

Amar Singh & Others

v.

Dalip Singh (D) By LRs. & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE DEEPAK VERMA HON'BLE MR. JUSTICE K.S.
RADHAKRISHNAN

C. A. No. 8466 of 2003 | 25-01-2012

1. This appeal is at the instance of Defendants against the judgment and decree passed by learned Single Judge in Respondents-Plaintiffs' Regular Second Appeal No. 2936 of 1979, decided on 14.02.2003 by the High Court of Punjab and Haryana at Chandigarh.

2. The Respondents-Plaintiffs' had filed a suit for possession, but was dismissed by the Trial Court. It was carried to the Appellate Court, which also dismissed the same, confirming the Judgment and Decree of the Trial Court. Feeling aggrieved thereby, the Plaintiffs filed the aforesaid Second Appeal before the High Court, which was allowed vide impugned Judgment, hence, this Appeal by Appellants-Defendants.

3. Thumbnail sketch of the facts is mentioned hereinbelow:-

4. Parties shall now be referred to as described in the plaint i.e. Plaintiffs and Defendants.

5. Sadhu Singh was the owner of land measuring 6 Kanal 10 Marla in Khasra No. 679 situated in village Bija. By a registered deed of sale executed by him on 09.12.1963, he sold 17 marlas of land to Narain Singh, who took possession of the land so purchased by him. Sadhu Singh sold 1 bigha (equivalent to 1 Kanal and 13.1/3 marlas) of land of the same Khasra No. jointly to Harbhajan Kaur and Hardial Kaur on 04.02.1964 by executing another sale deed in their favour. On 19.02.1969, out of the same Khasra, Sadhu Singh mortgaged land in favour of the original Defendants being Defendant Nos. 2 to 5 and handed over

possession of the same to them. Plaintiffs - Dalip Singh(D) - husband of Hardial Kaur and Harbans Singh - son of Hardial Kaur jointly filed a suit before the learned Trial Court for possession of agricultural land measuring 1 Kanal and 13.1/3 Marlas of the aforesaid Khasra against original defendants - Sadhu Singh, Harchand Singh, Amar Singh, Kapoor Singh and Dalbir Singh. They also claimed removal of structure, the foundation of which was laid by Defendant Nos. 2 to 5 without the Plaintiffs' knowledge and consent and without any right, title or interest. As mentioned hereinabove, Plaintiffs claimed title to the same on account of the sale deed having been executed in their favour on 4.2.1964. Smt. Hardial Kaur, purchaser of = of the share of agricultural land, had died about six years before the date of filing of the suit. Plaintiff No. 1 and Plaintiff No.3 are the legal heirs of said Smt. Hardial Kaur.

6. It has further been mentioned in the plaint by Plaintiffs that a month before filing of the suit on 11.09.1975, the Appellant Nos.1 to 4 - Defendant Nos. 2 to 5 had illegally and forcibly, without any right, title or interest, tried to take possession of the land of the Respondents- Plaintiffs in their absence and started laying foundation.

7. It has further been averred that Defendant no.1 had already sold the land to the Plaintiffs, hence, he had no right to sell the same land to Defendant Nos. 2 to 5. Even if such a sale deed had been executed in their favour, it will not confer any right, title or interest on them. In lieu of this, they prayed that a decree for the removal of the structure/super-structure be passed in Plaintiffs' favour and against the Appellants-Defendants.

8. This suit was filed in the Court of Sub-Judge, 1st Class, Samrala. On summons being issued to the Defendants, Defendant no. 1 filed his written statement and Defendant nos. 2 to 5 filed their separate written statement. Apart from denial in toto of the plaint allegations, they averred that Plaintiffs are estopped by their own acts and conduct as they filed the present suit after so many years. It was also contended that Defendant Nos. 2 to 5 were in the possession of the land purchased by them and they have been cultivating the same from the date of execution of the sale deeds. They also contended that the suit was bad for non-joinder of the necessary parties as Narain Singh, who was a necessary party to the suit, was not impleaded. Defendant nos. 2 to 5 had additionally submitted that Plaintiff nos. 1 and 2 had no locus standi to file the

present suit on behalf of the Plaintiff no.3 unless and until they had a Power of Attorney in their favour to sign and verify the plaint. Thus, additionally, on this ground, the plaint deserved to be dismissed.

9. According to Defendant nos. 2 to 5, they are in possession and cultivating the land, reflected in Khasra Girdawari and Jamabandi for the relevant years. Thus, all the Defendants, in one voice, said that the suit filed by the Plaintiffs, being devoid of any substance, deserves to be dismissed.

