PETITIONER:
RAMCHANDRA PANDURANG SONAR (DECEASED)THROUGH HIS HEIRS AND L

Vs.

RESPONDENT:
MURLIDHAR RAMCHANDRA SONAR AND ORS.

DATE OF JUDGMENT19/07/1990

BENCH:
SAWANT, P.B.
BENCH:
SAWANT, P.B.
KASLIWAL, N.M. (J)

CITATION:
1990 AIR 1973 1990 SCR (3) 435
1990 SCC (4) 45 JT 1990 (3) 202
1990 SCALE (2)85

ACT:
Code of Civil Procedure, 1908: Section 100--Second appeal-Finding of fact--High Court not to interfere unless question of law is involved and such question is formulated by it.

HEADNOTE:
S and R were brothers who carried on the business of gold smithery, and a partition took place between them in 1918. R got 2 houses and land in Survey No. 71. Later on, one of the sons of R instituted a suit claiming that Survey No. 71 was an ancestral property and that some of the suit properties were purchased by R out of the income, and subsequently the sale proceeds, of the land. The defendants, viz., the other children of R contended that Survey No. 71 was purchased by S and R with the income they derived from gold smithery and the suit properties except the two houses which were admittedly the ancestral properties, were not the joint family properties in which the plaintiff could claim his share.

The Trial Court decreed the suit in favour of the plaintiff. On appeal by the defendants, the First Appellate Court reappreciated the evidence, found infirmities in the conclusions arrived at by the Trial Court and dismissed the suit except to the extent of plaintiff's share in the two ancestral houses, on the basis of its finding that the other properties were self-acquired properties of R.

During the pendency of the suit R died. By virtue of his will the self-acquired properties of R went to the defendants and the plaintiff was left out.

The plaintiff preferred an appeal before the High Court against the order of the First Appellate Court. The High Court interfered with the said findings of facts and held that since Survey No. 71 had come to the share of R in general partition, it was ancestral property. it further observed that since the said property was yielding income with the help of which the other properties could have been purchased and since
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further the gold smithery business was an ancestral business, the properties purchased with the help of such income should be held to be joint family properties.

Aggrieved, the defendants have filed this appeal. Allowing the appeal,

HELD: 1. There was, no question of law involved in the second appeal. Yet the High Court chose to interfere with the finding ignoring the mandatory provisions of Section 100 of the Civil Procedure Code that unless it was satisfied that the case involved substantial question of law it could not entertain it and that before it could entertain it, the Court had to formulate such question. [440F]

2.1 It was not disputed at any time that the property in Survey No. 71 had all along stood in the name of Supadu and, therefore, the presumption drawn by the First Appellate Court that this showed that in all probability the property was purchased after the death of his father cannot be said to be unreasonable. There is no evidence brought on record by the plaintiff with regard to the quantum of income from Survey No.71. In fact, the uncontroverted evidence on record shows that Ramchandra had no implements and bullocks for cultivating the land and the land was always cultivated with the help of the labourers who brought their own implements and bullocks. This shows that the family derived less than normal income from the said land. It was admitted by the plaintiff that Ramchandra was a skilled goldsmith and was well-known in the locality as such, and was doing his business as goldsmith and earning sufficient income. [440A-D]

2.2 The High Court ignoring the fact that it was not the case of the plaintiff that goldsmithery was an ancestral business and that it was not his case that the suit properties were purchased with the help of the income from the said business held that it was so. What is further, the plaintiff's case was that the suit properties were purchased with the income from Survey No. 71. Thus it is obvious that the conclusions which were arrived at by the First Appellate Court were reasonable and legal besides being conclusions of facts. [440D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3704 of 1989.

From the Judgment and Order dated 11.3.1987 of the Bombay High Court in Second Appeal No. 725 of 1980.

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U.R. Lalit, G.A. Shah, V.N. Ganpule for the Appellants.

D.A. Dave, R. Karanjawala, Ms. M. Karanjawala and Jatinder Sethi for the Respondents.

