



S.A.No.989 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

S.A.No. 989 of 2013

1. Thirumathi
2. Palanisamy
3. Kannan

...Appellants

Vs.

1.Pugazhmangai
2.Sigamani

... Respondents

Prayer : Second Appeal filed Under Section 100 of CPC, to set aside the Judgment and Decree dated 19.03.2013 made in A.S.No.36 of 2012 on the file of the Sub Court, Harur by confirming Judgment and Decree dated 28.03.2012 made in O.S.No.501 of 2004 on the file of the District Munsif Court, Harur.

For Appellants : Mr.S.Kanniah

For Respondents : Mr.P.Jagadeesan

J U D G M E N T

The Second Appeal has been preferred against the Judgment and Decree in A.S.No.36 of 2012 passed by the Sub Court, Harur confirming the Judgment and Decree in O.S.No.501 of 2004 passed by the District Munsif Court, Harur.



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2. The plaintiffs, who have lost the suit before both the courts below are the appellants herein and have come up with the present Second Appeal. The appellants / plaintiffs have filed a suit for the relief of declaration of appellants' easement right of A,B pathway and for permanent injunction and restraining the respondents / defendants from disturbing or preventing the appellants / plaintiffs in using pathway in the AB Cart Tract in the document attached to the appellants / plaintiffs. The parties are referred to in the same rank, as ranked before the court below.

3. The brief facts are as follows:-

(i) The suit property is situated in Echampadi village, Survey No.6/2B, 6/2C measuring 23 feet in East-West direction and on North-South 770 links. This passage will lead to 'H' Echampadi to Maruthanpatti Thar road. The claim of the plaintiffs is that the plaintiffs own suit scheduled property in Survey no.6/1B and 5/3B and since there is no passage to approach their land, the plaintiffs have filed a suit seeking for declaration to use the passage earmarked in the plaint attached to the suit.

(ii) The plaintiffs have purchased the suit A, B cart track pathway from one Ponkrishnan on 16.02.2001 and from that date onwards, the plaintiffs are in possession and enjoyment of the suit property and on the eastern side of the pathway, one Chennammal and on the south of the plaintiffs' land, the 1st



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defendant's land and a house are situated. The said pathway has been used by the plaintiffs and the defendants herein and since there is no other passage for them. Thereafter, the 1st defendant purchased land about one year back on the western side and southern side of the pathway in Kurumpatty border. Since there is no pathway for the plaintiffs' land, the plaintiffs are entitled for easement right over the pathway, therefore, the plaintiffs have filed the plaint for easement of necessity.

(iii) According to the plaintiffs, on 22.09.2005 at about 10.00 a.m., the defendants have prevented the plaintiffs from using the passage. Thus, the cause of action has arisen, hence the present suit has been filed. The suit property is as follows:-

“தருமபுரி மாவட்டம், அர் வட்டம், அருள் சபரிடி, எச்.ஈச்சம்பாடி கிராம புல எண்.6/2B, 2C. நிலத்தின் மேற்கு புறம், வாதிகள் நிலம் வரை, தாவா மாதிரி வரைபடத்தில் “A முதல் B” வரை பச்சை கலரிட்டு காண்பிக்கப்பட்டுள்ள கிழமேல் சுமார் 23 லிங்ஸ் அகலமும் தென்வடல் சுமார் 770 லிங்ஸ் நீளமும் கொண்ட மாமூல் பாதை தான்.”

4. The defendants have filed counter denying the allegations made in the plaint, which was specifically admitted by the plaintiffs.

5. The defendants had specifically asserted that the plaintiffs were using passage AB Cart track, which was originally purchased from one Ponkrishnan on 16.02.2001. The plaintiffs' sale deed describes about Survey Nos.5/3B and 6/1B. The sale deed, which was purchased by the plaintiffs



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dated 16.02.2001 would clearly show that the right to use Cart Track was in the above sale deed. The plaintiffs own document clearly show that there is a road situated in Survey no.7/1A. When there is a document to show that the plaintiffs are having absolute way in S.No.7/1A, they have no right over the alleged suit pathway.

