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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
ABHAY S. OKA; J., SANJAY KAROL; J.
CIVIL APPEAL NOS.10556-10558 OF 2010; 24 July, 2023
GURBACHAN SINGH (D) THROUGH LRS *versus* **GURCHARAN SINGH (D) THROUGH LRS AND ORS.**

Code of Civil Procedure, 1908; Section 100 - Punjab Courts Act, 1918; Section 41 - In appeals arising out of the state of Punjab or the State of Haryana, courts are not required to frame substantial questions of law as per section 100 of CPC. *Referred to Pankajakshi (Dead) through LRs v. Chandrika (2016) 6 SCC 157. (Para 8, 9)*

Code of Civil Procedure, 1908; Section 100 - The parameters of an appeal under Section 100, CPC - Referred to *Nazir Mohamed v. J. Kamala (2020) 19 SCC 57* - Ordinarily, in second appeal, the court must not disturb facts established by the lower court or the first appellate court. However, this rule is not an absolute one or in other words, it is not a rule set in stone - Where the court is of the view that the conclusions drawn by the court below do not have a basis in the evidence led or it is of the view that the appreciation of evidence "suffers from material irregularity" the court will be justified in interfering with such finding. *(Para 14, 15)*

For Appellant(s) Mr. Amol Suryavanshi, Adv. Mr. Martand Singh, Adv. Ms. Vartika Aggarwal, Adv. M/S. Law Associates, AOR

For Respondent(s) Mr. Sameer Abhyankar, AOR Ms. Vani Vandana Chhetri, Adv. Ms. Nishi Sangtani, Adv. Ms. Sugandh Rathore, Adv. Mr. Naman Jain, Adv.

J U D G M E N T

SANJAY KAROL, J.

Background

1. The present appeals stand filed against a judgment rendered by the Punjab and Haryana High Court in Civil Regular Second Appeal number 283 of 1984 dated 18th February, 2010[1] and in RA-RS-42-C of 2010 and Civil Misc. No.6287-C of 2010 dated 28th May, 2010 by which the court in such jurisdiction set aside the concurrent findings returned by the Additional District Judge, Jalandhar in Civil Appeal No.248 of 1981 dated 1st August, 1981 and by the Sub-Judge 1st Class, Jullundur (now Jalandhar) in Civil Suit No.186 of 1981 dated 24th September, 1981.

2. The crux of these appeals lies in a property dispute wherein one of the two brothers namely, Faqir Singh had allegedly sold off the portion of property belonging to him that his brother Gurbachan Singh and he inherited from their father namely Suchet Singh who died intestate in the year 1942. Gurcharan Singh (Respondent herein/plaintiff) bought a piece of land belonging to Faqir Singh measuring 4 marlas vide sale deed dated 19th December, 1978[2] for a consideration of ₹6000. Thereafter, he was put in possession of such land however, it was forcibly taken by the Appellant Gurbachan Singh who stated that since Faqir Singh did not have any exclusive title or possession over the suit property, he could not purport to sell the same.

3. The Respondent (Gurcharan Singh) filed a suit for possession over such disputed property before the SubJudge 1st Class, Jullundur (now Jalandhar), who, having considered the evidence led, framed certain issues and returned findings in favour of the

[1] Hereinafter referred to as "Impugned Judgment"
[2] Hereinafter referred to as "disputed property"

Appellant (Gurbachan Singh) herein. On 1st appeal, the learned Additional District Judge upheld the judgement rendered by the court below on two grounds viz. that there is no document on record to prove that the disputed property had been given to Faqir Singh in a family partition; and that if Suchet Singh had indeed affected partition 50 or 60 years ago, then there should have been an entry in the revenue record to that effect, however, no such entry is to be found.

Impugned Judgement

4. The learned single Judge framed the following questions of law (not substantial questions of law) for his consideration whether the findings recorded by both the courts below by relying upon cogent evidence in the shape of admissions made by witnesses of the Respondents, can be termed to be perverse given the set of circumstances or not? And, whether a person, who is concededly the owner on the basis of valid the executed sale deed and having become co-sharer by virtue of the same, is entitled to protect his possession, if it is established that he is in settled possession of a specific area or not?

5. Referring to the testimonies of DW-1, DW-3 and DW-4 the learned judge noted a categorical admission that Suchet Singh had partitioned the property during his lifetime. It was also noticed that the abovenamed witnesses testified to the Respondents herein having carried out construction on the property purchased by him, the implication thereof being that after the execution of the sale deed, possession also rested with him. In view of the said facts the judge held that the judgements of the courts below were result of "complete misreading of the evidence" and that the Appellant was entitled to the possession of the specific portion sold to him, thereby setting aside the concurrent findings of the courts below.

