

HARYANA STATE & ANR.

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v.

GRAM PANCHAYAT VILLAGE KALEHRI

(Civil Appeal No.2516 of 2008)

JUNE 29, 2016

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[ABHAY MANOHAR SAPRE AND ASHOK BHUSHAN, JJ.]

*Code of Civil Procedure, 1908:*

*s. 100 – Second appeal – Substantial question of law – Issue as regards ownership rights and proper interpretation of documents to prove the ownership rights over the suit land – Dismissal of second appeal in limine since the appeal did not involve substantial question of law – On appeal, held: Where the court is required to properly interpret the nature of the documents, it only involves legal issue based on admitted documents, thus the appeal involved substantial questions of law – High Court was upon obligation to decide the legality and correctness of such findings – High Court could do so only when it had first admitted the appeal and framed substantial questions of law as required u/s. 100 – Thus, the High Court committed jurisdictional error in dismissing the appeal in limine – Matter remanded to the High Court for deciding the second appeal afresh on merits.*

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*Or. 27 r. 5B – Suit against the Government or a public officer – Duty of court to assist in arriving at a settlement – On facts, no endeavour made by Court or by parties to arrive at a settlement – Only on failure of settlement being reported, case should have been finally decided on merits.*

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**Allowing the appeal, the Court**

**HELD: 1.1** The appeal does involve the substantial questions of law and, therefore, the High Court should have admitted the appeal by framing substantial questions of law arising in the case and then after giving notice to the respondent for its final hearing as provided u/s. 100 CPC should have decided the appeal finally on merits. As a matter of fact, having regard to the nature of controversy and keeping in view the issues involved, such as

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A the issue regarding ownership rights coupled with the issue  
 regarding proper interpretation of documents to prove the  
 ownership rights over the suit land, these issues do constitute  
 substantial questions of law. Where the Court is required to  
 properly interpret the nature of the documents, it does not involve  
 B any issue of fact as such but it only involves legal issue based on  
 admitted documents. It is, therefore, obligatory upon the High  
 Court to decide the legality and correctness of such findings as  
 to which party's documents are to be preferred for conferring  
 title over the suit land. The High Court could do so only when it  
 had first admitted the appeal and framed substantial questions of  
 C law as required u/s.100 CPC.[Paras 14,15] [162-F-H; 163-A-C]

1.2 The High Court committed jurisdictional error when it  
 dismissed the appeal in limine saying that it only involves question  
 of fact. Thus, the case is remanded to the High Court for deciding  
 the appeal on merits. The High Court is requested to admit the  
 D second appeal and frame appropriate substantial questions of law  
 as are required u/s.100, keeping in view the documents and the  
 findings recorded by the courts below on the question of  
 ownership over the suit land. [Paras 16,17,18] [163-C-E]

2. This is a case filed by a statutory public body against the  
 E Government and it is in relation to the ownership rights on a  
 piece of land which both are asserting against each other. No  
 endeavour was made by the Court or by the parties to arrive at a  
 settlement keeping in view the mandate of Order 27 Rule 5B. It  
 should have been done and only on failure being reported, the  
 case should have been finally decided on merits in accordance  
 F with law. [Paras 20, 22] [163-H; 164-A, G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2516  
 of 2008.

G From the Judgment and Order dated 18.11.2005 of the High Court  
 of Punjab and Haryana at Chandigarh in R. S. A. No. 4083 of 2005.

Samar Vijay Singh, Kamal Mohan Gupta, Advs., for the Appellant.

The Judgment of the Court was delivered by

H **ABHAY MANOIHAR SAPRE, J.** 1. This appeal is filed against  
 the final judgment and order dated 18.11.2005 of the High Court of Punjab

and Haryana at Chandigarh in R.S.A. No. 4083 of 2005 whereby the High Court dismissed the appeal filed by the appellants herein against the order dated 24.08.2005 of the Additional District Judge, Karnal in Civil Appeal No. 30 of 2005 affirming the judgment/decreed dated 11.06.2002 of the Civil Judge (Jr. Division), Karnal in Civil Suit No. 226 of 2001. A

2. In order to appreciate the issues involved in the appeal, which lie in a narrow compass, few facts need mention infra. B

3. The appellant-the State of Haryana is the defendant. The respondent-Gram Panchayat of village Kalehri is the plaintiff.

4. The dispute in the suit relates to the land measuring 36 kanals 15 Marlas comprised in Khewat No. 361 min/350m, Khatoni No. 536 min, Khasra No 59 Gair Mumkin Nala situated in village Kalehri, Tahsil Gharaunda, District Karnal (hereinafter referred to as "the suit land"). C

5. The respondent filed a suit bearing Civil Suit No. 226 of 2001 against the appellants in the Court of Civil Judge (Jr. Division), Karnal. The suit was for a declaration that they are the owner of the suit land and that the appellant (State) have no right, title and interest in the suit land. The respondent also claimed prohibitory injunction against the appellants restraining the State authorities from interfering in their peaceful possession over the suit land. The respondent based their claim of ownership on several documents which, according to them, exclusively proved their superior title over every one including the State. D E

6. The appellants filed their written statement and denied the respondent's claim of the ownership. The appellants then asserted their ownership rights over the suit land to the exclusion of every one. The dispute thus essentially centered around to the ownership of the suit land as to who is the owner of the suit land, viz., the appellants or the respondent. F

7. The Trial Court, on the basis of pleadings, framed issues. Both parties adduced oral and documentary evidence to prove their title over the suit land. G

8. The Trial Court by judgment/decreed dated 11.06.2002 decreed the suit in favour of the plaintiff. On appreciating the evidence adduced by the parties, it was held that the respondent (plaintiff) is the owner of the suit land. Accordingly, injunction, as claimed by the respondent against H

A the appellants, was also granted.

