

Court No. - 24

Case :- SECOND APPEAL No. - 722 of 1989

Appellant :- State Of U.P.Through The Hone Sec U.P.Govt Lko.

Respondent :- Pioneer Montessori School

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- Uma Pati Rai

Hon'ble Saral Srivastava,J.

1. Heard Sri Hari Upadhyay, learned Additional Chief Standing Counsel for the appellant-State.
2. It appears that the suit has been instituted by respondent No.1 praying for damages. The suit was partly decreed by the trial Court vide judgment and decree dated 27.01.1989. Against the judgment dated 27.01.1989 passed by the trial court, the plaintiff-respondent preferred a Civil Appeal No.32 of 1989, and respondent-State preferred Civil Appeal No.50 of 1989.
3. The appellate court allowed the appeal No.32 of 1989 filed by plaintiff-respondent No.1 and dismissed the Appeal No.50 of 1989 preferred by defendant-appellant.
4. The present second appeal has been preferred by the State of U.P. against the judgment and decree dated 23.08.1989 passed by District Judge, Barabanki, whereby the Civil Appeal No.32 of 1989 preferred by the plaintiff-respondent and Civil appeal No.50 of 1989 preferred by the defendant-appellant have been decided by the common judgement dated 23.09.1989.
5. Though both the appeals have been decided by common judgment, but the second appeal ought to have been preferred separately, and therefore, the second appeal preferred by the State of U.P. is defective.
6. Normally, this Court has granted time to the State of U.P. to

remove the defect in filing the appeal, but the appeal is of the year 1989 and is pending for the last 33 years, therefore, this Court is not inclined to grant any further time.

7. Though, learned counsel for the appellant Sri Upadhyay, has vehemently submitted that the suit for damages before the trial court was not maintainable as the plaintiff-respondent claimed himself to be the tenant, and therefore, he ought to have preferred the suit under the Uttar Pradesh Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972 (U.P. Act 13 of 1972). Thus, it is contended that both the Courts i.e. trial court as well as first appellant court has acted illegally without jurisdiction in entertaining the suit and decreeing the suit.

8. The record reveals that the said contention was neither raised by the appellant before the trial court nor before the appellate court.

9. The question as to whether the suit was cognizable by the trial court or the trial court did not have jurisdiction to try the suit as the suit could lie only under the U.P. Act No.13 of 1972 is a mixed question of facts and law, therefore, it cannot be raised for the first time in second appeal.

10. Since, there is no substantial question of law involved in the present appeal, therefore, the appeal lacks merit and is accordingly ***dismissed*** with no order as to costs.

Order Date :- 11.12.2023

R.S. Tiwari