

Neutral Citation No. - 2024:AHC-LKO:22960
AFR

Court No. - 4

Case :- SECOND APPEAL No. - 54 of 2024

Appellant :- Fagoo Ram And Others

Respondent :- Ram Laut (Died) And Others

Counsel for Appellant :- Prabhat Kumar,Rajendra Prasad Verma

Counsel for Respondent :- Mohan Singh

Hon'ble Rajnish Kumar,J.

1. Heard Shri Prabhat Kumar, learned counsel for the appellants and Shri Mohan Singh, learned counsel for the respondent no.3.

2. This second appeal has been filed for setting aside the judgment and decree dated 25.01.2024 passed by the First Appellate Court i.e.Additional District Judge, Court No.1, Sultanpur in Civil Appeal No.182 of 2001 (Fagoo Ram And Others vs. Ram Laut and Others) and the judgement and decree dated 22.10.2011 passed by Trial Court i.e. Civil Judge (J.D.), Kadipur, Sultanpur in Original Suit No.337 of 1989 (Fagoo Ram and Others Vs. Ram Laut and Others).

3. Learned counsel for the appellants submits that the father of the appellants had filed a suit for permanent injunction and declaration of right on some part of Gata No.105 as an appurtenant land to his house, which is situated on Gata No.106, on the ground that the appellants are in possession of the land in dispute since prior to the promulgation of the U.P. Zamindari Abolition and Land Reforms Act-1950 (here-in-after referred as the Act of 1950), therefore it stands settled with them under Section 9 of the said Act. He further submits that an alternative plea was also taken that even if the possession of the appellants is not found since prior to promulgation of the Act of 1950, since the appellants are in possession on the land in dispute, since before 1985, therefore the same stands settled with the appellants under Section 123(1) of the Act of 1950. But the learned

Trial Court as well as the Appellate Court have dismissed the claim of the appellants on insufficient ground and without considering the evidence adduced before the Trial Court rightly and appropriately. Learned counsel for the appellants also submits that the Appellate Court has failed to record any finding in regard to the possession of the appellants on the land in dispute and the finding recorded in regard to Section 123 (1) of the Act of 1950 is not tenable, therefore the appellants are before this Court.

4. On the other hand, learned counsel for the Gaon Sabha submits that judgment and order passed by the Trial Court as well as Appellate Court have rightly been passed in accordance with law after considering the pleadings of the parties and the evidence adduced before the Trial Court as they have failed to prove their possession on the land in dispute. He further submits that the benefit of Section 123 (1) of the Act of 1950 is also not available to the appellants because the house of the appellants has not been found on the land in dispute and the benefit of the same is available only in case the house has been built on any such land. Thus the submission is that the appeal is misconceived and liable to be dismissed.

5. Having considered the submissions of learned counsel for the parties, I have perused the documents placed on record of this second appeal.

6. The Original Suit No.337 of 1989 was filed by the predecessor-in-interest of the appellants for permanent injunction and declaration on the ground that the land in dispute, which is the part of Gata No.105 and which is on the eastern side of the house of the appellants which is on Gata No.106, is in possession of the appellants and they are using it since prior to the promulgation of the Act of 1950, therefore it stands settled with him under Section 9 of the Said Act.

The alternative plea of Settlement of land in dispute with the appellants under Section 123 (1) of the Act of 1950 was also taken.

7. The learned Trial Court after affording opportunity of evidence and considering the pleadings and evidence adduced before it, has recorded a categorical finding that the appellants have failed to prove the construction of the house of the appellants prior to promulgation of Act of 1950. Thus, they have failed to prove the possession on the land in dispute. Even otherwise on the western and northern side of the house of the appellants, there is sufficient land for his use. Accordingly dismissed the suit. The Appellate court also, considering the pleadings, evidence and material on record, found that the appellants have failed to prove their case and dismissed the appeal holding that the learned trial court was right and justified in his view and approach and his findings/ order is perfectly valid/ legal and does not call for any interference, therefore the submission of learned counsel for the appellants in regard to possession is misconceived and not tenable.

8. The alternative plea of settlement of land in dispute under Section 123 (1) of the Act 1950, taken by the appellants, was also rejected by trial court on the ground that house of the appellants is not existing on the land in dispute, which is the precondition for settlement under Section 123 (1). The plea of the appellants has also been considered by the Appellate Court and dismissed on the ground that Section 123 (1) lays down the provision as to settlement of certain house sites with existing owner thereof and order of preference for allotment of such land for housing site for members of schedules castes, agricultural labourer etc. shall be observed in the light of Section 122-C (3) of the Act of 1950, but plaintiff did not file any paper pertaining to the allotment of the disputed land by the competent authority. The submission of learned counsel for the appellants in this regard is that there is no requirement of allotment of

the site for settlement under Section 123 (1) of the Act of 1950, therefore the question arises as to whether it was a precondition or not and if it was not precondition as to whether any substantial question of law arises in this case for adjudication in view of pleadings and material on record.

