

RAM CHAND (DECEASED) THROUGH L.R.S. & ORS. A

v.

UDAI SINGH @ DAYA RAM & ORS.

(Civil Appeal Nos. 11107-11108 of 2017) B

AUGUST 24, 2017

[R.K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Code of Civil Procedure, 1908:

s. 100 – Second appeal – Suit for declaration of right, title and interest in the suit property – Suit decreed giving only symbolic possession to the plaintiff – Cross appeals (first appeal) – Dismissed – Second appeal by plaintiff as well as defendant – Decided in favour of defendant by High Court – On appeal, held: Since the High Court failed to frame substantial questions of law as is required to be framed at the time of admission of the second appeal, the impugned order is not sustainable – Case remanded to High Court for deciding the second appeals afresh in accordance with law. C D

Allowing the appeals, the Court

Held: 1. In order to admit the second appeal, what is required to be made out by the appellant being *sine qua non* for exercise of powers under Section 100 of CPC is existence of “substantial question of law” arising in the case so as to empower the High Court to admit the appeal for final hearing by formulation on such question. In the absence of any substantial question arising in appeal, the same merits dismissal in *limine* on the ground that the appeal does not involve any substantial question of law within the meaning of Section 100 of CPC. [Para 17] [735-A-B] E F

2. In the present case, the High Court while disposing of second appeals filed by the both parties did not frame any substantial question of law as is required to be framed at the time of admission of the second appeal and proceeded to allow the appeal filed by the defendants and dismiss the appeal filed by the plaintiff. Therefore, the impugned order is not legally sustainable and thus liable to be set aside. The case is remanded to the High H

A **Court for deciding the second appeals afresh in accordance with law. [Paras 15, 19 and 20] [734-D; 735-D-E]**

Santosh Hazari v. Purushottam Tiwari (Deceased) by L.Rs., (2001) 3 SCC 179: [2001] 1 SCR 948 – relied on.

B

Case Law Reference

[2001] 1 SCR 948 relied on Para 16

C

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 11107-11108 of 2017.

From the impugned Final Judgment and Order dated 21.11.2011 passed by the High Court of Punjab and Haryana in R.S.A. No.1791/1980 and R.S.A. No.2037.

D

Mahabir Singh, Sr. Adv., A.P. Jain, Ram Niwas, Anurag Jain, Ms. N. Annaporani, Advs. for the Appellants.

R.S. Sihota, Sr. Adv., P.I. Jose, Shashank Mishra, Ms. Pooja Singh, Advs. for the Respondents.

E

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. Leave granted.

F

1. These appeals are filed by the legal representatives of original plaintiff against the common final judgment and order dated 21.11.2011 passed by the High Court of Punjab & Haryana at Chandigarh in Regular Second Appeal Nos. 1791 and 2037 of 1980 whereby the High Court dismissed RSA No.1791 of 1980 filed by the appellants (plaintiff) and allowed R.S.A. No.2037 of 1980 filed by the respondents (defendants).

2. We herein set out the facts, in brief, to appreciate the issue involved in these appeals.

G

3. The dispute in the suit out of which this appeal arises relates to agricultural lands comprises of Khewat No. 280 Khata No. 350 Rect. No. 258 Killa No. 25 area 5 kanal, Rect. No. 295 Killa No. 5 area -01 marla, Rect. No. 214 Killa 11 area 5 kanals 12 marlas, killa no. 12 area 8 kanal, Rect. No. 255 Killa No. 6/1 area 2 kanals 10 marlas, 6/2 area 2 kanals 17 marlas, 7/1 area 4 kanals 3 marlas, 7/2 area 3 killa 17 marlas

H

Killa 8 area 8 kanals, Rect. 258 killa 16 area 6 kanals 6 marlas, killa 24
area 8 kanals, total area 54 kanals 6 marlas situated in Patti Bedha,
Hodel (hereinafter referred to as the "suit land").

4. The plaintiff (Ram Chand) since dead and now represented by
his legal representatives (appellants herein) filed a civil suit out of which
these appeals arise against the respondents (defendants) claiming right,
title and interest in the suit land. The plaintiff (appellants) also claimed
possession of the suit lands from the defendants (respondents).

