

GAHC030000772019



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

Case No. : RSA/3/2019

PC Zakhuma
Bethlehem Vengthlang

VERSUS

PB Lungmuana (L) r/b Legal Representative Smt. Lalthathangii
Bethlehem Veng, Aizawl

Advocate for the Petitioner : Mr B Lalramenga

Advocate for the Respondent : Mr C Zoramchhana

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGMENT

Date : 06-03-2023

Heard Mr. B Lalramenga learned counsel for the appellant along with Mr. C. Zoramchhana learned counsel for the respondent.

2. This is a Regular Second Appeal under section 100 Civil Procedure Code against the Judgment and order of the Addl. District Judge dated 10.06.2019 in RFA 40 of 2012.

3. The brief background of the present case is that the appellant herein applied for an Heirship Certificate for the landed property covered under LSC No. 346 of 1976 left by Smt. Kapzawni (L) before the Addl. Subordinate District Council Court (hereinafter referred to as ASDCC), Aizawl District, Aizawl and an Heirship Certificate No. 69 of 2005 was accordingly issued in favour of the appellant for the said LSC No.346 of 1976. Thereafter, when the respondent came to know about the issuance of Heirship Certificate No.69 of 2005 to the appellant, he filed an appeal which was registered as RFA No.16/2005 before the Appellate Court i.e., the District Council Court at Aizawl which was in existence at that particular time. The RFA No. 16/2005 was allowed and the matter was remanded back to the Ld. ASDCC for *de novo* trial vide its Order dated 28.06.2005.4

4. After the Ld. ASDCC had taken evidences from both the parties the Judgment & Order dated 08.03.2010 was passed by the said Ld. ASDCC thereby declaring the appellant as the legal heir of Smt. Kapzawni (L) in respect of the landed property and the house situated on the land covered under LSC No. AZL 346 "Grade II B" of 1976 and also by declaring the Respondent as the legal heir of Smt. Kapzawni (L) in respect of the landed property and the house situated on the land covered under LSC No. AZL 346 "Grade III A" of 1976. Accordingly, the Heirship Certificate No. 69 of 2005 was issued in favour of the appellant and

the respondent, wherein the landed property of Smt. Kapzawni (L) was distributed between them as stated above.

5. The present appellant aggrieved by the Judgment & Order dated 08.03.2010 preferred the First Appeal i.e., RFA No. 40/2012 before the Id. Court of Addl. District Judge-I, Aizawl District, Aizawl. The reason why the appellant assailed the impugned Judgment & Order dated 08.03.2010 was that the two LSC's i.e., LSC No. AZL 346 "Grade II B" of 1976 and the LSC No.AZL 346 "Grade III A" of 1976 which were distributed between the appellant and the respondent respectively were not different landed properties and instead, the two LSCS covered the one and same location. This was clarified by the letter No.C.15016/26/2011-LEGAL/DTE (REV) dated 16.11.2011 sent to the appellant and the respondent by the Director, Land Revenue & Settlement, Mizoram, Aizawl, on the direction of the learned ASDCC.

6. Thereafter, the First Appellate Court of Addl. District Judge-I, Aizawl, disposed of the RFA No. 40/2012 vide its Order dated 31.03.2014 cancelling the Heirship Certificate No.69/2005 issued by the learned ASDCC (Trial Court) and at the same time, by deciding that the respondent shall inherit the landed property under LSC No.AZL-346 of 1976 and gave a house site covered under LSC No.AZL-2159 of 1987 to the appellant.

7. Again being aggrieved, the appellant preferred a Second Appeal U/s 100 CPC before this Hon'ble Court by assailing the impugned Order dated 31.03.2014 passed by the Addl. District Judge–I, Aizawl, in RFA No. 40/2012. The said Second Appeal was registered as RSA No. 6 of 2014. This Hon'ble Court had accordingly formulated three substantial questions of law.

i) Whether the order dated 31.03.2014 passed by the first appellate court was based on evidence on record.

ii) Whether LSC No.AZL 2159 of 1987 was a subject matter in the Heirship Case No. 69/2005. If not, whether the learned Appellate Court could have distributed the properties covered by the said LSC between the Appellant and the respondent.

iii) Whether the First Appellate Court could have distributed the properties directing inheritance of LSC No. 2159 of 1987 by the appellant and the land covered by LSC No. 346/1976 to be inherited by the respondent.

