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APPARAJU MALHAR RAO

v.

TULA VENKATAIAH @ VENKAT RAO (DEAD) & ORS.

(Civil Appeal No. 3672 of 2009)

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SEPTEMBER 01, 2017

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

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Code of Civil Procedure, 1908 – s. 100 – Second appeal – Substantial question of law – On facts, High Court did not frame any substantial question of law as is required to be framed at the time of admission of the second appeal and allowed the second appeal filed by respondent No.1 – Sustainability of – Held: Impugned order not legally sustainable and is set aside – Matter remanded to the High Court for deciding the second appeal afresh.

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Allowing the appeal, the Court

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HELD: The reasons to remand the case to the High Court has occasioned because the High Court while allowing the second appeal filed by the plaintiff-respondent No.1 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 plaintiff. Perusal of the impugned order shows that no such question was formulated except to note the submissions of counsel for the appellant that it so arises but not beyond that as to whether it actually arises and, if so, what is that question. Thus, the impugned order is not legally sustainable and is liable set aside. The case is remanded to the High Court for deciding the second appeal afresh in accordance with the law in the case of **Santosh Hazari*. [Paras 13, 16-18] [628-F; 629-E-F]

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

Case Law Reference

[2001] 1 SCR 948 relied on Paras 17, 18

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3672 A
of 2009.

From the final Judgment and Order dated 30.12.2005 passed by
the High Court of Judicature of Andhra Pradesh at Hyderabad in Second
Appeal No.743 of 2004.

D. Mahesh Babu, Ms. Suchitra H.K., T.V. Bhaskar Reddy, B
B.Rana K.R., Advs. for the Appellant.

Anil Kumar Tandale, Adv. for the Respondents.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. This appeal is filed by C
defendant No.1 against the final judgment and order dated 30.12.2005
passed by the High Court of Judicature of Andhra Pradesh at Hyderabad
in Second Appeal No. 743 of 2004 whereby the High Court allowed the
second appeal filed by the plaintiff and set aside the judgment and decree
dated 24.03.2004 passed by the Additional District Judge (FTC), D
Karimnagar in A.S. No. 34 of 1999 and confirmed the judgment and
decree dated 26.03.1999 passed by the Principal Junior Civil Judge,
Karimnagar in O.S. No. 338 of 1994.

2. We herein set out the facts, in brief, to appreciate the issue
involved in this appeal.

3. The appellant herein is defendant No.1, respondent No.1 is the
plaintiff (since dead) and respondent No. 2 is defendant No.3 (son of
late defendant No.2) and respondent No.3 is the wife of defendant No.2.
Defendant No.2 died during the pendency of the case before the High
Court and his legal representative is respondent No.3 herein. E

4. Respondent No.1-Plaintiff filed a suit for perpetual injunction F
against the defendants restraining them from interfering with the peaceful
possession and enjoyment of the plaintiff in respect of land measuring 5
guntas and 7 sq. yds. (hereinafter referred to as "suit land") in Survey
No.1128/A situated at Mankanmathota in Karimnagar.

5. On 20.01.1995, the defendants filed written statement and G
denied the claim of the plaintiff. It was, *inter alia*, contended that the
plaintiff is not the owner and possessor of suit land.

6. The Trial Court framed the issues and parties adduced their
evidence. By judgment/decreed dated 26.03.1999, the Trial Court decreed
the suit in favour of the plaintiff. H

A 7. Aggrieved by the said judgment/decree, the defendants filed first appeal being Appeal Suit No.34 of 1999 before the Additional District Judge (FTC), Karimnagar (A.P.). By judgment/decree dated 24.03.2004, the Additional District Judge allowed the first appeal, set aside the judgment/decree of the Trial Court and dismissed the suit.

B 8. Against the said judgment/decree, the plaintiff filed second appeal being S.A. No.743 of 2004 before the High Court.

9. The High Court, by the impugned judgment dated 13.12.2005, allowed the appeal and set aside the judgment/decree dated 24.03.2004 passed by the First Appellate Court in A.S. No.34 of 1999 and restored the judgment/decree dated 26.03.1999 passed by the Trial Court in O.S. No.338 of 1994 which had decreed the plaintiff's suit.

C 10. Felt aggrieved, defendant No.3 has filed this appeal by way of special leave before this Court.

D 11. Heard Mr. D. Mahesh Babu, learned counsel for the appellant. Nobody appears for the respondents.

E 12. Having heard the learned counsel for the appellant and on perusal of the record of the case, we are constrained to allow the appeal and while setting aside the impugned order, remand the case to the High Court for deciding the second appeal afresh in accordance with law as indicated below.

F 13. The reasons to remand the case to the High Court has occasioned because the High Court while allowing the second appeal filed by the plaintiff (respondent No.1 herein) 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 plaintiff.

G 14. 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 the 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:

"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

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abnegation or abdication of the duty case 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.)”

15. 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 formulating such question. In the absence of any substantial question of law 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.

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

17. 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.

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