5. The claim of the plaintiff, in substance, is based on the law of
inheritance. It is, *inter alia*, alleged in the plaint that the suit land originally
belonged to one Hiri, son of Bhondu and on his death, the plaintiff claimed
his right, title and interest in the suit land as one of the nearest heirs of
the deceased Hiri through inheritance.

6. The defendants (respondents) denied the claim of the plaintiff
and further denied his right to claim the ownership of the suit land by
inheritance through Hiri. The defendants then claimed ownership over
the suit land on the basis of a Will said to have been executed in their
favour by the erstwhile owner of the suit land.

7. So the basic question, involved in the suit, was who is the owner
of the suit land-plaintiff or the defendants.

8. By judgment/decreed dated 24.12.1979, the Trial Court (sub-
Judge, 1st Class), Palwal decreed the suit against the defendants for
possession and held that the plaintiff would be entitled to get only symbolic
possession of the suit land because the suit land was in possession of
Ram Narain (defendant No.5) as tenant.

9. Being aggrieved by the said judgment/decreed, both the parties
filed first appeals before the District Judge, Gurgaon being Civil Appeal
Nos. 5 and 6 of 1980.

10. The District Judge, by his judgment and order dated 09.04.1980,
dismissed both the appeals and affirmed the judgment/decreed passed by
the Trial Court.

11. Against the said judgment, both plaintiff and defendants filed
second appeals before the High Court being R.S.A. No. 1791 of 1980
(filed by the plaintiff) and R.S.A. No.2037 of 1980 (filed by the
defendants).

A 12. The High Court, by the impugned common judgment and order dated 21.11.2011, dismissed R.S.A. No.1791 of 1980 filed by the plaintiff and allowed R.S.A. No.2037 of 1980 filed by the defendants. As a result, the suit came to be dismissed.

B 13. Against the said judgment, the legal representatives of the original plaintiff, filed these appeals by way of special leave before this Court.

C 14. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeals and while setting aside the impugned judgment, remand the case to the High Court for deciding the second appeals afresh in accordance with law as indicated below.

D 15. The reasons to remand the case to the High Court has occasioned due to the reason that the High Court while disposing of second appeals filed by the both parties did not frame any substantial question of law as is required to be framed at the time of admission of the second appeal and proceeded to allow the appeal filed by the defendants and dismiss the appeal filed by the plaintiff.

E 16. A three Judge Bench of this Court in **Santosh Hazari vs. Purushottam Tiwari (Deceased)** by L.Rs., (2001) 3 SCC 179 had examined the scope of Section 100 of the Code of Civil procedure, 1908 (hereinafter referred to as "the Code"). Justice R. C. Lahoti (as His Lordship then was) speaking for the Bench laid down the following proposition of law in Para 9:

F **"9. The High Court cannot proceed to hear a second appeal without formulating the substantial question of law involved in the appeal and if it does so it acts illegally and in abnegation or abdication of the duty cast on Court. The existence of substantial question of law is the sine qua non for the exercise of the jurisdiction under the amended Section 100 of the Code. (See *Kshitish Chandra Purkait v. Santosh Kumar Purkait*, (1997) 5 SCC 438 *Panchugopal Barua v. Umesh Chandra Goswami*, (1997) 4 SCC 413 and *Kondiba Dagadu Kadam v. Savitribai Sopan Gujar*, (1999) 3 SCC 722.)"**

G

H

17. His Lordship then in Paras 10 to 14 succinctly explained the meaning of the words “substantial question of law” and “question of law” and held that in order to admit the second appeal, what is required to be made out by the appellant being *sine qua non* for exercise of powers under Section 100 of the Code, is existence of “substantial question of law” arising in the case so as to empower the High Court to admit the appeal for final hearing by formulation on such question. In the absence of any substantial question arising in appeal, the same merits dismissal in *limine* on the ground that the appeal does not involve any substantial question of law within the meaning of Section 100 of the Code.

18. Perusal of the impugned order shows that no such question was formulated except to note the submissions of learned counsel for the appellants that it so arises but not beyond that as to whether it actually arises and, if so, what is that question.

19. In the light of foregoing discussion and keeping in view the law laid down in the case of **Santosh Hazari** (supra), we are of the considered view that the impugned order is not legally sustainable and thus liable to be set aside.

20. As a result, the appeals succeed and are allowed. Impugned order is set aside. The case is remanded to the High Court for deciding the second appeals afresh in accordance with law keeping in view the law laid down in **Santosh Hazari** (supra).