

CASE NO.:
Appeal (civil) 3086 of 2006

PETITIONER:
Gian Dass

RESPONDENT:
The Gram Panchayat, Village Sunner Kalan & Others.

DATE OF JUDGMENT: 21/07/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No. 11715 of 2005)

ARIJIT PASAYAT, J.

Leave granted.

The appeal relates to a judgment delivered by a learned Single Judge of the Punjab and Haryana High Court in Regular Second Appeal No. 895 of 1984. The Second Appeal was filed by the defendants, in a suit for possession. The suit had been decreed by both the trial court and the first appellate court on the ground that the plaintiff (appellant) herein is the Saunjidar of the land in dispute and he had been dispossessed forcibly and illegally. The High Court held that when a person is claiming a title, right or interest in the property in dispute either being a owner or a saunjidar or tenant, then the jurisdiction of the civil court is barred. Saunjidar right is an interest claimed by the plaintiff-the appellant herein. Therefore, the civil court cannot adjudicate upon the matter. It is only the Collector under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act') who can decide whether the plaintiff had any saunjidar rights in the property in dispute. Accordingly the appeal was allowed, judgment and decree passed by the courts below were set aside and the suit of the plaintiff-appellant herein were dismissed.

Though several points were urged in support of the appeal, the basic issue which was urged was that the Second Appeal in terms of Section 100 of the Code of Civil Procedure, 1908 (in short the 'Code') has been disposed of without formulating substantial question of law by the High Court. It is, therefore, not necessary to deal with the factual aspects in detail.

Learned counsel for the appellant submitted that the High Court was not justified in disposing of the second appeal without formulating the substantial question or questions of law, as mandated by Section 100 of the Code.

Learned counsel for the respondents submitted that though the High Court has not formulated the questions of law as required, yet on analyzing the evidence, it concluded that the views expressed by the courts below were not tenable in law, and the civil court had no jurisdiction to deal with the suit.

It is further submitted that though no substantial question of law was formulated before the Second Appeal was adjudicated, yet that is permissible, because proviso to sub Section (5) of Section 100 permits the High Court to decide a second appeal on a different substantial question of law subject to recording of reasons.

Section 100 of the Code deals with "second appeal". The provision reads as follows:

"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 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 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.

(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."

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.

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

"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."

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:

"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 finding 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 Page 1532 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.

The position has been reiterated in Kanhaiyalal v. Anupkumar [2003 (1) SCC 430]. In Chadat Singh v. Bahadur Ram and Ors. [2004 (6) SCC 359], it was observed thus:

"6. In view of Section 100 of the Code the memorandum of appeal shall precisely state substantial question or questions 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."

The position was highlighted by this Court in Joseph Severane and Others v. Benny Mathew and Others [2005 (7) SCC 667]. Sasikumar and Others v. Kunnath Chellappan Nair and Others. [2005 (12) SCC 588].

The plea about proviso to sub-section (5) of Section 100 instead of supporting the stand of the respondent rather goes against them. The proviso is applicable only when any substantial question of law has already been formulated and it empowers the High Court to hear, for reasons to be recorded, the appeal on any other substantial question of law. The expression "on any other substantial question of law" clearly shows that there must be some substantial question of law already formulated and then only another substantial question of law which was not formulated earlier can be taken up by the High Court for reasons to be recorded, if it is of the view that the case involves such question.

Under the circumstances the impugned judgment is set aside, we remit the matter to the High Court so far as it relates to Second Appeal No. 895 of 1984 for disposal in accordance with law. The appeal is disposed of on the aforesaid terms with no order as to costs.