8. Thereafter, this Hon'ble Court disposed of the RSA No. 6 of 2014 by passing Judgment & Order dated 11.04.2017 remanding the matter back to the First Appellate Court to take a fresh decision, after hearing both the parties and keeping in mind that the LSC No. AZL-2159 of 1987 is not the subject matter of dispute.

9. After the matter was remanded back to the First Appellate Court, the

learned Addl. District & Sessions Judge -III, Aizawl District disposed of the matter vide its Judgment & Order dated 10.06.2019 passed in RFA No. 40 of 2012 holding that the present appellant had already enjoyed the property covered by the LSC No. AZL.2159/1987 from the deceased Kapzawni and the respondent was to inherit the landed property covered by LSC No.AZL-346 of 1976 left by Kapzawni (L) as the respondent lived and support her till her demise.

10. Thus being further aggrieved with the impugned Judgment & Order dated 10.06.2019, the appellant again prefers the instant Second Appeal on the grounds that the learned First Appellate Court had erred in coming to a conclusion that the present appellant has no right to inherit the landed property covered by LSC No.AZL-346 of 1976 left by Kapzawni (L) as the appellant did not support her till her demise. This decision of the learned First Appellate Court is not based on the evidences on record. The learned counsel has led this court to the evidence adduced by the appellant wherein he had denied the claim of the respondent that the respondent had supported the deceased Kapzawni till her death. He further mentions that the learned First Appellate Court had based its decision on the evidence of DW Shri Rohmingthanga, but failed to appreciate the fact, the evidences of DW Shri Rohmingthanga, were not based on his personal knowledge. The learned Court for the appellant also lead this Court to

the evidences deposed by the witnesses that indicated that it was the deceased Pi Kapzawni who had instead supported the respondent.

11. The learned counsel for the appellant further submits that whereas this Hon'ble Court had clearly directed, in its Judgment & Order dated 11.04.2017 passed in the earlier RSA No. 6 of 2014, that the First Appellate Court is to keep in mind, while taking a fresh decision, that the LSC No. AZL.2159/1987 is not the subject matter of dispute in the present case; the Id. Addl. District & Sessions Judge -III, Aizawl District had based his decision in the impugned Judgment & Order dated 10.06.2019 by saying that since the present appellant had already enjoyed the property covered by the LSC No. AZL.2159/1987 from the deceased Kapzawni, another property covered by LSC No. AZL-346 of 1976 left by the deceased Smt. Kapzawni should be inherited by the respondent, which is against the direction of this Court and besides, this baseless decision deviates from the existing Mizo Customary Law. Hence, the impugned Judgment & Order dated 10.06.2019 passed in RFA No. 40/2012 is liable to be quashed and set aside.

12. The following substantial questions of law was formulated herein on 24.07.2019 :-

i) *Whether the finding of the learned First Appellate Court in its Judgment & order dated 10.06.2019, passed in RFA No.*

40/2012 was based on evidence on record.

ii) Whether the impugned Judgment & Order was passed as per the direction of this Hon'ble Court in its Judgment & Order dated 11.04.2017 passed in the earlier RSA No. 6 of 2014.

13. Mr. C. Zoramchhana, the learned counsel for the respondent on the other hand raised his objection to the substantial question of law formulated on 24.07.2019. He submits that this court at the stage of Regular Second Appeal should not again look into the evidence adduced but should consider only on the substantial question of law involved.

14. He further submits that the learned First Appellate Court had not erred in passing the impugned Judgment and order dated since he had, after due consideration of the evidence, had rightly held that the respondent is to inherit the LSC No.AZL-346 of 1976. The findings of the First Appellate Court was based on the facts adduced by both the parties and found that the LSC No.AZL-346 of 1976 was to be inherited by the respondent. He further submits that in the learned Appellate Court had not based its decision that the LSC No.AZL-346 of 1976 should be inherited by the respondent because the LSC No.2159 of 1982 was inherited by the appellant but had only mentioned the fact in the Judgment and order dated 10.06.2019.