6. The respondents / defendants in the written statement has categorically stated that one Arumuga Gounder is the father of the plaintiffs 2 and 3, namely, Palanisamy and Kannan. The 1st plaintiff is the wife of the said Palanisamy and they belong to a joint family and owned lands in survey no.6/1B, which is in southern side of the land. The entire lands comes under S.Nos.6/1A, 6/1B and 5/3B are in possession and enjoyment of the plaintiffs' family and they entered the lands through cart track, which is available in Survey No.7/1A. As it was mentioned in their sale deed dated 16.02.2001, Ex.A1.

7. The specific case of the defendants in the written statement is that the land, owned by the 1st defendant, is Survey No.6/2C and another land in Kurumpatiti border south to S.No.6/1B. The plaintiffs intends to purchase the property of the 1st defendant's land and the plaintiffs were unsuccessful in getting the property. The 1st defendant, on 15.09.2004, purchased the separate pathway and in enjoyment as absolute owner of the said pathway.



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The said right was previously in the joint enjoyment through the sale deed dated 03.09.1990. Since the plaintiffs could not purchase the property belonging to the defendants, the plaintiffs executed vexatious suit.

8. The trial court after considering the case of the plaintiffs and the defendants had framed the following four issues, namely,

(i) Whether the plaintiffs are entitled for the relief as prayed for?

(ii) Since the AB Portion of the suit property was purchased by the plaintiffs from Ponkrishnan by way of sale deed dated 16.02.2001 and the plaintiffs are in enjoyment of the same, whether there is easementary necessity?.

(iii) Whether it is correct to state that the revenue documents with regard to the Cart Track AB passage stands in the name of the plaintiffs?

(iv) To any other reliefs, the plaintiffs are entitled to?

9. The advocate commissioner was appointed to ascertain the passage, which is marked as AB Cart track. The trial court had examined the 2nd plaintiff as P.W.1 and vendor of P.W.1 as P.W.2 on the side of the plaintiffs. On the side of the defendants, 1st defendant is examined as D.W.1 and one Vasantha was examined as D.W.2. On the side of the plaintiffs, Ex.A.1- sale deed dated 16.02.2001 was marked. Ex.A.2 is the rectification



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deed dated 27.10.2004. Ex.A.3 is the certified copy of the sale deed dated 04.03.1996. Ex.A.4 is the Patta dated 31.07.1987. Ex.A.5 is the Patta dated 19.10.2004. Ex.A.6 is the receipt of the EB Meter, which stands in the name of the 1st plaintiff. Ex.A.7 is the tax receipt dated 25.10.2004. Ex.A.8 is the another tax receipt. On the side of the respondents / defendants, Ex.B.1 is the original sale deed dated 03.09.1990. Ex.B.2 is the original sale deed dated 15.09.2004. Ex.B.3 is the Original certified copy of the complaint dated 01.08.2003. Ex.B.4 is the another Original Certified copy of the complaint dated 15.10.2004. The advocate commissioner's report was marked as Ex.C1 and and the sketch was marked as Ex.C.2.

10. The trial court after evaluating the evidence on record had answered the issues. Before the trial court, the defendants submitted that the plaintiffs are the joint family members and the entire joint family owns land in Survey No.6/1B, which is on the southern side of the Survey No.6/1A. The Survey Nos.6/1A, 6/1B, 5/3B are enjoyed in one block by the plaintiffs family. The plaintiffs' family entered into Cart track, through Survey No.7/1 and the same is mentioned in their own sale deed dated 16.02.2001, which is marked as Ex.A1. The cart tract is subdivided as 7/1A2, thereby having absolute and separate pathway in lands in Survey No.7/1A2 and the appellants / plaintiffs have no right over the alleged suit pathway.



