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PATRICK J. SALDANHA

v.

ANTONY M. SALDANHA

MAY 8, 2007

B

[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

C

Code of Civil Procedure, 1908—Section 100—Second appeal—Disposal of by High Court without formulating substantial question of law—Justification of—Held: It is for the High Court to formulate a substantial question of law and hear the appeal on the question formulated—In absence of the same, such judgment cannot be maintained.

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The issue involved in this appeal was whether the High Court was justified in disposing of the second appeal without formulating the substantial question of law, as mandated by Section 100 CPC.

Disposing of the appeal, the Court

E

HELD: 1.1. In view of Section 100 CPC, 1908, the memorandum of appeal shall precisely state substantial question or questions of law involved in the appeal as required under sub-section (3) of Section 100. Where 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. [Para 3] [125-F-G]

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1.2. In the instant case, a perusal of the impugned judgment passed by High Court does not show that any substantial question of law has been formulated or that the second appeal was heard on the question, if any, so formulated and as such the judgment cannot be maintained. The matters are remitted back to High Court for disposal in accordance with law.

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[Paras 5 and 9] [126-D-E; 127-G]

Ishwar Dass Jain v. Sohan Lal, [2000] 1 SCC 434; *Roop Singh (dead) by LR's v. Ram Singh (dead) by LR's*, [2000] 3 SCC 708; *Kanahaiyalal and Ors. v. Anupkumar and Ors.*, JT (2002) 10 SC 98; *Premabai v. Jnaneshwar Ramakrishna Patange and Ors.*, (2003) AIR SCW 2922; *Chadat Singh v.*

H

Bahadur Rama and Ors., JT (2004) 6 SC 296; *Mathakala Krishnaiah v. V. Rajagopal*, JT (2004) 9 SC 205; *Shah Mansukhlal Chhaganial (dead) through Lrs. v. Gohil Amarsing Govindbhai (dead) through Lrs.*, (2006) 13 SCALE 99; *Ravi Construction Co. v. Somvanshi Arya Ksatriya Samai and Ors.*, (2006) 9 SCALE 174; *Jawala Singh (Dead) by LR's & Ors. v. Jagat Singh (Dead) by LR's & Ors.*, JT (2006) 8 SC 483 and *C.A. Sulaiman and Ors. v. State Bank of Travancore Alwayee and Ors.*, AIR (2006) SC 2848, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 414 of 2001.

From the Final Judgment and Order dated 06.08.1998 of the High Court of Karnataka at Bangalore in R.S.A. No. 930 of 1991.

S.S. Javeli, and P.R. Ramasesh for the Appellant.

Naveen R. Nath and Lalit Mohini Bhat for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the order passed by a learned Single Judge of the Karnataka High Court allowing the Second Appeal (RSA No. 930 of 1991) filed by the respondent.

2. Though many points are urged, primarily it was submitted that the Second Appeal was allowed without formulating a substantial question of law.

3. In view of Section 100 of the Code of Civil Procedure, 1908 (in short "The Code") the Memorandum of Appeal shall precisely state substantial question or questions of law 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.

4. Section 100 of the Code deals with "Second Appeal". The provision reads as follows:

"Section 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

A 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.

B (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.

C (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:

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 5. 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 the question, if any, so formulated. That being so, the judgment cannot be maintained.

E 6. In *Ishwar Dass Jain (Dead) through LRs. v. Sohan Lal (Dead) through LRs.*, [2000] 1 SCC 434 this Court in para 10, has stated thus:

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

G 7. Yet again in *Roop Singh (Dead) through LRs. v. Ram Singh (Dead) through LRs.*, [2000] 3 SCC 708 this Court has expressed that the jurisdiction of a High Court is confined to appeals involving substantial question of law. Para 7 of the said judgment reads:

H “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 A
 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 findings courts after
 appreciating the evidence held that the defendant entered into the B
 possession of 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 C
 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 D
 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.”

8. The position has been reiterated in *Kanahaiyalal and Ors. v. Anupkumar and Ors.*, JT (2002) 10 SC 98, *Premabai v. Jnaneshwar Ramakrishna Patange and Ors.*, (2003) AIR SCW 2922, *Chadat Singh v. Bahadur Rama and Ors.*, JT (2004) 6 SC 296 and *Mathakala Krishnaiah v. V. Rajagopal*, JT (2004) 9 SC 205. Recently this Court has clarified the position in *Shah Mansukhlal Chhangani (Dead) through LRs. v. Gohil Amarsing Govindbhai (Dead) through LRs.* (2006) 13 SCALE 99, *Ravi Construction Co. v. Somvanshi Arya Ksatriya Samaj and Ors.*, (2006) 9 SCALE 174, *Jawala Singh (Dead) by LRs. & Ors. v. Jagat Singh (Dead) By LRs. & Ors.*, JT (2006) F
 8 SC 483, and *C.A. Sulaiman and Ors. v. State Bank of Travancore Alwayee and Ors.*, AIR (2006) SC 2848.

9. In the circumstances, the impugned judgment is set aside. We remit G
 the matter to the High Court for disposal after formulating the substantial
 question of law, if any, and in accordance with law. The appeal is disposed
 of in the aforesaid terms with no order as to costs.