In support of his submissions the learned counsel has relied on the decisions of the Apex court in **Commissioner of Customs (Preventive) -vs- Vijay Dasharath Patel** reported in **(2007) 4 SCC 118**, **Lisamma Antony & Another -vs- Karthiyayani & Another** reported in **(2015) 11 SCC 782**, **State Bank of India & Ors. -vs- S. N. Goyal** reported in **(2008) 8 SCC 92** and **Kondiba DaguduKadam -vs- Savitribai Sopan Gujar & Others** reported in **(1999) 3 SCC 722**.

15. Mr. B Lalramenga, learned counsel for the appellant has refuted the point raised by the learned counsel for the respondent and submits that the court in a second appeal can look into the evidence adduce by citing the decisions of the Apex court in **Laxmi Ram(dead) by LR & Anr. Vs. Bietsshwar Singh & Ors** reported in **(2008)10SCC 697**, **Kochukakkada Aboobacker (Dead) by LRS & Ors. Vs. Attah Kasim & Ors.** reported in **(1996) 7SCC 389**, **Santosh Hazari vs. Purushottam Tiwari (deceased) by LRS**, reported in **(2001) 3 SCC 179 & Kaithuami (L) Through L.Rs. -vs- Ralliani & Others** reported in **2022 SCC Online SC 512**.

16. Having heard the submissions made by the counsels representing both the rival parties, this court finds that the Apex court in **Lisamma Antony v.**

Karthiyayani, (supra) held that

“11. It is settled principle of law that second appeal under Section 100 of the Code of Civil Procedure, 1908, cannot be admitted unless there is substantial question of law involved in it. As to what is substantial question of law, in Kondiba Dagadu Kadam v. Savitribai Sopan Gujar [Kondiba Dagadu Kadam v. Savitribai Sopan Gujar, (1999) 3 SCC 722], this Court has explained the position of law as under :

“6. If the question of law termed as a substantial question stands already decided by a larger Bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court, its merely wrong application on the facts of the case would not be termed to be a substantial question of law. Where a point of law has not been pleaded or is found to be arising between the parties in the absence of any factual format, a litigant should not be allowed to raise that question as a substantial question of law in second appeal. The mere appreciation of the facts, the documentary evidence or the meaning of entries and the contents of the document cannot be held to be raising a substantial question of law. But where it is found that the first appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as a substantial question of law. Where the first appellate court is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or of procedure requiring interference in second

appeal.”

12. In view of the above position of law, the question formulated by the High Court in the present case, as quoted above, cannot be termed to be a question of law, much less a substantial question of law. The above question formulated is nothing but a question of fact. Merely for the reason that on appreciation of evidence another view could have been taken, it cannot be said that the High Court can assume the jurisdiction by terming such a question as a substantial question of law.

13. Having gone through the impugned order challenged before us and after considering the submissions of the learned counsel for the parties, we are of the view that the High Court has simply re-appreciated the evidence on record and allowed the second appeal and remanded the matter to the trial court.”

17. In ***SBI v. S.N. Goyal, (supra)*** the Apex court held that ;

“15. the scope of second appeals and as also the procedural aspects of second appeals are often ignored by the High Courts. Some of the oft-repeated errors are:

(a)Admitting a second appeal when it does not give rise to a substantial question of law.

(b)

(c)

(d)

(e).....

(f)

(g) Deciding second appeals by re-appreciating evidence and interfering with findings of fact, ignoring the questions of law. These lapses or technical errors lead to injustice and also give rise to avoidable further appeals to this Court and remands by this Court, thereby prolonging the period of litigation. Care should be taken to ensure that the cases not involving substantial questions of law are not entertained, and at the same time ensure that cases involving substantial questions of law are not rejected as not involving substantial questions of law.

18. However, the Apex Court in ***Laxmi Ram v. Bietsghwar Singh, (supra)*** also held that;

“5. Having heard the parties and perused the records, we are of the view that the High Court was not justified in observing that no substantial question of law is involved in the appeal. In our view, the following substantial questions of law do arise in the second appeal:

“(2) Whether the findings of the trial court on Issue (vii) that Pokhani inherited the property as her husband, Bifan Ram was the last male holder in the branch of Rucha Ram is based on an error of record in appreciating the averments made in Para 18 of the written statement which read with the averment made in Para 10 of the written statement makes out a clear case that Bifan Ram predeceased his father, Rucha Ram, therefore inadvertently using the words that Bifan was the last male heir becomes meaningless read with the further continuous statement in the same sentence

that Bifan Ram was the last male heir in the branch of late Rucha Ram @ Rupa Ram who predeceased his father and thereafter Rucha Ram also died and thereafter the entire property reverted back to the branch of Ramdhyan Ram?

