SUPREME COURT OF INDIA

V. Ramaswamy

Vs.

Ramachandran

C.A.No.2634 of 2009

(Dr. Arijit Pasayat J.)

17.04.2009

JUDGEMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Madras High Court allowing the second appeal filed by the respondents under Section 100 of the *Code of Civil Procedure, 1908* (in short 'CPC').

3. 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 learned Single Judge has allowed the appeal after analyzing the factual position in the background of settled principles in law.

4. 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."

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, which is set aside and remitted back to the High Court for proceeding in the matter in accordance with law and in terms of observations made herein.

6. In *Ishwar Dass Jain v. 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 v. Ram Singh*[2], 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*[3]). 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 *Kanhaiyalal and Ors. v. Anupkumar and Ors.*[4], *Mathakala Krishnaiah v. V. Rajagopal*[5], *Smt. Ram Sakhi Devi v. Chhatra Devi & Ors.*[6], *Sasikumar & Ors. v. Kunnath Chellappan Nair & Ors.*[7], *Gian Dass v. The Gram Panchayat Village Sunner Kalan & Ors.*[8], *Shah Mansukhlal Chhaganial (d) through Lrs. V. Gohil Amarsing Govindbhai (d) through Lrs.*[9] *and Nune Prasad & Ors. v. Nune Ramarisna.*[10]

9. The matter is remitted to the high Court to decide after formulating substantial question of law, if any.

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

[1]*(2000 (1) SCC 434)*
[2]*(2000 (3) SCC 708)*
[3]*(1994) (6) SCC 591*
[4]*(2003 (1) SCC 430)*
[5]*(2004(10) SCC 676)*
[6]*(JT 2005 (6) SC 167)*
[7]*(2005(12) SCC 588)*
[8]*(2006 (6) SCC 271)*
[9]*(2006(13) SCALE 99)*
[10]*(2008(8) SCC 258)*