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11. That apart, the defendants, before the trial court contended that the 1st defendant owns land, which is situated in Survey No.6/2C and other lands in Kurumpatti South to S.No.6/1B. Since the plaintiffs wanted to purchase the 1st defendant's land, which entered in vain, the 1st defendant, on 15.09.2004, had purchased a separate pathway and he is in absolute enjoyment and possession of the same, which is marked as Ex.B.2 and the the said right was previously in joint enjoyment through sale deed dated 03.9.1990. Ex.B.2 is the successful pathway and its right was inspected from 03.09.2002 vendor from him. The advocate commissioner's report was taken into consideration by the trial court which is extracted as follows :-

“மனு/தாவா சொத்தை கிராம நிர்வாக அலுவலரும் நில அளவையரும் அடையாளம் காட்டினார்கள். மனு/தாவா சொத்து என்பது வண்டிபாதையாகும். மேற்படி பாதையை என்னுடைய சுய விளக்கப்படத்தில் ABCD என குறிப்பிட்டு பச்சை வண்ணம் தீட்டி காட்டியுள்ளேன். அப்பாதை ச.எண்.7/1A-2 ல் உள்ள பாதையில் இருந்து தெற்கு நோக்கி சென்று 1-ம் மனுதாரரின் வீடு நிலங்கள் மற்றும் 1-ம் எதிர்மனுதாரரின் வீடு, நிலங்களை அடைகின்றது, மேற்படி பாதை ச.எண்.6/2A விற்கு மேற்கு ச.எண்கள் 6/2B, 6/2C-ல் உள்ள நிலங்களில் மேற்கு பக்கமாக வடக்கில் இருந்து தெற்கு நோக்கி சென்று குரும்பட்டி எல்லை வரை சென்றுமுடிவடைகிறது.

மனு/தாவா சொத்தான மேற்படி வண்டி பாதையின் அகலம் 12' 17' 15' 17' 15' அடி என பல அளவுகளுடன் உள்ளது. நீளம் 770 லிங்க்ஸ் உள்ளது. மேற்படி பாதையின் அரம்பத்தில் மேற்கு பக்கம் ஆறுமுகம் (1-ம் மனுதாரரின் மாமனார்) என்பவர் நிலமும் அந்த நிலத்தில் இரு தார்க் வீடு, ஒரு அட்டை வீடு, ஒரு பழதடைந்த ஒட்டுவீடு, கிணறு உள்ளது, மேற்படி ஆறுமுகம் நிலத்திற்கு தெற்கு மேற்கு வண்டி பாதைக்கு மேற்கில் 1-ம் மனுதாரரின்



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அட்டை வீடும், அவருடைய நிலங்களான ச.எண். 6/1B யும் ச.எண்.5/3B நிலங்களும் உள்ளது. 1-ம் மனுதாரரின் நிலங்களுக்கு தெற்கில் 1-ம் எதிர்மனுதாரர் வீடு மற்றும் நிலங்கள் உள்ளன. 1-ம் எதிர்மனுதாரரின் வீடு மற்றும் நிலங்கள் குரம்பட்டி கிராம எல்லையில் உள்ளது.