The Instant Appeals

6. The judgement rendered in the regular 2nd appeal has been impugned before us on the ground that the High Court has transgressed the scope of second appeal; that the purchaser of a co-share does not have a right to possession [this ground is urged on the basis of 3 judgement rendered by this court in Jai Singh v. Gurmej Singh[3], Ramdas v. Sitabai [4]and Shyam Sunder v. Ram Kumar[5]] and, that the High Court had erred in its appreciation of evidence, particularly on the aspects of possession, the disputed property being an integral part of the Appellant herein's house and that of the Respondents herein having raised construction on the disputed property.

Our View

7. The parameters of an appeal under Section 100, CPC passing muster are well established. The section itself dictates that such an appeal shall only be maintainable when the case involves a substantial question of law or that the appellate decree has been passed *ex parte.* the latter, obviously is not the case. This court has, in a multitude of decisions, expounded on what may be termed as a substantial question of law to satisfy the requirements of section 100. In **Nazir Mohamed v. J. Kamala[6]**(2- Judge Bench), it was observed:-

"27. In HeroVinoth v. Seshammal [HeroVinoth v. S eshammal, (2006) 5 SCC 545] , this Court referred to and relied upon Chunilal V. Mehta and Sons Ltd. [Chunilal V. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd., AIR 1962 SC 1314] and other judgments and summarised the tests

[3] (2009) 15 SCC 747
[4] (2009) SCC 444
[5] (2001) 8 SCC 24
[6] (2020) 19 SCC 57

to find out whether a given set of questions of law were mere questions of law or substantial questions of law. The relevant paragraphs of the judgment of this Court in Hero Vinoth [Hero Vinoth v. Seshammal, (2006) 5 SCC 545] are set out hereinbelow : (SCC p. 554, para 21)

"21. The phrase "substantial question of law", as occurring in the amended Section 100 CPC is not defined in the Code. The word substantial, as qualifying "question of law", means— of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with—technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In Guran Ditta v. Ram Ditta [Guran Ditta v. Ram Ditta, 1928 SCC OnLine PC 31 : (1927-28) 55 IA 235 : AIR 1928 PC 172] the phrase "substantial question of law" as it was employed in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. In Chunilal case [Chunilal V. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd., AIR 1962 SC 1314] the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in Rimmalapudi Subba Rao v. Noony Veeraju [Rimmalapudi Subba Rao v. Noony Veeraju, 1951 SCC OnLine Mad 100 : AIR 1951 Mad 969] : (Chunilal case [Chunilal V. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd., AIR 1962 SC 1314] , AIR p. 1318, para 5)

'5. … when a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular facts of the case it would not be a substantial question of law.'

28. To be "substantial", a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way."

(Emphasis supplied)

8. However, the formulation or lack thereof of the Court having framed substantial questions of law is not one of relevance to the instant dispute and therefore does not come to the aid of the Appellant herein. This case arises out of a dispute in Punjab and therefore, the rigors of section 100 do not apply. It has been held by this court that in appeals arising out of the state of Punjab or the State of Haryana, courts are not required to frame substantial questions of law as per section 100 of CPC.

9. The Constitution bench in **Pankajakshi (Dead) through LRs v. Chandrika**[7] had held Kulwant Kaur v. Gurdial Singh Mann[8]which held section 41 of the Punjab Courts Act, 1918 to be repugnant to section 100, CPC to be bad in law, thereby implying that section 41 of the Punjab Court Act holds as good law. It was held as under:-

"25 . We are afraid that this judgment in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] does not state the law correctly on both propositions. First and foremost, when Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 speaks of any amendment made or any provision inserted in the principal Act by virtue of a State Legislature or a High Court, the said section refers only to amendments made and/or provisions inserted in the Code of Civil

[7] (2016) 6 SCC 157
[8] (2001) 4 SCC 262

Procedure itself and not elsewhere. This is clear from the expression "principal Act" occurring in Section 97(1). What Section 97(1) really does is to state that where a State Legislature makes an amendment in the Code of Civil Procedure, which amendment will apply only within the four corners of the State, being made under Schedule VII List III Entry 13 to the Constitution of India, such amendment shall stand repealed if it is inconsistent with the provisions of the principal Act as amended by the Parliamentary enactment contained in the 1976 Amendment to the Code of Civil Procedure. This is further made clear by the reference in Section 97(1) to a High Court. The expression "any provision inserted in the principal Act" by a High Court has reference to Section 122 of the Code of Civil Procedure by which High Courts may make rules regulating their own procedure, and the procedure of civil courts subject to their superintendence, and may by such rules annul, alter, or add to any of the rules contained in the First Schedule to the Code of Civil Procedure."

