

NUNE PRASAD AND ORS.
v.
NUNE RAMAKRISHNA
(Civil Appeal No. 4701 of 2008)

JULY 29, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]

Code of Civil Procedure, 1908 – s. 100 – Second appeal – Substantial question of law – Non-formulation – Effect of – On facts, second appeal allowed by High Court – Order does not show that substantial question of law was formulated or appeal was heard on any question so formulated – Thus, order of High Court set aside – Matters remitted to High Court.

The question which arose for consideration in this appeal was whether the High Court was justified in allowing the second appeal without framing any substantial question of law as mandated by s. 100 of the Code of Civil Procedure, 1908.

Disposing of the appeal, the Court

HELD: 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, which is set aside and remitted back to the High Court for proceeding in the matter in accordance with law and in terms of observations made herein. [Para 5] [438-D-E]

Ishwar Dass Jain v. Sohan Lal 2000 (1) SCC 434; *Roop Singh v. Ram Singh* 2000 (3) SCC 708; *Kanhaiyalal and Ors. v. Anupkumar and Ors.* 2003 (1) SCC 430; *Mathakala Krishnaiah v. V. Rajagopal* 2004(10) SCC 676; *Smt. Ram Sakhi Devi v. Chhatra Devi and Ors.* JT 2005 (6) SC 167;

A *Sasikumar and Ors. v. Kunnath Chellappan Nair and Ors.* **2005 (12) SCC 588**; *Gian Dass v. The Gram Panchayat Village Sunner Kalan and Ors.* **2006 (6) SCC 271**; *Shah Mansukhlal Chhaganial (d) through Lrs. v. Gohil Amarsing Govindbhai (d) through Lrs.* **2006(13) SCALE 99** – relied on.

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Case Law Reference

2000 (1) SCC 434 Relied on. Para 6

2000 (3) SCC 708 Relied on. Para 7

2003 (1) SCC 430 Relied on. Para 8

C

2004 (10) SCC 676 Relied on. Para 8

JT 2005 (6) SC 167 Relied on. Para 8

2005 (12) SCC 588 Relied on. Para 8

D

2006 (6) SCC 271 Relied on. Para 8

2006 (13) SCALE 99 Relied on. Para 8

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 4701 of 2008

E From the final Judgment and Order dated 28.3.2006 of the High Court of Andhra Pradesh at Hyderabad in Second Appeal No. 512 of 2001

T.V. Ratnam for the Appellants.

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Anjani Aiyagari for the Respondent.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Leave granted.

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2. Challenge in this appeal is to the judgment of a learned Single Judge of the High Court of Andhra Pradesh at Hyderabad allowing the second appeal filed by the respondent under Section 100 of the Code of Civil Procedure, 1908 (in short 'CPC').

3. Factual background in a nutshell is as follows:

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The appellant-plaintiff filed O.S. No.78 of 1990 before the

Sub-Court, Ramachandrapuram, East Godavari District, Andhra Pradesh against the respondent-defendant. The Trial Court by the judgment and order dated 27.06.1995 held that the plaintiffs are the owners of the schedule property and they being the owners of the schedule property are entitled to possession. Aggrieved by the judgment and decree of the Trial court, the respondent-defendant preferred an appeal in the Court of Additional District Judge, Rajahmundry, East Godavari District. By judgment and order dated 14.06.2001, the first appellate court confirmed the Trial Court's judgment. The respondent-defendant preferred a second appeal under Section 100 C.P.C. before the High Court of Andhra Pradesh at Hyderabad, being Second Appeal No.512 of 2001. By the impugned judgment, the learned Single Judge allowed the second appeal and the judgments and decree passed by the courts below were set aside.

Though many points have been urged in support of the appeal, the primary stand of the learned counsel for the appellants is that the second appeal was allowed without framing any substantial question of law as mandated by Section 100 CPC. Learned counsel for the respondent submitted that though the High Court's judgment does not show that any substantial question of law was framed yet learned Single Judge has allowed the appeal after analyzing the factual position in the background of settled principles in law.

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

"Section 100-Second Appeal: (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

A 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.

B (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 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, which is set aside and remitted back to the High Court for proceeding in the matter in accordance with law and in terms of observations made herein.

E 6. In *Ishwar Dass Jain v. Sohan Lal* (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 v. Ram Singh* (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 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 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 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.”

8. The position has been reiterated in *Kanhaiyalal and Ors. v. Anupkumar and Ors.* (2003 (1) SCC 430), *Mathakala Krishnaiah v. V. Rajagopal* (2004(10) SCC 676), *Smt. Ram Sakhi Devi v. Chhatra Devi & Ors.* (JT 2005 (6) SC 167), *Sasikumar & Ors. v. Kunnath Chellappan Nair & Ors.* (2005 (12) SCC 588), *Gian Dass v. The Gram Panchayat Village Sunner Kalan & Ors.* (2006 (6) SCC 271), *Shah Mansukhlal Chhaganial (d) through Lrs V. Gohil Amarsing Govindbhai (d) through Lrs.* (2006(13) SCALE 99).

9. The appeal stands disposed of in the above terms.

There will be no order as to costs.