1-ம் மனுதாரர் தன் வீடு மற்றும் நிலங்களை அடைய மனு/தாவா சொத்தான வண்டி பாதையை தவிர வேறு வண்டி பாதை ஏதும் இல்லை. எதிர்மனுதாரர் வழக்கறிஞரும், 1-ம் மனுதாரருக்கு மாற்று பாதை இருப்பதாக கூறியதன் பேரில் அவற்றை பார்வையிட்டதில் 7/1A2 பாதையில் இருந்து கண்ணன் தார்கு வீட்டின் பின் பக்கமாகவும், ஆறுமுகம் தார்கு வீட்டின் முன் கண்ணன் தார்கு வீட்டின் முன் பக்கமாக இரண்டு வீட்டிற்கும், இடைப்பட்ட பகுதியில் மாடுகள் கடடும் கட்டாந்தரை மற்றும் களத்தின் வழியாக பழனிசாமி வீடு வரை ஒரு பாதை சென்று முடிவடைகிறது அப்பாதையை எனது சுயவினக்க வரைபடத்தில் நீல வண்ணம் தீட்டி காட்டியுள்ளேன். பழனிசாமி வீட்டில் இருந்து தெற்கு நோக்கி ஆறுமுகம் நிலத்தில் உள்ள வரப்பின் வழியாக ஆட்கள் நடந்து சென்றதற்கான ஒரு நடை பாதை (காலடி தடம்) உள்ளது. அவை 1-ம் மனுதாரர் நிலம் வரை செல்கிறது. அவற்றை என் சுயவினக்க வரைபடத்தில் சிவப்பு வண்ணம் தீட்டி காட்டியுள்ளேன். 1-ம் மனுதாரர் மனு/தாவா பாதையில் இருந்து தன் வீடு மற்றும் நிலங்களுக்கு திரும்பும் இடத்தில் மேற்படி பாதையின் ஓரமாக கற்கள் உள்ளன. இருதரப்பு வழக்கறிஞர்களும் ஸ தலத்தில் எழுத்துமுலமான குறிப்புரைகள் ஏதும் எனக்கு தரவில்லை.”

12. Ex.C.1 is the sketch/plan submitted by the advocate commissioner in continuation to the report filed as Ex.A.1. The plan submitted by the advocate commissioner would show that the land in Survey nos.5/3B and 6/1B is the passage, which is earmarked in Thin dark shaded line, wherein the dark shaded passage AB Cart track, which was exclusively purchased by the 1st defendant vide his sale deed document Ex.B1. The passage was in possession and enjoyment of the 1st respondent ever since the year 1990, which was not disputed by the plaintiffs. The sketch / plan submitted by the



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Advocate Commissioner would show as a different passage, where the cattle would be taken to the main passage. In view of the same, the trial court, while answering the 1st and 2nd issues, had entertained the claim in favour of the plaintiffs. As far as the passage is concerned, the trial court has come to the conclusion that the revenue documents which was submitted by the plaintiffs is not relevant to the Survey No.7/1 or Survey No.6/2B and the said documents are only to show that the properties, which were in enjoyment of the plaintiffs and not with regard to the defendants' property.

13. The recitals mentioned clearly show that the plaintiffs have no right over AB cart track property, which is the subject matter of the suit schedule property. In the absence of the recitals in the schedule, plaintiffs cannot claim right over the property as a passage and report filed by the Advocate Commissioner along with sketch / plan shows that there is a path / passage, which is being used for cattle would show that there is alternate passage. Answering these three issues, the trial court has come to the conclusion that there is no room for giving any relief for 4th issue that has arisen for consideration. Challenging the same, the plaintiffs filed the appeal before Sub Court, Hosur in A.S.No.36 of 2012.

14. The First Appellate Court while examining the documents filed by the plaintiffs, which is marked as Ex.A.1 - Sale Deed dated 16.02.2001 and



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Ex.A.2, Rectification Deed dated 27.10.2004 found that only Survey Nos.5/3B and 6/1B would reflect in the documents. In the above sale deed, right of the Cart track was purchased and the said sale deed filed by the plaintiffs would show that there is a road in Survey No.7/1A. The plaintiffs family which is a joint family, having properties in Survey Nos.6/1B and 6/1A and 5/3B, has been enjoyed as one block, in the entire block in Survey No.7/1A, it is mentioned in the sale deed dated 16.02.2001. The said cart track was sub-divided as 7/1A2. When the plaintiffs are having absolute way in survey no.7/1A2 then they cannot claim right over the suit path way, the defendants owns only land in Survey N.6/2C and another land in Karupatti border southern survey no.6/1B. The first defendant has purchased separate pathway on 15.09.2004, which is Ex.B.2, 2nd sale deed, which is a exclusively a pathway. When the suit property in Survey no.7/1 was sub-divided as 7/1A and 7/1A2 pathway, the plaintiffs have no right to interfere with the pathway purchased by the defendants in the suit scheduled property. The Trial Court on 08.03.2013 had framed two issues for consideration, namely,

1. Whether the plaintiffs are entitled to easement right by grant ?
2. Whether the plaintiffs are entitled to permanent injunction in respect of suit 'AB' Cart track?

