SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Shiv Dayal

C.A.No.7363 of 2000

(Abhay Manohar Sapre and R.Subhash Reddy,JJ.,)

14.08.2019

JUDGMENT

Abhay Manohar Sapre,J.,

1. These appeals are directed against the final judgment and order dated 23.03.1999 passed by the High Court of Judicature for Rajasthan Bench at Jaipur in S.B. Civil Second Appeal Nos.83, 84 and 85 of 1999 whereby the High Court dismissed the second appeals filed by the appellants herein.

2. A few facts need mention hereinbelow for the disposal of these appeals, which involve a short point.

3. The appellants are the defendants and respondent No. 1 is the plaintiff in the civil suit out of which these appeals arise.

4. The appellant No. 1 is the State of Rajasthan and respondent No. 1 claims to be the mining lessee in relation to the suit land under the Mines and Minerals (Development & Regulation) Act (hereinafter referred to as "MMRD Act").

5. The respondent No. 1 filed a civil suit against the appellant - State and its authorities and claimed therein a relief of grant of permanent injunction restraining the State and its authorities from interfering in carrying out the mining operations on the suit land by respondent No.1.

6. Respondent No. 1 claimed this relief inter alia on the averments that the suit land was not the part of any protected Forest area as claimed by the State authorities but it was a part of the Revenue area. It was averred that since the suit land did not fall in the protected forest area, the respondent No. 1 (plaintiff) had a right to carry out mining operation on the suit land without any interference of the State and its authorities.

7. The State contested the suit by denying the averments made in the plaint. The Trial

Court framed issues. Parties led their evidence. By Judgment and decree dated 10.05.1998, the Trial Court decreed in favour of the plaintiff the suit and granted an injunction against the State and its authorities in relation to the suit land, as prayed in the plaint.

8. The State felt aggrieved and filed first appeal before the District Judge. By Judgment dated 03.09.1998, the first Appellate Court dismissed the appeal and affirmed the judgment/decree of the Trial Court giving rise to filing of the second appeals by the State in the High Court.

9. By impugned order, the High Court dismissed the second appeals holding that the appeals did not involve any substantial question of law. It is against this order, the State felt aggrieved and has filed the present appeals by way of special leave before this Court.

10. So, the short question, which arises for consideration in these appeals, is whether the High Court was justified in dismissing the State's second appeals on the ground that these appeals did not involve any substantial question of law.

11. Heard Mr. Milind Kumar, learned counsel for the appellants and Mr. S.K. Bhattacharya, learned counsel for respondent No.1.

12. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeals, set aside the impugned order and remand the case to the High Court for deciding the second appeals afresh on merits in accordance with law.

13. In our opinion, the need to remand the case to the High Court has arisen because we find that the second appeals did involve several substantial questions of law for being answered on merits in accordance with law. The High Court was, therefore, not right in so holding.

14. Indeed, we find that the High Court dismissed the second appeals essentially on the ground that since the two Courts have decreed the suit, no substantial question of law arises in the appeals. In other words, the High Court was mostly swayed away with the consideration that since two Courts have decreed the suit, resulting in passing of the decree against the State, there arises no substantial question of law in the appeals. It is clear from the last paragraph of the impugned order, which reads as under:

> "Under these circumstances, when both the Ld. Courts have arrived at the conclusion that the disputed area is outside the forest area. Therefore, the principles laid down in T.N. GODAWARAN vs. U.O.I. (above-quoted) cannot be enforced in this appeal."

(Emphasis supplied)

15. We do not agree with the aforementioned reasoning and the conclusion arrived at by the High Court.

16. It is not the principle of law that where the High Court finds that there is a concurrent finding of two Courts (whether of dismissal or decreeing of the suit), such finding becomes unassailable in the second appeal.

17. True it is as has been laid down by this Court in several decisions that "concurrent finding of fact" is usually binding on the High Court while hearing the second appeal under Section 100 of the Code of Civil Procedure, 1908(hereinafter referred to as "the Code"). However, this rule of law is subject to certain well known exceptions mentioned infra.

18. It is a trite law that in order to record any finding on the facts, the Trial Court is required to appreciate the entire evidence (oral and documentary) in the light of the pleadings of the parties.

19. Similarly, it is also a trite law that the Appellate Court also has the jurisdiction to appreciate the evidence de novo while hearing the first appeal and either affirm the finding of the Trial Court or reverse it.