The Judgment of the Court was delivered by

SAWANT.J. This is a case where the High Court in second appeal has interfered with a pure finding of fact recorded by the First Appellate Court for no worthwhile reason, and ignoring the mandatory provisions of Section 100 of the Civil Procedure Code.

2. The only question which was involved in the suit was whether the suit properties in which the plaintiff claimed one-fifth share, were the ancestral joint family properties or whether they were the self acquired properties of his father, Ramchandra. The relevant facts are: defendant No. 1, Ramchandra had four sons including the plaintiff, and a daughter. The three other sons and the daughter are defendants Nos. 2 to 5. One of the sons, defendant No. 3 appears to support the plaintiff. During the pendency of the suit, Ramchandra died and his sons including the plaintiff have been brought on record as his heirs and legal representatives. The suit properties consisted of lands being (i)

Survey No. 21/1 admeasuring 14 acres 3 gunthas, (ii) Survey No.. 20/2 admeasuring 2 acres 36 gunthas, (iii) Survey No. 20/1 admeasuring 3 acres 30 gunthas and two houses all situated at Nizampur, Taluka Saaki, District Dhuiia. It was the case of the plaintiff in his plaint that a joint family consisting of his father Ramchandra and his brother, Supadu owned several houses, and a land comprised in Survey No. 71 admeasuring about 14 acres. In the partition between Ramchandra and Supadu, two houses and Survey No. 71 came to the share of Ramchandra- The said two houses are included in the suit properties and it is not disputed on behalf of the respondent-defendants that they are ancestral properties and the plaintiff has one-fifth share in the same. However, the case of the plaintiff that Survey No. 71 was the ancestral property was vehemently disputed and that has been the sheet-anchor of contention of both the parties while the plaintiff claims that rest of the suit properties were purchased by Ramchandra out of the income and-subsequently the sale proceeds, of the said land (since admittedly the said land was sold by Ramchandra in 1953), it is the case of the defendants that the said land was in fact purchased jointly by Ramchandra and his brother, Supadu out of their own earnings, and in the partition between Ramchandra and Supadu that land came to the share of Ramchandra. Hence, according to the defendants, even
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assuming that the rest of the suit properties were purchased with the help of the income from Survey No. 71, they were the self-acquired properties of Ramchandra.

3. In support of his case that Survey No. 71 was the ancestral property, the plaintiff relied upon the fact that the said survey no. had come to the share. of Ramchandra in a general partition between him and his brother, Supadu in 1918. As against this, the defendants contended that Ramchandra's father Pandu died in 1904 and since the property all along stood in the name of Supadu it showed that it was purchased after Pandu's death in 1904. They also relied upon the fact that Ramchandra was a skilled goldsmith and was well known for his artisanship and commanded good business. His brother was also a goldsmith and both of them had purchased the said land with the earning in goldsmithery. It was also their case that Ramchandra's father, Pandu had only two houses and no other property nor did he carry on any business even of goldsmithery. Hence, there was no question of purchasing Survey No. 71 out of the income from the ancestral property by Ramchandra and Supadu and the purchase was with the help of the income which they had earned from the business which they were carrying on by their own skill. It was also shown by the defendants that when Survey No. 71 was sold in 1953, no objection whatsoever was taken to the sale nor permission of any of the sons including that of the plaintiff was deemed necessary for the same. They further contended that they had hardly any income from Survey No. 71 and the properties which were purchased prior to 1953 could not have been purchased with the help of any such income assuming that it was an ancestral land. According to them, therefore, the suit properties were purchased only from the income from the business of goldsmithery. The three of the properties were purchased prior to 1953 while the rest were purchased long after 1953, i.e. in 1961, 1965 and 1967. Hence, their purchase had no relation to the sale of Survey No. 71 in 1953, again assuming that it was an ancestral property. It is for these reasons, according to them, that the suit properties except the two houses which were admittedly the ancestral properties were not the joint family

properties in which the plaintiff could claim his share.