The plaintiffs in the suit have filed an application, which is numbered as I.A.No.23 of 2013 to receive additional documents dated 03.09.1990, sale deed, which was executed in favour of one Ponnusamy and the 1st defendant



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by one Chennu & Chennammal and another sale deed in favour of the plaintiffs' vendors marked as Ex.A.10. The plaintiffs also filed application for appointment of advocate commissioner in I.A.No.7 of 2013 and advocate commissioner inspected the property, marked his report and plan, vide Ex.C3 and Ex.C4 by the consent. The primary contention for allowing the application in I.A.No.7 of 2013 is that the plaintiffs had failed to prove that there is no alternate passage except the suit pathway and considering the same, the Application No.7 of 2013 was allowed.

15. The advocate commissioner has taken into consideration Ex.A1 and Ex.A.2 filed on the side of the plaintiffs, who claim right to pathway. However, there is no whisper about the pathway in Ex.A.1 and Ex.A.2 The First Appellate Court had extensively cross examined and the same, which is available at Page No.38 of typed set of papers, is extracted as follows:-

“நான் பொன்கிருஹ்ணனிடம் நிலம் வாங்கினேனா என்றால் ஆமாம். அப்போது அந்த நிலத்திற்கு வழிப்பதைக்கான சர்வே எண்.7/1 என்று காண்பித்துள்ளேன் என்றால் சர்வே எண்.5,6-ல் தான் வழிப்பதை காண்பித்துள்ளேன். நான் வாங்கும்போது ச.எண்.7/1எ என்று காண்பிக்கப்பட்டவில்லை. நான் வாங்கும்போது சரியாக சர்வே எண் காண்பிக்கப்பட்டுள்ளேனா என்றால் நான் வாங்கிய வா.சா.ஆ.1-ல் எங்களுக்கு பொன்கிருஹ்ணன் சரியான சர்வே எண்ணில் தான் வழிப்பாதையை காண்பித்துள்ளார். வா.சா.ஆ.1-ல் கண்ட பாதையில் தான் அனுபவித்து வருகிறேனா என்றால் ஆமாம். வா.சா.ஆ.1-ல் கண்ட சர்வே சரியானதை காண்பிக்கப்படவில்லை அதை திருத்திக்கொடுக்கும்படி நான் கேட்டேனா என்றால் கேட்டேன். வா.சா.ஆ.1 எழுதியது சரியா என்றால் அதில் ஒரு நெம்பர் விட்டுவிட்டதால் பின்பு திருத்தம் செய்து கொடுத்தார்.....சர்வே எண்.6/1பியும், 5/3பியும் நான் வாங்கிய நிலம் என்றால் சரிதான். நான் வாங்கிய நிலத்திற்கு கீழ்க்கு 6/2பி உள்ளதா என்றால் ஆமாம். மருதிப்பட்டி ஈச்சம்பாடி தார்சாலையில் இருந்து தெற்கு நோக்கி வந்து மீண்டும் மேற்கு நோக்கி வந்தார் அந்த இடத்தில் தீப்பாஞ்சி அம்மன் கோயில் உள்ளதா என்றால் உள்ளது,