10. Trial Court, on the basis of pleadings, was pleased to formulate following issues:-

1 Whether the Suit is bad for non-joinder of necessary parties?

2 Whether the Plaintiffs are estopped to file the present Suit?

3 Whether the Plaintiffs have locus standi to file the Suit?

4 Whether the Plaintiffs are owner of the Suit property and are entitled to its possession?

5 Relief.

11. The Trial Court, after relying on the evidence and after appreciating the materials on record, dismissed the Plaintiffs' suit. As regards Issue No. 1, the Trial Court held that the same was not seriously pressed and there was no pleading or evidence led in this regard. As regards Issue No. 2, the finding of the Trial Court is that the Plaintiffs were estopped from bringing the suit because they had not objected the acts which were being done by the Defendants for a long number of years. As regards Issue No. 3, the finding of the Trial Court is that Plaintiff nos. 1 and 3, being the heirs of Hardial Kaur, had

the locus standi to file the suit. With regard to Issue No. 4 dealing with the question of ownership, it was decided in favour of the Plaintiffs holding them to be the owners of the suit land.

12. Since the suit of the Plaintiffs came to be dismissed, they were constrained to file an appeal before Additional District Judge, Ludhiana, registered as Civil Appeal No. 556/103 of 1978. The said appeal also came to be dismissed by the Lower Appellate Court vide its Judgment and Order dated 04.08.1979.

13. Since the judgment and decree of the Trial Court was confirmed by the lower Appellate Court and the Plaintiffs' suit was dismissed, they then filed a Regular Second Appeal under Section 100 of the Code of Civil Procedure (in short, "the Code") before learned Single Judge of the High Court of Punjab and Haryana.

14. Perusal of the impugned Judgment shows that the learned Single Judge had formulated the following substantial questions of law, reflected at page 6:-

1. Whether the Suit for possession based on title can be defeated on account of the failure of the Plaintiffs to prove their previous possession?

2. Whether the Plaintiffs are entitled to the possession of land purchased from Sadhu Singh in preference to the land sold subsequently to Defendants No.2 to 5?

3. Whether Defendants No.2 to 5 can be said to be bonafide purchasers in respect of the land purchased in spite of the fact that their vendor has no title to the extent he has sold the land in favour of Narain Singh on 19.12.1963 and the present Appellants on 4.2.1964?

15. Since the said appeal came to be allowed and the Plaintiffs' suit was decreed, the findings recorded by the two courts below were reversed, thus, the Defendants are in appeal before us, challenging the same on variety of grounds.

16. We have, accordingly, heard Shri Vijay Hansaria, learned senior counsel appearing for the Appellants and Shri Manoj Swaroop, learned counsel appearing for the Respondents at length and perused the record.

17. At the outset, learned Senior Counsel appearing for the Appellants-Defendants contended that as contemplated under Section 100 of the Code, the Appellants in the Second Appeal i.e. Plaintiffs had not formulated any questions of law in their memo of appeal. Therefore, Second Appeal filed by them was not properly constituted in the eyes of law before the High Court. It was thus contended that since no questions of law were formulated in the memo of appeal, the learned Single Judge, in his wisdom, formulated the same, mentioned hereinabove. But after formulation of the said questions of law, neither party was given opportunity of hearing to address on the said questions of law. According to them, these questions of law appear to have been formulated after hearing the counsel for the parties and appears to be formulated during the time of dictation.

18. Thus, obviously, according to them, they could not have been afforded any opportunity of hearing on the said questions of law, which were formulated subsequent to the hearing of arguments on Appeal by the learned Judge.

19. Even though, no specific ground has been raised by the Defendants in the appeal, but since this ground was orally argued before us, we thought it fit and proper to satisfy ourselves, after going through the original record. Original record also does not reflect or show that any order sheet was maintained by the learned Single Judge before 14.02.2003. We tried to find out from the Records, whether opportunity of hearing was given to the learned counsel for the parties to address their arguments on the substantial questions of law so formulated. But we are not able to find out any separate or specific order sheet mentioning therein that the aforesaid substantial questions of law arise in the appeal, thereafter giving an opportunity to the counsel to advance arguments.

20. In any case, Defendants could not have been aware of such substantial questions of law as the memo of appeal filed by the Plaintiffs does not reflect or show any substantial questions of law.