20. If the Appellate Court affirms the finding, it is called "concurrent finding of fact" whereas if the finding is reversed, it is called "reversing finding". These expressions are well known in the legal parlance.

21. When any concurrent finding of fact is assailed in second appeal, the appellant is entitled to point out that it is bad in law because it was recorded de hors the pleadings or it was based on no evidence or it was based on misreading of material documentary evidence or it was recorded against any provision of law and lastly, the decision is one which no Judge acting judicially could reasonably have reached. (see observation made by learned Judge -Vivian Bose.J.- as His Lordship then was a Judge of the Nagpur High Court in *Rajeshwar Vishwanath Mamidwar & Ors. vs. Dashrath Narayan Chilwelkar & Ors*[1]., - Para 43).

22. In our opinion, if any one or more ground, as mentioned above, is made out in an appropriate case on the basis of the pleading and evidence, such ground will constitute substantial question of law within the meaning of Section 100 of the Code.

23. Coming to the facts of the case, we are of the view that the following are the questions which do arise for consideration in the suit/appeal for proper adjudication of the rights of the parties to the suit and are in the nature of substantial questions within the meaning of Section 100 of the Code.

24. First, whether the suit land was a part of a protected Forest area, i.e., Forest land and, if so, whether the parties satisfied all the statutory provisions of the Forest Laws enacted by the Center and the State?

25. Second, whether the suit land was a part of a Revenue land and, if so, whether the

parties to the suit satisfied all the statutory provisions of the State Revenue Laws.

26. Third, whether a mining lease of the suit land could be granted by the State to the plaintiff for carrying out the mining operation in accordance with the provisions of the MMRD Act and, if so, whether it satisfied all the statutory provisions of the MMRD Act read with relevant Forest and Revenue Laws.

27. Fourth, whether a suit is hit by any provision of Forest Laws or MMRD Act or/and Revenue Laws expressly or by implication.

28. Lastly, whether the plaintiff on facts/evidence has proved that the suit land is a part of Revenue land and, therefore, it does not fall in the protected forest area and, if so, whether any prima facie case, balance of convenience and irreparable loss is made out for grant of permanent injunction in plaintiff's favour?

29. In our opinion, all the five questions enumerated above did arise in the case. As a matter of fact, the suit could not have been tried properly without deciding these questions in the light of the pleadings, evidence and the applicable laws mentioned above.

30. In our view, the High Court, therefore, should have admitted the second appeal by framing appropriate substantial question(s) of law arising in the case and answered them on their respective merits rather than to dismiss the appeals without considering any of the aforementioned questions.

31. It is for this reason, we are of the view that the interference in the impugned order is called for to enable the High Court to decide the controversy in its proper perspective.

32. In the light of the foregoing discussion, the appeals succeed and are accordingly allowed. The impugned order is set aside. The case is remanded to the High Court for deciding the second appeals afresh on merits after framing appropriate substantial questions of law(s) arising in the case.

33. Needless to say, the High Court will frame proper questions keeping in view the pleadings/evidence and the findings of two Courts in the context of relevant provisions of the specific Forest Acts (Centre and State), MMRD Act and State Revenue Laws.

34. We, however, make it clear that we have not expressed any opinion on the merits of the case having formed an opinion to remand the case to the High Court for deciding afresh.

35. It was, however, brought to our notice that during pendency of the appeals Shiv Dayal-plaintiff/respondent No.1 in civil suit has expired. We, however, find that his wife - Smt. Kasturi Devi is already on record in two connected appeals/civil suits; Second, all the three suits/appeals, i.e., the one filed by Shiv Dayal and two filed by his wife Kasturi Devi) were clubbed together for their analogues disposal; Third, when one legal representative of the deceased is already on record, the appeal would not abate; and lastly, when the remand of

the case is directed, consequential steps to bring remaining legal representative of the deceased on record, if there are, can always be taken before the High Court in pending appeals. It is for these four reasons, we are of the view that the appeals filed against Shiv Dayal have not abated.

36. The parties are, however, granted liberty to make necessary amendments in the cause title of the second appeals after remand of the case to the High Court by deleting the name of Shiv Dayal and substitute in his place the name of his wife- Kasturi Devi and his other legal representatives, if there are, before hearing of the second appeals.

37. We request the High Court to expedite the hearing of the appeals preferably within 6 months.

Judgment Referred.

[1]*AIR 1943 Nag 0117*