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The cross examination would clearly show that Ex.B2 sale deed dated 15.09.2004, which was purchased by the 1st defendant, has exclusive right of the suit schedule property and the sale deed, which is marked as Ex.A1 by the plaintiffs did not show any right over the property in the suit, which is a cart track. The First Appellate Court has considered the case of the plaintiffs and has come to the conclusion that the property lying on the southern side in Survey no.6/1B, was purchased by the defendants exclusively from one Lakshmi and one Ponkrishnan. The plaintiffs have failed to refer plaintiffs' deed, which was marked as Ex.A.2. Though the suit was filed on 23.09.2004, Ex.A.1, sale deed marked on the side of the defendants is stated as 16.02.2001, the rectification deed Ex.A2 is dated 27.10.2004. This is after filing the suit, rectification was made by the appellants /plaintiffs on 27.10.2004. The suit was filed on 23.09.2004 and the written statement was filed on 04.07.2007, rectification deed, which is marked as Ex.A2 was registered on 27.10.2004, would fairly show that to overcome the discrepancies, which has crept in by non-mentioning of the suit cart tract, the present rectification deed has been registered and marked as Ex.A2. The First Appellate Court on the basis of the above finding, dismissed the appeal filed by the plaintiffs herein. Challenging the same, the second appeal has been filed by the plaintiffs.



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16. This Court had issued notice at the time of admission and Second Appeal was not admitted on any substantial questions of law.

17. The learned counsel for the plaintiffs would contend that Ex.A.1 would clearly show that the plaintiffs have right over the property and advocate commissioner's report, which was filed before the trial court shows that there is no alternate passage to the plaintiffs. The next point advanced by the learned counsel for the plaintiffs is that when there is no alternate passage way to the plaintiffs, then, right of the plaintiffs will come into force and therefore, entitled for easmentary right.

18. Per contra, the learned counsel for the defendants would contend that there is no right for the plaintiffs to claim the cart tract, which is the subject matter of the suit schedule property, by way of recitals in the sale deed marked by the plaintiffs in Ex.A.1 and the rectification deed Ex.A.2. Further, the document filed by the defendants would show that the party was in enjoyment since 1990, which is evident from Ex.B.1 dated 03.09.1990 and the Ex.B2 dated 15.10.2002 Original Sale deed, shows that the defendants has exclusive right of pathway, which was purchased by the defendants and



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the same clearly demonstrates that the defendants had purchased the property for exclusively 'cart tract' and the same cannot be brushed aside.

19. The learned counsel for the defendants would further contend that Second Appeal cannot be held unless the second appeal is admitted and substantial question of law is framed. This Court issued notice to the respondents and the second appeal was not admitted on any substantial question of law.

20. The Hon'ble Apex Court in the Judgment reported in SCC Online SC 1206 **Hemavathi & Ors Vs. Hombegowda & Another in Civil Appeal Nos.5780-5781/2023 @ SLP (c) Nos.19975-19976/2022** by relying upon various judgments at Paragraph No.18 has held as follows:-

“In this context, the law on the practice to be followed while considering a regular second appeal, has been re-iterated by this Court in C.A. No. 4935 of 2023 in Bhagyashree Anant Gaonkar vs. Narendra @ Nagesh Bharna Holkar and Anr. dated 07.08.2023, and the relevant extracts in this regard are exposted as under:

a) Roop Singh v. Ram Singh, (2000) 3 SCC 708, as relied upon in C.A. Sulaiman vs. State Bank of Travancore, Alwayee (2006) 6 SCC 392:

“7. It is to be reiterated that under Section 100 CPC jurisdiction of the High Court to entertain a second appeal is confined only to such appeals which involve a substantial question of law and it does not confer any jurisdiction on the High Court to interfere with pure questions of fact while exercising its jurisdiction under Section 100 CPC.”



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b) State Bank of India vs. S.N. Goyal (2008) 8 SCC 9215:

“15. It is a matter of concern that the scope of second appeals and as also the procedural aspects of second appeals are often ignored by the High Courts. Some of the repeated errors are:

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

(b) Admitting second appeals without formulating substantial question of law.

(c) Admitting second appeals by formulating a standard or mechanical question such as “whether on the facts and circumstances the judgment of the first appellate court calls for interference” as the substantial question of law.

(d) Failing to consider and formulate relevant and appropriate substantial question(s) of law involved in the second appeal.