21. Learned counsel for the Plaintiffs - Mr. Manoj Swaroop contended that under the Punjab Courts Act, 1918, it was neither necessary nor obligatory to formulate substantial question of law in Second Appeal even though there was already an amendment in Section 100 of the Code with effect from 1.02.1977. According to him, framing of substantial questions of law arose only on account of a Judgment pronounced by this Court, reported in (2001) 4 SCC 262, Kulwant Kaur v. Gurdial Singh Maan. This Court has resolved the issue in the following manner, reflected in para 29 reproduced hereinbelow :-

"Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus, we have no hesitation to hold the law declared by the Full Bench of the High Court in the case of Ganpat cannot be sustained and is thus overruled."

22. In spite of the aforesaid Judgment in the matter of Kulwant Kaur (supra), learned counsel appearing for Plaintiffs still contended that it requires reconsideration as, according to him, law has not been laid down correctly. However, we are neither impressed nor convinced with the said line of arguments. Therefore, we are of the opinion that even though provisions in the Punjab Courts Act might have been there, but after the amendment incorporated in Section 100 of the Code, it was not only obligatory but mandatory for the Appellants to have formulated substantial questions of law in the memo of appeal. To appreciate this, we hereby reproduce Section 100 of the Code as under:-

"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"

23. Sub-Section 3 of Section 100 of the Code is absolutely clear and in very categorical terms, it mandates that the memo of appeal shall precisely state the substantial questions of law involved in the appeal. The proviso appended to Section 100 gives power to the Court to formulate its own substantial questions of law, if after going through the record, it feels so.

24. As mentioned hereinabove, admittedly, no substantial question of law was formulated in the appeal filed by the Plaintiffs. Thus, the learned Single Judge must have taken recourse to proviso appended to Section 100 of the Code.

25. Now, the question that arises for our consideration is whether after formulation of such substantial questions of law, parties should be made aware of the said questions of law, and thereafter they should further be given an opportunity of hearing on such questions of law or not, or straightaway the Court can proceed to decide the same.

26. Critical and microscopic reading of Section 100 of the Code makes its abundantly clear to us that as and when any substantial question of law is formulated by the Court, then as a necessary consequence thereto, parties have to be apprised of the said questions of law and thereafter they should be given an opportunity of hearing to advance arguments on the said questions of law.

27. To clarify the position further, we would like to give an example here. Supposing, in a memo of appeal, three substantial questions of law have been formulated, but when the matter comes up for hearing, if the learned Judge is of the opinion that additionally some more substantial questions of law would arise, then certainly he has the power to do so, but once that power is exercised, then obviously, the parties have to be apprised of the said additional substantial question/questions of law formulated, so that they may advance arguments on those questions of law as well.

28. The very purpose of formulation of substantial question of law is to grant an opportunity to the other side to come prepared to address on that question of law. In absence of any question of law, the counsel may not be aware as to which substantial question of law he is required to address the Court. In our opinion, it is required to be formulated with intention to cut short the lengthy arguments that may be advanced by the parties.

29. This procedure, as mentioned hereinabove, does not appear to have been observed or followed by learned Single Judge while deciding the Second Appeal.

30. Even though, at the threshold of hearing, we indicated that it would be a fit case where matter should be remanded so that on substantial questions of law, as may be framed, should be adjudicated de novo. But learned counsel for the Plaintiffs in his usual perseverance, continued to argue and made attempts to convince us that no case for remand has been made out. However, according to us, it would not be legally permissible to get the Second Appeal decided without affording the parties an opportunity of hearing on the substantial questions of law. Substantial justice between the parties would be done only when they are aware as to what case they are required to meet in the Court. Then and only

then, they would be in a proper position to advance arguments on behalf of their clients.

31. Time and again, it has been pronounced in numerous judgments of this Court that no second appeal filed under Section 100 of the Code can be entertained or decided unless substantial questions of law have been formulated. We need not reiterate those cases as it is too well settled by now. In the given facts and circumstances, we have no alternative but to remand the matter to the High Court for deciding it afresh on merits and in accordance with law.

32. The High Court, while considering the Second Appeal, would also give an opportunity to both the parties to suggest as to which substantial questions of law would arise. Therefore, in the instant case, present Appellants i.e. Respondents in the Second Appeal are entitled to argue under Sub-Section 5 of Section 100 of the Code, to contend that those questions of law do not arise.

33. With the aforesaid directions, this appeal stands allowed to the aforesaid extent.

34. Since the matter is old, we deem it fit and proper that the learned Single Judge would endeavour to dispose of the appeal at an early date on merit and in accordance with law, preferably within a period of one year from the date of framing of the substantial questions of law. The parties would appear before the High Court on 14.3.2012 and matter be listed on the said date before learned Single Judge as per Roster.

35. The record, together with copy of this order, be sent to the Registrar General of the Punjab and Haryana High Court by this office at an early date. Parties to bear their own costs.