9. Section 123 (1) as renumbered by U.P. Act No.34 of 1974 is extracted here-in-below:-

"[(1)] Without prejudice to the provisions of Section 9, where any person referred to in sub-section (3) of Section 122-C has built a house on any land referred to in subsection (2) of that section, not being land reserved for any public purpose, and such house exists on [May 13, 2007] the site of such house shall be held by the owner of the house on terms and conditions as may be prescribed."

10. The aforesaid section 123 (1) provides that where any person referred to in sub-section (3) of Section 122-C has built a house on any land referred to in sub-section (2) of that section, not being land reserved for any public purpose, and such house exists on the site of such house shall be held by the owner of the house on terms and conditions as may be prescribed. The date of existence of house was 30th June, 1985 at the time of filing of suit in 1989, which is changing time to time. Thus, if a person referred in Section 122-C (3) of the Act of 1950 has built a house on any land referred in sub-section (2) of Section 122-C, then the site of such house shall be held by the owner of the house on terms and conditions, which may be prescribed.

11. Section 122-C of the Act of 1950 is extracted here-in-below:-

"122C. Allotment of land for housing site for members of Scheduled Castes, agricultural labourers, etc. - (1) The Assistant Collector in charge of the sub-division on his own motion or on the resolution, of the Land Management Committee, may earmark any of the following classes of land for the provision of abadi sites for the members of the Scheduled Castes and [the Scheduled Tribes and the Other Backward Classes and the persons of General Category living below poverty line] and agricultural labourers and village artisans-

(a) lands referred to in clause (i) of sub-section (1) of Section 117 and vested in the Gaon Sabha under that section;

(b) lands coming into possession of the Land Management Committee under Section 194 or under any other provisions of this Act;

(c) any other land which is deemed to be or becomes vacant under Section 13, Section 14, Section 163, Section 186, or Section 211;

(d) where the land earmarked for the extension of abadi and reserved as abadi site for Harijans under the U.P. Consolidation of Holdings Act, 1953, is considered by him to be insufficient, and land earmarked for other public purposes under that Act is available, then any part of the land so available.

(2) Notwithstanding anything in Sections 122-A, 195, 196, 197 and 198 of this Act, or in Sections 4, 15, 16, 28-B and 34 of the United Provinces Panchayat Raj Act, 1947, the Land Management Committee may with the previous approval of the Assistant Collector in charge of the sub-division allot for purposes of building of houses, to persons referred to in sub-section (3)-

(a) any land earmarked under sub-section (1);

(b) any land earmarked for the extension of abadi sites for Harijans under the provisions of the U.P. Consolidation of Holdings Act, 1953;

(c) any abadi site referred to in clause (iv) of sub-section (1) of Section 117 and vested in the Gaon Sabha;

(d) any land acquired for the said purposes under the Land Acquisition Act, 1894.

(3) The following order of preference shall be observed in making allotments under sub-section (2)- [(i) an agricultural labourer or a village artisan residing in Gram Sabha and belonging to any of the following categories in the order of preference:-

(a) persons belonging to the Scheduled Castes and the Scheduled Tribes;

(b) persons belonging to Other Backward Classes;

(c) persons belonging to the general category living below poverty line.];

(ii) any other agricultural labourer or village artisan residing in the village;

[(iii) any other person residing in the Gram Sabha and belonging to any of the following categories in the order of preference:-

(a) persons belonging to the Scheduled Castes or the Scheduled Tribes;

(b) persons belonging to Other Backward Classes;

(c) persons belonging to the general category living below poverty line.];

[(iv) a person with disability residing in the village.]

Provided that no person shall be deemed to be a village artisan whose total income (including income of his or her spouse and minor children) exceeds two thousand four hundred rupees in a year.]

(4) If the Assistant Collector-in-charge of the sub-division is satisfied that the Land Management Committee has failed to discharge its duties or to perform its functions under sub-section (2) or it is otherwise necessary or expedient so to do, he may himself allot such land in accordance with the provisions of subsection (3).

(5) Any land allotted under this section shall be held by the allottee on such terms and conditions as may be prescribed.

(6) The Collector may of his own motion and shall on the application of any person aggrieved by an allotment of land under this section inquire in the manner prescribed into such allotment, and if he is satisfied that the allotment is irregular, he may cancel the allotment, and thereupon the right, title and interest of the allottee and of every other person claiming through him in the land allotted shall cease.

(7) Every order passed by the Assistant Collector under sub-section (4) shall, subject to the provisions of sub-section (6) and every order passed by the Collector under sub-section (6) shall be final, and the provisions of [Section 333 and Section 333-A] shall not apply in relation thereto.

*(8) [* * *]*

[(9) In Rule 115-L of the U.P. Zamindari Abolition and Land Reforms Rules, 1952, sub-rule (2) shall be deemed always to have been omitted.]"

