

SUPREME COURT OF INDIA

Kanai Lal Garari

Vs.

Murari Ganguly

(S Kurdukar and S Phukan JJ.)

11.02.1999

ORDER

S.P. KURDUKAR, J.

1. This appeal is filed by the appellant-plaintiffs challenging the legality and correctness of the judgment and decree dated 30-5-1989 passed by, the High Court.

2. The plaintiffs filed a suit based on title for possession of a suit property which they claimed to have purchased under the registered sale deed dated 10-6-1974 from some of the heirs of the original owner Shri Jugal Kishore. The defendant had set up a lease dated 205-1968 (Exhibit 5) from Jugal Kishore and according to them they have been in possession pursuant to the said lease and the plaintiffs cannot ask for, possession -from the lessees. Parties went to trial and led evidence, oral and documentary, before the trial court. The trial court decreed the suit. The appeal preferred by the respondent-defendants was dismissed. The respondent-defendants thereafter preferred second appeal to the High Court and the High Court by its judgment and decree dated 30-5-1989 set aside the judgment of the courts below and remanded the matter to the trial court for disposal in accordance with the directions contained in its judgment. It is this judgment of the High Court which is the subject-matter of the challenge in this appeal which is filed after obtaining leave. Mr. Tapas Ray, learned Senior Advocate appearing for the appellants (plaintiffs) urged that the High Court was totally wrong in setting aside the judgment of the courts below and remanding the matter to the trial court. He urged that it was mandatory for the High Court to formulate a substantial question of law as required under Section 100 C.P.C. and without formulating such a question of law or questions of law the High Court could not have remanded the matter for wholesome trial. He strongly relied upon the decision of this Court in Panchugopal Barua v. Umesh Chandra Goswami . He, 'therefore,, contended that the impugned judgment is unsustainable and in the facts and circumstances of the

case the matter be remanded to the High Court for disposal in accordance with law bearing in mind the requirements prescribed under Section 100 C.P.C. Mr. Banerjee, learned Counsel appearing for the respondents sought to support the impugned judgment on the premise that although the High Court had not formulated substantial question of law but from the discussion appearing in the judgment of the High Court it is quite clear that certain important and substantial questions of law were raised which were not either discussed or considered by the trial court as well as the first appellate court. Mr. Banerjee, therefore, submitted that the High Court was fully justified in remanding the matter in exercise of its discretionary powers under Order 41 Rule 23 of the Civil Procedure Code.

3. We have gone through the judgment of the High Court as well as the trial court and the lower appellate court and we find that the High Court while exercising its jurisdiction under Section 100 C.P.C. has not formulated a substantial question of law. A plain reading of Section 100 C.P.C. would make it clear that the High Court is required to frame a substantial question of law at the beginning of the hearing itself and/ or if such a substantial question of law or questions of law are already raised in the memorandum of appeal then it is obligatory upon the High Court to hear the learned Counsel for the parties on such substantial question of law or questions of law. The judgment of the High Court does not disclose that any such substantial question of law or questions of law were raised at the initial stage and the learned advocates for the parties were heard accordingly. The approach of the High Court in our opinion is contrary to the mandatory provisions of Section 100 C.P.C. On this short ground we are of the opinion that the judgment of the High Court is unsustainable and has got to be set aside and accordingly we do so. Mere quashing of the judgment would not solve the problem because ultimately the High Court will have to consider as to whether any substantial question of law or questions of law are raised in the memorandum of appeal and if such a question of law or questions of law would arise on the basis of pleadings of the parties and material on record. The High Court would formulate the substantial question of law or questions of law if they arise as indicated above and then will hear the parties and dispose of the same in accordance with law. As this litigation is pending since 1974 we request the High Court to dispose of the second appeal as expeditiously as possible and preferably within six months from the date of production of a certified copy of this judgment. It is expressly made clear that all contentions are kept open.

4. The appeal is accordingly allowed. The impugned judgment of the High Court dated 30-5-1989 is set aside and the matter is remanded to the High Court for disposal as indicated above. RSA No. 858 of 1980 is restored to its file. In the circumstances there will be no order as to costs.