

SUPREME COURT OF INDIA

Tara Chand

Vs.

Municipality Gharaunda

C.A.Nos.1009-1010 of 2001

(Tarun Chatterjee J.)

21.04.2009

JUDGEMENT

Tarun Chatterjee, J.

1. These appeals, by way of Special Leave Petitions, are directed against the Judgment and order dated 17th of February, 2000 of the High Court of Punjab and Haryana at Chandigarh in Regular Second Appeal No. 2094 of 1996, by which the High Court had allowed the Second Appeal and reversed the findings of fact arrived at by the Appellate Court in a suit for permanent injunction.

2. We have heard the learned counsel for the parties and examined the impugned Judgment of the High Court as well as of the Appellate Court and the trial Court and also other materials on record. In our view, these appeals have to be sent back to the High Court for fresh disposal in the light of the observations made hereinbelow.

3. On a plain reading of the Judgment of the High Court, we find that the High Court, without framing the substantial questions of law, allowed the second appeal and reversed the Judgment of the Appellate Court, which had set aside the Judgment of the trial Court dismissing the suit for permanent injunction. It is now well settled by catena of decisions of this Court that the High Court in Second Appeal, before allowing the same, ought to have framed the substantial questions of law arising between the parties and only thereafter, to decide the appeal on consideration of such questions of law.

4. In these appeals, admittedly, the second appeal was allowed without formulating any substantial questions of law as required mandatorily under Section 100 of the Code of Civil Procedure.

5. That being the position, we set aside the Judgment and decree of the High Court passed in the aforesaid second appeal and remit the appeals back to the High Court for fresh decision after formulating the substantial questions of law and thereafter to decide on merits.

6. For the reasons aforesaid, the Judgment and decree of the High Court in the second appeal is set aside. The Second Appeal is restored to its original file. The High Court is now requested to dispose of the same at an early date, preferably within six months from the date of supply of a copy of this order to it.

7. We make it clear that we have not gone into the merits of the appeals, which shall be decided by the High Court after formulating the substantial questions of law and then decide the second appeal in accordance with law.

8. There is another aspect of this matter. It appears from the record that initially by an order dated 14th of November, 2007, a Bench of this Court dismissed the appeals for non-prosecution.

“Subsequently, on an application for restoration, the aforesaid order of dismissal was recalled and the Civil Appeals were restored for hearing. By an order dated 17th of July, 2008, we dismissed the appeals on the ground of abatement. The order passed by this Court on 17th of July, 2008 runs as under:-

"In our view, the appeals have been abated in its entirety. In view of the abatement caused on the death of the appellant Nos. 6, 10, 13 & 14 which would be evident from the order of this Court dated 29th April, 2008, we, therefore, hold that these appeals have abated in its entirety and the appeals are, therefore, dismissed as abated. No order as to costs.”

9. However, by an order dated 5th of February, 2009, the aforesaid order of abatement was set aside and the appeals were directed to be heard on merits and it was made clear that at the time of hearing of the appeals, the question whether the entire appeals stood abated on the ground of death of appellant Nos. 6, 10, 13 and 14, would be considered. In this view of the matter and as we set aside the order of the High Court, as mentioned herein earlier, we request the High Court to decide the said questions i.e whether the appeals had also abated in its entirety on the death of the appellant nos. 6, 10, 13 and 14.

10. Accordingly, the impugned judgment of the High Court is set aside. The appeals are allowed to the extent indicated above.

There will be no order as to costs.