

CASE NO.:
Appeal (civil) 1004 of 2003

PETITIONER:
Jawala Singh (D) By Lrs.& Ors.

RESPONDENT:
Jagat Singh (D) By Lrs. & Ors.

DATE OF JUDGMENT: 06/09/2006

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T
With
Civil Appeal No. 3938 of 2006

ARIJIT PASAYAT, J.

In these appeals challenge is to the judgment rendered by a learned Singh Judge of the Punjab and Haryana High Court allowing the Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 (in short the 'CPC'). The Second appeal was partially allowed by setting aside the judgment and decree of the First appellate Court in the plaintiff's suit for possession to the extent of land measuring 36 kanals comprised in Khasra Nos. 646,647 and 648.

Though many points were urged basically it was urged that the Second appeal was allowed without formulating any question of law for adjudication. This according to appellants rendered the judgment vulnerable.

Learned counsel for the respondents submitted that though specific question of law was not formulated, the High Court analysed the evidence and kept to the correct conclusion.

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 show that any substantial question of law has been formulated or that the second appeal was heard on a question, if any, so formulated. That being so, the judgment cannot be maintained.

In *Ishwar Dass Jain v. Sohan Lal* this Court in para 10 has stated

"10. Now under Section 100 CPC, after the 1976 Amendment, it is essential for the High Court to formulate a substantial question of law it is not permissible to reverse the judgment of the first appellate court without doing so."

Yet again in *Roop Singh v. Ram Singh* this Court has expressed that jurisdiction of a High Court is confined to appeals involving substantial question of law. Para 7 of the said judgment reads: (SCC p. 713, para 7)

"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 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 [(2004) 6 SCC 359] it was observed thus: (SCC p. 360)

"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] and Gian Dass v. The Gram Panchayat, Village Sunner Kalan & Ors. [2006 (5) Supreme 776].

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. 1832 of 1979 for disposal in accordance with law. The appeals are disposed of on the aforesaid terms with no order as to costs.

Since the matter is pending since long, we request the High Court to dispose of the appeal as early as practicable.