

# SUPREME COURT OF INDIA

Sansar Chand

Vs.

Swami Vivekanand Adarsh Vidha Mandir

C.A.No.2909 of 2002

(Dalveer Bhandari and Gyan Sudha Misra JJ.)

05.05.2010

## ORDER

1. This appeal is directed against the judgment and order dated 23.5.2001 passed by the High Court of Jammu and Kashmir in Civil Second Appeal No.22 of 1998 whereby the High Court has set aside the concurrent findings of fact arrived at by both the Courts below.

2. Mr. S.B. Sanyal, learned senior counsel appearing on behalf of the appellant has taken a threshold objection that the High Court was not justified in interfering with the concurrent findings of fact in second appeal, without formulating the substantial question of law. He placed reliance on the decision of this Court in *Gurdev Kaur and Ors. vs. Kaki and Ors.*<sup>1</sup>, particularly on paragraph 70 which reads as under:

“Now, after the 1976 amendment, the scope of Section 100 has been drastically curtailed and narrowed down. The High Courts would have jurisdiction of interfering under Section 100 CPC only in a case where substantial questions of law are involved and those questions have been clearly formulated in the memorandum of appeal. At the time of admission of the second appeal, it is the bounden duty and obligation of the High Court to formulate substantial questions of law and then only the High Court is permitted to proceed with the case to decide those questions of law. The language used in the amended section specifically incorporates the words as 'substantial question of law' which is indicative of the legislative intention.”

3. It must be clearly understood that the legislative intention was very clear that legislature never wanted second appeal to become 'third trial on facts' or 'one more dice in the gamble'. The effect of the amendment mainly, according to the amended section, was:

“(i) The High Court would be justified in admitting the second appeal only when a substantial question of law is involved;

(ii) The substantial question of law to precisely state such question;

(iii) A duty has been cast on the High Court to formulate substantial question of law before hearing the appeal;

(iv) Another part of the section is that the appeal shall be heard only on that question.”

4. In view of the clear enunciation of law as declared by this Court in *Gurdev Kaur and Ors.* (supra), we are left with no option but to set aside the impugned judgment. Consequently, the impugned judgment is set aside and the case is remitted to the High Court of Jammu and Kashmir.

5. The High Court may first evaluate as to whether any substantial question of law is involved or not. In case, the High Court comes to the conclusion that there is substantial question of law involved, the same may first be formulated and then it may proceed to decide the second appeal on that question.

6. This appeal is disposed of accordingly. In the facts and circumstances of this case, we direct the respondent to pay the costs to the appellant which we quantify at Rs.10,000/-.

<sup>1</sup>(2007) 1 SCC 546