10. Recently, a Bench of three learned Judges in **Satyender v. Saroj**[9] while dealing with a property dispute arising out of the State of Haryana, held as under:-

"**16**. We may also add here that we are presently concerned with the laws in the State of Haryana. All the same, the laws as applicable in Punjab in the year 1918, were also applicable to the present territory of Haryana since it was then a part of the State of Punjab. Later on, the creation of the new State of Haryana, under the provision given in Section 88 of the Punjab Re-organization Act, 1966, the laws applicable in the erstwhile State of Punjab continued to be applicable in the new State of Haryana. Furthermore, State of Haryana formally adopted the laws of the erstwhile State of Punjab, under Section 89 of the Punjab Re-Organisation Act, 1966. Therefore, in the State of Haryana a court in second appeal is not required to formulate a substantial question of law, as what is applicable in Haryana is Section 41 of the Punjab Courts Act, 1918 and not Section 100 of CPC. Consequently, it was not necessary for the High Court to formulate a substantial question of law."

11. In view of the above discussion, it is clear to this court that the judgement of the learned single Judge sitting in second appellate jurisdiction cannot be faulted for not having framed substantial questions of law under section 100, CPC.

12. With reference to **Ramdas** (supra) and **Gurmej Singh** (supra) it is contended that Faqir Singh as a co-owner sold a part of his share in an undivided property and therefore the purchaser only acquires such share but not the right to possess. It is only after such a joint holding is partitioned and a right of exclusive possession arises. With reference to **Shyam Sunder**(supra) it is submitted that a co-sharer has a right to substitute himself in place of a stranger so as to prevent such a person from entering into family property.

13. The principles of law cited herein may be undoubtedly good law, but, however, in the considered view of this court, they do not hold in the case put forward by the Appellant. A perusal of the witness statements of DW-3 as duly recorded by the High Court, (the court also relies on the crossexamination portions of DW-4 although the same do not form part of the record before this court.) shows that father of the Appellant had indeed partitioned the property during his lifetime. In such situation selling a part of his share in an undivided property, is a question that does not arise. Reliance on **Shyam Sunder** (supra) does not support the case of the Appellant as there is nothing on record to reflect any effort having been made by him to substitute himself in place of the Respondents in buying the 4 marlas of land from Faqir Singh in order to keep a stranger, namely Gurcharan Singh from entering into family-owned property. Had the Appellant made any such effort and the same would be reflected from record, then it could have been argued that he has a right to exclude the Respondents.

[9] 2022 SCC OnLine SC 1026

14. As already noted above, another ground of objection taken by the Appellant is the fact of the impugned judgement entering into a reappreciation of evidence. While it is true that ordinarily, in second appeal, the court must not disturb facts established by the lower court or the first appellate court. However, it is also equally well recognised that this rule is not an absolute one or in other words, it is not a rule set in stone. In **Nazir Mohamed** (supra) this Court has recognised three conditions in which a court in such jurisdiction, may disturb findings of fact. They are: -

"(*i*) the courts below have ignored material evidence or acted on no evidence; (*ii*) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (*iii*) the courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

15. A Bench of three learned Judges, recently in **Balasubramanian and Anr. v. M. Arockiasamy (Dead) Through LRs.**[10], had referred to, with approval judgement rendered in **Ramathal v. Maruthathal & Ors**[11] (two-Judge Bench) wherein it was observed that the restraint in interfering with questions of fact under the jurisdiction of second appeal, is not an absolute rule. Where the court is of the view that the conclusions drawn by the court below do not have a basis in the evidence led or it is of the view that the appreciation of evidence "suffers from material irregularity" the court will be justified in interfering with such findings.

16. A perusal of the impugned judgement as also the cross-examination portion of the statement of DW-3 suggests that both the courts below had ignored material evidence on the aspect of property having been divided by the father of the Appellant herein. The Appellant has himself admitted to having sold one plot in favour of Atma Singh, claiming himself to be the exclusive owner of such property. A material contradiction then arises between the statement and one made earlier where he denies the property ever having been partitioned by his father in favour of himself and his brother. Nothing on record reflects the vires of the transaction ever having been challenged therefore the earlier part, described above, by nature of it being self-contradictory, stands falsified. DW-3 has also, on oath testified to the factum of partition of the property by father of the Appellant, Suchet Singh. Although in the later part of his testimony he has tried to go back on his earlier statement and states that it was incorrect that the father of the Appellant had effected partition within his lifetime however, a conjoint reading of the statement of DW-1 in regards to selling a portion of his property to Atma Singh as well as the examination in chief portion of the testimony of DW 3 suggests that, Suchet Singh had indeed partitioned the property. Hence, findings returned by the High Court in the impugned judgment cannot be faulted.

17. In view of the above discussion, the appeals against the impugned judgement fail. The judgement and orders of the High Court, impugned are upheld and the appeals are dismissed as lacking on merit.

18. Interlocutory applications, if any, shall stand disposed of in the above terms. No order as to costs.

[10] (2021) 12 SCC 529
[11] (2018) 18 SCC 303