

GAHC040003012021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : Review Pet. 9/2021

1:SHRI MODO KAMKI
S/O LT. HORMO KAMKI, PO/PS KAMBA, WEST SIANG DISTRICT, AP.

VERSUS

1:THE STATE OF AP AND 2 ORS.
REPRESENTED BY ITS CHIEF SECRETARY, GOVT. OF AP, ITANAGAR.

2:THE DEPUTY COMMISSIONER
AALO
WEST SIANG DISTRICT
AP.

3:SHRI JUMGE KAMKI
S/O LT. HORJUM KAMKI
PERMANENT RESIDENT OF VILLAGE KAMKI
PO/PS KAMBA
WEST SIANG DISTRICT
AP

Advocate for the Petitioner : Rintu Saikia

Advocate for the Respondent : GA (AP)

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

17.01.2023

Heard Mr. R. Saikia, the learned counsel appearing for the petitioner. Also heard Mr. T.T Tara, the learned counsel representing the opposite parties.

2. This is an application under Section 114 of the Code of Civil Procedure read with Order 47 Rule 1 of the said Code praying for review of the judgment dated 19.02.2021 passed by this Court in SAO No.02(AP)/2017.

3. It has been submitted that SAO No.02(AP)/2017 is a Second Appeal and in spite of that, no substantial question of law was framed. Mr. Saikia has submitted that under the provision of Section 100 of the Code of Civil Procedure, it is mandatory on the part of the Court to frame a substantial question of law.

4. To buttress his argument, Mr. Saikia has relied upon the decision of the Supreme Court that was delivered in *Santosh Hazari Versus Purushottam Tiwari (Deceased) By LRS.*, reported in (2001) 3 SCC 179. Paragraph 9 of the said judgment is quoted as under:

“The High Court cannot proceed to hear a second appeal without formulating the substantial question of law involved in the appeal and if it does so it acts illegally and in abnegation or abdication of the duty cast on Court.

The existence of substantial question of law is the sine qua non for the exercise of the jurisdiction under the amended Section 100 of the Code. (See *Kshitish Chandra Purkait v. Santosh Kumar Purkait*¹, *Panchugopal Barua v. Umesh Chandra Goswami*² and *Kondiba Dagadu Kadam v. Savitribai Sopan Gujar*³)."

5. *Per contra*, Mr. Tara has submitted that it was a duty on the part of the present petitioner to raise that issue at the time of hearing of the Second Appeal and therefore, at this stage, the petitioner is estopped from raising issue now.

6. I have given my anxious considerations to the submissions made by the learned counsels of both sides.

7. There is no doubt that SAO No.02(AP)/2017 is a Second Appeal. Therefore, there should have been a substantial question of law.

8. It is a settled law that the High Court cannot proceed to hear a Second Appeal without framing a substantial question of law. In Second Appeal under Section 100 of the Code of Civil Procedure, existence of a substantial question of law is mandatory.

9. For the aforesaid reason, this Court finds that there is an error apparent on the face of the record so far as the judgment dated 19.02.2021 passed by this Court in SAO No.02(AP)/2017 is concerned. This is a fit case for exercising the power of review under Section 114 of the Code of Civil Procedure read with Order 47 Rule 1 of the said Code. Accordingly, the review petition is allowed.

10. The impugned dated 19.02.2021 passed by this Court in SAO No.02(AP)/2017 is set aside.

11. The SAO No.02(AP)/2017 shall be listed again after 2(two) weeks for Admission hearing.

The present review petition is disposed of.

JUDGE

Comparing Assistant