CASE NO.:
Appeal (civil) 6784-6785 of 2004

PETITIONER:
Mathakala Krishnaiah

RESPONDENT:
V. Rajagopal

DATE OF JUDGMENT: 15/10/2004

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
J U D G M E N T
(Arising out of SLP ) Nos. 11653-11654 of 2004)

ARIJIT PASAYAT, J

Leave granted.

By the impugned judgment a learned Single Judge of the Andhra Pradesh High Court reversed the Appellate Court's judgment and decree passed by learned IInd Additional District Judge, Nellore. The present respondent was the plaintiff in the original suit which was on the file of Ist Additional District Munsif Court, Nellore. He was the appellant before the High Court. Though the trial Court had decided in favour of the plaintiff (respondent herein), as noted above the first Appellate Court reversed the judgment and decree of the trial Court and the suit filed by the plaintiff was dismissed. The plaintiff filed Second Appeal before the High Court which was disposed of by the impugned judgment. The High Court directed restoration of the judgment and decree of the trial Court and set aside the judgment and decree of the first Appellate Court.

Though many points were urged in support of the appeal, the pivotal plea was that the High Court could not have interfered with the judgment and decree of the first Appellate Court without framing a substantial question of law as enjoined by Section 100 of the Code of Civil Procedure, 1908 (in short the 'Code'). The High Court can only exercise its jurisdiction under Section 100 of the Code in Second Appeal on the basis of substantial question of law framed at the time of admitting appeal. A Second Appeal can be heard and decided only on the basis of substantial question of law, if any. The judgment rendered by the High Court in Second appeal without following the aforesaid procedure is not sustainable in law.

Learned counsel for the respondent on the other hand submitted that the question of law is self evident and on a technical plea that a question has not been framed, the well reasoned judgment should not be set aside.

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

Section 100 of the Code deals with "Second Appeal". The provision

reads as follows:

"Section 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 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."

The position has been reiterated in Kanhaiyalal and Ors. V. Anupkumar and Ors. (JT 2002 (10) SC 98)

Reference may also be made to R. Lakshmi Narayan v. Santhi (2001 (4) SCC 688), M.S.V. Raja and Anr. v. Seeni Thevar and Ors. (2001 (6) SCC 652), R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P. Temple and Anr. (2003 (8) SCC 752), Md. Mohammad Ali (dead) by Lrs. V. Jagadish Kalita and Ors. (2004 (1) SCC 271) and Chadat Singh v. Bahadur Ram and Ors. (Civil Appeal Nos.4903-4905/2005 decided on 3rd August, 2004).

In the circumstances, the impugned judgment is set aside. We remit these matters to the High Court for disposal in accordance with law. The appeals are disposed of in the aforesaid terms with no order as to costs.