SUPREME COURT OF INDIA

Madan Lal

Vs.

Bal Krishan

C.A.No.918 of 2000

(Arijit Pasayat and Tarun Chatterjee JJ.)

14.12.2005

JUDGMENT

Arijit Pasayat, J.

1. Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Himachal Pradesh High Court in a Second Appeal preferred under Section 100 of the *Code of Civil Procedure, 1908* (in short the 'Code). By the impugned judgment the learned Single Judge set aside the judgments and decrees of the courts below and decreed the suit of the plaintiffs for declaration of title and injunction as prayed for. Though several points were urged in support of the appeal it was basically contended that findings of fact recorded by the two courts were set aside even without formulating question of law much less a substantial question of law.

2. Learned counsel for the respondents on the other hand submitted that though specifically the questions of law were not formulated, the High Court has rightly taken note of the legal position as applicable to the factual background and has allowed the appeal.

3. In view of Section 100 of the Code the memorandum of appeal shall precisely state substantial question or questions of law 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.

4. Section 100 of the Code deals with "Second Appeal". The provision reads as follows:

> "Section 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."

5. A perusal of the impugned judgment passed by the High Court does not show that any substantial question of law has been formulated or that the second appeal was heard on the question, if any, so formulated. That being so, the judgment cannot be maintained.

6. In *Ishwar Dass Jain vs. Sohan Lal*[1] this Court in para 10, has stated thus:

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

7. Yet again in Roop Singh vs. Ram Singh, this Court has expressed that the jurisdiction of a High Court is confined to appeals involving substantial question of law. Para 7 of the said judgment reads:

"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 findings 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 vs. Arvind Kumar . Hence the High Court ought not to have interfered with the findings of fact recorded by both the courts below."

8. The position has been reiterated in *Kanahaiyalal and others vs. Anupkumar and others* [1], *Premabai vs. Jhaneshwar Ramakrishna Patange and others*[2], *Chadat Singh vs. Bahadur Rama and others*[3] *and Mathakala Krishnaiah vs. V. Rajagopal*[4].

9. In the circumstances, the impugned judgment is set aside. We remit the matter to the High Court for disposal after formulating the substantial question of law, if any, and in accordance with law. The appeal is disposed of in the aforesaid terms with no order as to costs.

[1] *2000 (1) SCC 434*
[2] *2003 AIR (SCW) 2922*
[3] *2004 (6) JT 296*
[4] *2004 (9) JT 205*