SUPREME COURT OF INDIA

Wyawahare & Sons

Vs.

Madhukar Raghunath Bhave

SLP (C) Nos. 3711 /2005

(Dr. Arijit Pasayat and Lokeshwar Singh Panta JJ.)

07.03.2007

JUDGMENT

Dr. ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the order passed by the learned Single Judge of the Bombay High Court allowing the second appeal filed by the respondent under Section 100 of the Code of Civil Procedure, 1908 (in short 'CPC').

Factual background in a nutshell is as follows:

The respondent-plaintiff filed a Special civil suit bearing No.2 of 1986 in the Court of Civil Judge, Sr. Division, Buldana against the appellants-defendants. The Trial Court by the judgment and order dated 19.9.1987 partially decreed the suit. Aggrieved by the judgment and decree of the Trial court, the appellants-defendants preferred an appeal in the Court of Additional District Judge, Buldana. By judgment and order dated 28.9.1990 the first appellate court allowed the appeal and set aside the decree passed by the Trial Court. The respondent-plaintiff preferred a second appeal before the High Court of Bombay, Nagpur Bench. By the impugned judgment the learned Single Judge allowed the second appeal.

Though many points have been urged in support of the appeal, the primary stand of the learned counsel for the appellants is that the second appeal was allowed without framing any substantial question of law as mandated by Section 100 CPC. Learned counsel for the respondent submitted that though the High Court's judgment does not show that any substantial question of law was framed yet the learned Single Judge at the time of admission of the second appeal had referred to certain points urged.

Section 100 of CPC deals with "Second Appeal". The provision reads as follows:

"Section 100-Second Appeal: (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."

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.

In Ishwar Dass Jain v. Sohan Lal (2000 (1) SCC 434) 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."

Yet again in Roop Singh v. Ram Singh (2000 (3) SCC 708) 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 v. Arvind Kumar (1994 (6) SCC 591). Hence the High Court ought not to have interfered with the findings of fact recorded by both the courts below."

The position has been reiterated in Kanhaiyalal and Ors.

v. Anupkumar and Ors. (2003(1) SCC 430), Mathakala Krishnaiah v. V. Rajagopal (2004(10) SCC

676), Smt. Ram Sakhi Devi v. Chhatra Devi & Ors. (JT 2005 (6) SC 167), Sasikumar & Ors. v. Kunnath Chellappan Nair & Ors.

(2005(12) SCC 588), Gian Dass v. The Gram Panchayat Village Sunner Kalan & Ors. (2006 (6) SCC 271), Shah Mansukhlal Chhaganial (d) through Lrs. V. Gohil Amarsing Govindbhai (d) through Lrs. (2006(13) SCALE 99).

The appeal stands disposed of in the above terms. There will be no order as to costs.