(3) Whether the findings on Issue (vii) are vitiated in law for being influenced by an error of record and misappreciation and non-appreciation of evidence on the record as to who was the last male holder?"

The High Court should have framed the aforementioned substantial questions of law and decided the same.

6. In view of this, the appeal is allowed, the impugned order is set aside and the second appeal is remanded to the High Court. Upon such remand, the High Court shall first frame the above noted two substantial questions of law and decide the second appeal afresh in accordance with law."

18. From the reading of the above decisions of the Apex court, it is seen that the court in a second Appeal is not to re-appreciate the evidence or interfere with the mere appreciation of the facts but when it is found that there is an error of record and mis-appreciation and non-appreciation of evidence on the record then the matter may be considered as an substantial question of law in an second appeal.

19. In light of the above rulings, this court on perusal of the impugned Judgment of the First Appellate Court dated 10.06.2019 in RFA 40 of 2012 finds

that the First Appellate Court had noted that the only point to be determined was who should inherit the properties left by the deceased Smt. Kapzawni, whether by the appellant or the respondent. The learned Court had then briefly discussed the evidence adduced by both the parties in the Trial Court. The learned First Appellate Court had analyzed the evidence of the plaintiff and plaintiff witnesses PW-1, PW-2, PW-3 and had thereafter analyzed the evidence adduced by the defendant and the defendant witness Mr. Rohmingthanga and DW Rochhara, thereafter arrived at its decision in Judgment & Order dated 10.06.2019. While appreciating the evidence of the witnesses it may be noted that in civil proceedings, a mere preponderance of probability is sufficient to prove their case. The learned First Appellate Court on considering the evidence adduced by both the parties in the trial court had passed its reasoned Judgment and Order having weighed the evidences of both the parties. I thus find that this Court in this Second Appeal need not re-appreciate the evidence already analyzed and discussed by the learned First Appellate Court.

20. Accordingly the issue (i) *'Whether the finding of the learned First Appellate Court in its Judgment & order dated 10.06.2019, passed in RFA No. 40/2012 was based on evidence on record'* is held not to be a substantial question of law since this would be a process of re-appreciation of the evidence adduced by the

witnesses already analyzed and reasoned by the learned First Appellate Court. The appellant has not been able to show that this is a case where there is an error of record or mistake in appreciating the averments made in the statement of the parties.

21. With regards to the second substantial question of law, this Court finds that the learned First Appellate Court has mentioned that :

“the appellant/plaintiff already enjoyed properties covered by LSC No. 2159 of 1987 from the deceased Smt. Kapzawni as true owner, this court inevitably decided that another properties situated under LSC No.Azl 346 of 1976 left by the deceased Kapzawni will be inherited by Shri P.B Lungmuana (late) represented by his wife Lalthansangi, Bethlehem Veng, Aizawl on account of the respondent/defendant also lived with the deceased Smt. Kapzawni since 1985 till the death of the deceased Smt. Kapzawni as the deceased him as a close relative is undisputed fact”.

It is thus seen that the learned First Appellate Court, though had made a mention of the LSC No.2159 of 1987, has not made it a subject matter of dispute. It is seen that the disputed LSC No.AZL.346 of 1976 was given to Shri P.B Lungmuana (late) represented by his wife Smt. Lalthansangi, Bethlehem Veng, Aizawl on account of the fact that the respondent/defendant also lived with the deceased Smt. Kapzawni in the same house since 1985 till the death of

the deceased Smt. Kapzawni as the deceased considered him as a close relative, which was inferred from the evidence adduced by the parties before the trial court.

22. In view of the above, I do not find any sufficient grounds to interfere with the Judgment & Order of the learned First Appellate Court in RFA 40 of 2012 dated 10.06.2019 and the RSA No.3 of 2019 accordingly stands dismissed and disposed.

JUDGE

Comparing Assistant