely state substantial question or questions involved in the appeal as required under sub-section (3) of Section 100. Where the High Court is satisfied that in any case any substantial question of law is involved, it shall formulate that question under sub-section (4) and the second appeal has to be heard on the question so formulated as stated in sub-section (5) of Section 100.”

The Position was highlighted by this Court in *Joseph Severane and Ors. v. Benny Mathew and Ors.*, [2005] 7 SCC 667, *Sasikumar and Ors. v. Kunnath Chellappan Nair and Ors.*, [2005] 12 SCC 588 and *Gian Dass v. The Gram Panchayat, Village Sunner Kalan & Ors.* (2006) 5 Supreme 776 .

Under the circumstances, the impugned judgment is set aside. We remit the matter to the High Court so far as it relates to Second Appeal No. 1832 of 1979 for disposal in accordance with law. The appeals are disposed of on the aforesaid terms with no order as to costs.

Since the matter is pending since long, we request the High Court to dispose of the appeal as early as practicable.