9. The appellants, felt aggrieved, filed first appeal being Civil Appeal No. 30 of 2005 before the Additional District Judge, Karnal. The first appellate Court vide judgment dated 24.08.2005 dismissed the appeal and affirmed the judgment/decreed of the Trial Court.

B 10. The appellants, felt aggrieved, filed second appeal being R.S.A. No. 4083 of 2005 in the High Court. The learned Single Judge of the High Court, by impugned judgment/order, dismissed the second appeal in *limine* holding that the appeal does not involve any substantial question of law as required under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”). Felt aggrieved, the State  
C filed this appeal by way of special leave before this Court.

11. Heard Mr. Samar Vijay Singh, learned counsel for the appellants. Though served, none appeared for the respondent.

D 12. Having heard the learned counsel for the appellants and on perusal of the record of the case, we are inclined to allow the appeal and remand the case to the High Court for deciding the second appeal afresh on merits after hearing both the parties.

13. Learned Single Judge while dismissing the appeal held as under:

E **“After hearing learned counsel, I am of the considered view that there is no question of law which would require determination by this Court under Section 100 of the Code. The aforementioned findings are pure findings of fact, which are based on ample evidence. Therefore, there is no merit in the appeal. Dismissed.”**

F 14. In our considered view, the appeal does involve the substantial questions of law and, therefore, the High Court should have admitted the appeal by framing substantial questions of law arising in the case and then after giving notice to the respondent for its final hearing as provided under Section 100 of the Code should have decided the appeal  
G finally on merits.

H 15. As a matter of fact, having regard to the nature of controversy and keeping in view the issues involved, such as the issue regarding ownership rights coupled with the issue regarding proper interpretation of documents (exhibits) to prove the ownership rights over the suit land, we are of the view that these issues do constitute substantial questions

of law, viz., whether the Courts below were justified in properly interpreting the documents/exhibits relied upon by the parties for determining the ownership rights over the suit land? In other words, we are of the view that where the Court is required to properly interpret the nature of the documents, it does not involve any issue of fact as such but it only involves legal issue based on admitted documents. It is, therefore, obligatory upon the High Court to decide the legality and correctness of such findings as to which party's documents are to be preferred for conferring title over the suit land. In this case, the High Court could do so only when it had first admitted the appeal and framed substantial questions of law as required under Section 100 of the Code.

16. The High Court thus, in our view, committed jurisdictional error when it dismissed the appeal *in limine* saying that it only involves question of fact. We cannot countenance the approach of the High Court. The impugned order, therefore, is liable to be set aside.

17. In view of foregoing discussion, the appeal succeeds and is allowed. The impugned order is set aside. The case is now remanded to the High Court for deciding the appeal on merits in accordance with law.

18. We request the High Court to admit the second appeal and frame appropriate substantial questions of law as are required to be framed under Section 100 of the Code, keeping in view the documents (exhibits) and the findings recorded by the courts below on the question of ownership in relation to the suit land. Needless to say the questions to be framed should be specific with relevance to exhibit and errors in the findings recorded by the two courts below so that they can be properly answered on their merits.

19. Before parting, we consider it proper to mention here that we are not expressing any opinion on the merits of the controversy but confined our inquiry only to examine whether the second appeal involved any substantial question of law within the meaning of Section 100 of the Code. Since we have held that the appeal does involve the substantial questions of law and hence we have requested the High Court to formally admit the appeal and frame substantial questions of law and then answer them finally on merits in accordance with the law.

20. There is one more aspect of this case which we have noticed and we consider it apposite to mention here. As is clear, this is a case

- A filed by a statutory public body against the Government and it is in relation to the ownership rights on a piece of land which both are asserting against each other.

21. Order 27 of the Code deals with the suits which are filed by the Government or against the Government. Rule 5B of Order 27 casts a duty on the Court in a suit filed against the Government to assist the parties to the suit in arriving at a settlement. Rule 5B of Order 27 reads as under:

**Order 27 Rule 5B**

- C **“5B. Duty of Court in suits against the Government or a public officer to assist in arriving at a settlement-**
- (1) **In every suit or proceeding to which the Government, or a public officer acting in his official capacity, is a party, it shall be the duty of the Court to make, in the first instance, every endeavour, where it is possible to do so consistently with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject-matter of the suit.**
- D
- E (2) **If, in any such suit or proceeding, at any stage, it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit, to enable attempts to be made to effect such a settlement.**
- F (3) **The power conferred under sub-rule(2) is in addition to any other power of the Court to adjourn proceedings.”**

G 22. It is clear from the record that no such endeavour was made by the Court or by the parties to arrive at a settlement keeping in view the mandate of Order 27 Rule 5B quoted above. In our view, it should have been done and only on failure being reported, the case should have been finally decided on merits in accordance with law.

23. We now request the High Court to decide the second appeal in accordance with law finally on merits keeping in view the aforesaid observations and, if possible, preferably within six months.

H 24. Since none appeared for the respondent in this appeal despite

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KALEHRI [ABHAY MANOHAR SAPRE, J.]

service, we request the High Court to issue notice to the respondent for A  
final hearing the second appeal before it is heard finally.

25. Record of the case, if requisitioned, be sent back to the High  
Court forthwith by the registry.

Nidhi Jain

Appeal allowed.

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