4. The relevant issues were framed including the issue as to whether defendants proved that the suit properties were self-acquired and plaintiff had no share in it. The Trial Court answered the said issue in favour of the plaintiff and decreed the suit against the defendants. Against the said decision, the defendants appealed and the First
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Appellate Court after reappreciating the evidence and pointing out the infirmities in the conclusions arrived at by the Trial Court, dismissed the suit except to the extent of the plaintiff's share in the two ancestral houses. It may be mentioned here that although Ramchandra, defendant No. 1 died during the pendency of the suit, he had willed out his properties in favour of the defendants and, therefore, the plaintiff had no share in the self-acquired properties of Ramchandra which could have been granted to him otherwise.

5. The First Appellate Court held that the following circumstances showed that the suit properties except the ancestral houses were the self-acquired properties of Ramchandra. The first circumstance was that Survey No. 71 was purchased in the name of Supadu which showed that in all probability the property was purchased after the death of Ramchandra's father, Pandu. Secondly, since there was no record to show that Pandu had any lands or was carrying on any business, Survey No. 71 must have been purchased by Ramchandra and Supadu with the help of their earnings. It was not disputed and in fact it was admitted that Ramchandra was a skilled goldsmith and was carrying on business of goldsmithery along with his brother, Supadu and was earning sufficient income with the help of which he could purchase the properties. Survey No. 71 further was sold in 1953 without obtaining the consent of the other members of the family. Had it been the joint family property the vendee would have insisted upon such consent.

6. The High Court interfered with these findings on grounds which were not even made out by the plaintiff either in the plaint or in his evidence and which were contrary to the admissions of the plaintiff himself. The High Court held that since the property had come to the share of Ramchandra in general partition, it must be held that it was an ancestral property. The High Court further held that Survey No. 71 was yielding sufficient income with the help of which the other properties would have been purchased and further the goldsmithery business was an ancestral business and, therefore, the properties purchased with the help of such income should also be held to be joint family properties.

It may be stated here that the learned counsel appearing for the appellant-defendants wanted to produce before us documents to show that in fact Survey No. 71 was purchased in the year 1907 by Ramchandra and his brother Supadu after the death of their father, Pandu in 1904, and that in the Revenue records the property always
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stood in the name of Supadu. We did not permit him to produce the said documents since no explanation whatsoever was available as to why the documents were not produced before the courts below. However, it was not disputed at any time that the property had all along stood in the name of Supadu and, therefore, the presumption drawn by the First Appellate Court that this showed that in all probability the property was purchased after the death of Pandu cannot be said to be unreasonable. Secondly, there is no evidence brought on record by the plaintiff with regard to the quantum of income from Survey No; 71. In fact, the uncontroverted evidence on

record shows that Ramchandra who had entered the witness box had no implements and bullocks for cultivating the land and the land was always cultivated with the help of the labourers who brought their own implements and bullocks. This shows that the family derived less than normal income from the said land. Secondly, it was admitted by the plaintiff that Ramchandra was a skilled goldsmith and was well-known in the locality as such, and was doing his business as goldsmith and earning sufficient income. It was not his case further that the goldsmithery was the ancestral business. However, the High Court ignoring the fact that it was not the case of the plaintiff that goldsmithery was an ancestral business and that it was not his case that the suit properties were purchased with the help of the income from the said business held that it was so. What is further, the plaintiff's case was that the suit properties were purchased with the income from Survey No. 71. Thus it is obvious that the conclusions' which were arrived at by the first Appellate Court were reasonable and legal besides being conclusions of facts. There was, therefore, no question of law involved in the second appeal. Yet the High Court chose to interfere with the finding ignoring the mandatory provisions of Section 100 of the Civil Procedure Code that unless it was satisfied that the case involved a substantial question of law it could not entertain it and that before it could entertain it, the Court had to formulate such question.

7. We are, therefore, more than satisfied that the High COurt has erred in law in interfering with the decree passed by the First Appellate Court. We, therefore, allow the appeal, set aside the decision of the High Court and restore the decree passed by the First Appellate Court. Since the parties belong to one family we pass no order as to costs.

G.N. Appeal allowed.

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