(e) Rejecting second appeals on the ground that the case does not involve any substantial question of law, when the case in fact involves substantial questions of law.

(f) Reformulating the substantial question of law after the conclusion of the hearing, while preparing the judgment, thereby denying an opportunity to the parties to make submissions on the reformulated substantial question of law.

(g) Deciding second appeals by reappreciating 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.”

c) Municipal Committee, Hoshiarpur v. Punjab SEB, (2010) 13 SCC 216:

“16 A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is



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something distinct from a substantial question of fact. The court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a *sine qua non* for the exercise of jurisdiction under the provisions of Section 100 CPC. It is the obligation on the court to further clear the intent of the legislature and not to frustrate it by ignoring the same.”

d) *Umerkhan v. Bismillabi*, (2011) 9 SCC 684:

“11. In our view, the very jurisdiction of the High Court in hearing a second appeal is founded on the formulation of a substantial question of law. The judgment of the High Court is rendered patently illegal, if a second appeal is heard and judgment and decree appealed against is reversed without formulating a substantial question of law. The second appellate jurisdiction of the High Court under Section 100 is not akin to the appellate jurisdiction under Section 96 of the Code; it is restricted to such substantial question or questions of law that may arise from the judgment and decree appealed against. As a matter of law, a second appeal is entertainable by the High Court only upon its satisfaction that a substantial question of law is involved in the matter and its formulation thereof. Section 100 of the Code provides that the second appeal shall be heard on the question so formulated. It is, however, open to the High Court to reframe substantial question of law or frame substantial question of law afresh or hold that no substantial question of law is involved at the time of hearing the second appeal but reversal of the judgment and decree passed in appeal by a court subordinate to it in exercise of jurisdiction under Section 100 of the Code is impermissible without formulating substantial question of law and a decision on such question.”

e) *Raghavendra Swamy Mutt v. Uttaradi Mutt*, (2016) 11 SCC 235 “18. In the instant case, the High Court has not yet admitted the matter. It is not in dispute that no substantial question of law has been formulated as it could not have been



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when the appeal has not been admitted. We say so, as appeal under Section 100 CPC is required to be admitted only on substantial question/questions of law. It cannot be formal admission like an appeal under Section 96 CPC. That is the fundamental imperative. It is peremptory in character, and that makes the principle absolutely cardinal.”

In the circumstances, the impugned judgment dated 13.04.2022 and impugned order dated 23.06.2022 passed in the Regular Second Appeal as well as the Review Petition are set aside. The matters are remanded to the High Court to consider the same in accordance with law and by being mindful of the aforementioned flaws in the impugned judgment and order. Since the parties are before the High Court, it is necessary to ensure that the legal representatives of the deceased-Respondent No.2 herein are brought on record (R-4 before the High court) by the first respondent herein who was the appellant in the High court by filing the necessary applications so as to bring his legal representatives on record and thereafter to dispose of the Regular Second Appeal in accordance with law.”

21. The High Court has issued notice to the defendants and no substantial question of law was framed. In the absence of any Substantial Question of Law arises for consideration, this Court upon considering the above said Judgment of the Hon'ble Supreme Court referred supra and upon evaluating the evidence and the deposition of the respective parties before the Trial Court which was considered by the First Appellate Court, is inclined to dismiss the second appeal. Accordingly, the Second Appeal filed by the plaintiffs is dismissed and the judgment and decree passed in the First Appeal is confirmed. The Judgment and Decree in O.S.No.501 of 2004 dated 28.03.2012 passed by the learned District Munsif, Harur, which was confirmed



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in Judgment and Decree in A.S.No.36 of 2012 dated 19.03.2013 passed by the learned Subordinate Judge, Harur need not be interfered with and the same is confirmed.

For the foregoing reasons, the Second Appeal fails and is dismissed.

No costs.

24.09.2024

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

ssd

To

1.The Sub Court, Harur

2. The District Munsif Court, Harur.



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N.SENTHILKUMAR, J.

ssd

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12.09.2024