

# SUPREME COURT OF INDIA

Thanikkuzhilyil Vellayi

Vs.

Kizhakkumpurath Chankoyi

C.A.No.5075 of 1998

(Shivaraj V. Patil and D. M. Dharmadhikari JJ.)

29.01.2004

## JUDGMENT

### **Shivaraj V. Patil, J.**

1. The plaintiff filed suit for possession of the lands in question based on title. The defendants pleaded that they were lessee over these lands having taken from third party. Alternatively, the defendants also pleaded that they perfected their title over the suit lands by adverse possession. The Trial Court dismissed the suit holding that the plaintiff failed to establish his title over the suit lands. The first appeal filed by the plaintiff was also dismissed. Hence, the plaintiff filed second appeal before the High Court. The High Court, by the impugned judgment, set aside the concurrent findings recorded by both the courts below, taking a view that although the plea of adverse possession was set up by the defendants, that had not been properly considered. According to the High Court, that itself was a substantial question of law. Hence, this appeal by the defendants.

2. The learned Senior counsel for the appellants contended that the impugned judgment cannot be sustained; the High Court did not formulate any substantial question or questions of law and which it considered as a substantial question of law, was stated only in the impugned judgment, without notice to parties. The learned counsel added that the finding of the High Court that the findings recorded by the courts below were perverse, cannot be sustained. Per contra, the learned counsel for the respondent urged that the impugned judgment can be sustained. According to him, a finding recorded without the support of evidence or a perversity in appreciation of evidence itself gives rise to a substantial question of law.

3. In the view we are proposing to take, we do not think it necessary to deal with the contentions urged on behalf of the parties touching the merits of the findings. Perusal of the impugned judgment shows that no substantial question or questions of law were formulated and considered. Though, the High Court in the impugned judgment has stated that non-consideration of the issue of perfection of title by the defendants by adverse possession itself was a substantial question of law, as already stated above, no substantial question or

questions of law were formulated to the knowledge of the parties, particularly so when the question of adverse possession was considered by the High Court in support of the plaintiff and against the defendants.

4. This Court has repeatedly held that under Section 100 of the Civil Procedure Code the mandatory requirement is that a substantial question or questions of law should arise for consideration between the parties and the same should be formulated to entertain and decide the second appeal.

5. In this view, in the absence of formulation of any substantial question or questions of law, we find it difficult to sustain the impugned judgment. On this short ground, the impugned judgment is set aside, the second appeal is remitted to the High Court for formulation of substantial question or questions of law, if arise for consideration and proceed to dispose of the second appeal. We make it clear that all the contentions of the parties are left open to be urged before the High Court. We may also add that the High Court may proceed to dispose of the second appeal uninfluenced by any of the findings recorded in the impugned judgment.

The appeal is allowed. No costs