12. In view of above, for claiming a right under Section 123 (1) of the Act of 1950, first a person would have to assert that he comes under the categories provided under sub-section (3) of Section 122-C and the land in question is of categories as provided under sub-section (2) of Section 122-C and he has built a house on the same, then only may be held by him on the terms and conditions, which may be prescribed, but in the present case the appellants have not taken such plea and failed to show the terms and conditions, which may have been prescribed for holding the same by the appellants. He has only taken plea in paragraph-2(अ) of the plaint that if the possession of the plaintiff is not found prior to abolition of zamindari on the land in dispute, even then his possession is coming on the land in dispute since prior to 1985, therefore he is entitled to benefit of Section 123 (1) of the Act of 1950 and under said provision he has become owner of the land in dispute. Paragraph-2(अ) is extracted here-in-below:-

" धारा 2 (अ) - यह कि वादी राम निहोर विवादित भूमि पर अपने पिता के सिलसिले से काबिज है वादी राम निहोर एक गरीब कृषक मजदूर एवं पिछड़ी जाति के अन्तर्गत कुर्मी उपजाति का व्यक्ति है उसका मुख्य पेशा कृषि व कृषि सम्बन्धी मजदूरी ही रहा है। विवादित भूमि पर यदि वादी का कब्जा जमीन्दारी विनाश के पूर्व का न पाया जाय तो भी विवादित भूमि पर वादी का कब्जा सन 1985 ई. के पूर्व से ही बराबर चला आ रहा है। जिससे वादी राम निहोर धारा 123 (1) ज०वि० अधिनियम का लाभ पाने का अधिकारी है और उसके तहत विवादित भूमि का स्वामी हो चुका है।"

13. In view of above, firstly no plea has been taken that the appellants comes in preference as per sub-section (3) of Section 122-C and the land in dispute is among one of the categories as provided

under sub-section (2) of Section 122-C and he/they have constructed a house on the said land, therefore this Court is of the view that the plea taken by the appellants is not sufficient for claiming the benefit of Section 123 (1) of the Act of 1950. Even otherwise, the appellants had not constructed any house on land in dispute, prior to 30th June, 1985 or even thereafter, therefore he is not entitled to hold the land in dispute as owner under Section 123 (1) of the Act of 1950. A co-ordinate bench of this Court, in the case of **Satya Veer and Another Vs. State of U.P. and Others; 2015 (4) ADJ 676**, has held that this apart they are also not entitled for benefit of Section 123 (1) as it is clearly emerged that they have not built their house prior to 01.05.2002, which was a date amended subsequently.

14. The learned Trial Court has considered the alternative plea of the appellants also and rejected recording a specific finding that DW-1 has given the evidence that the appellants has failed to prove that if he is entitled to benefit of Section 123 (1) and the benefit of Section 123 (1) is available to the housing site, therefore the appellants is not entitled for any benefit of the same on the basis of evidence adduced before this Court.

15. The Appellate Court has also recorded a finding that the appellants are claiming benefit of Section 123 (1), but the plaintiffs did not file any paper pertaining to allotment of disputed land by the competent authority. The contention of learned counsel for the appellants is that there is no such requirement. Section 123 (1) of Act of 1950 makes provision of holding of such housing site on which the house was built and existing on 30th June, 1985 by a person referred to in sub-Section (3) of Section 122-C on any land referred in sub-section (2) of that section, by owner of the house on terms and conditions as may be prescribed, therefore the appellants were required to assert and prove his/ their category, category of land and that the house has been built on the land in dispute and the terms and

conditions, which have been prescribed for holding that housing site. Thus, this Court is of the view that even if it may not be a precondition for holding the housing site under Section 123 (1) of the Act of 1950, the house must have been built by the claimant on the land in dispute was required to be proved and the terms and conditions of holding the said site were required to show, which the appellants have failed to do and there is no plea that house has been built on the land in dispute, therefore it can not affect the final outcome of this appeal in view of the pleadings made by the appellants in the plaint and unchallenged findings of the Trial Court in this regard with any cogent evidence, therefore no substantial question of law arises in this case.

16. In the context of Section 100 C.P.C., any question of law which may affect the final decision in a case is substantial question of law between the parties, therefore, even if it may be a question of law, it can not be said to be a substantial question of law to be decided in the present case between the parties.

17. The Hon'ble Supreme Court, in the case of **State Bank of India & others Vs. S.N. Goyal; 2008 (8) SCC 92**, has considered as to what would be the substantial question of law and difference between the question of law and the substantial question of law. Paragraph 13 is extracted here-in-below:-

"13. Second appeals would lie in cases which involve substantial questions of law. The word 'substantial' prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. In the context of section 100 CPC, any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing in the final outcome, will not be a substantial question of law. Where there is a clear and settled enunciation on a question of law, by this Court or by the High Court concerned, it cannot be said that the case involves a substantial question of law. It is said that a substantial question of law arises when a question of law, which is not finally settled by this court

(or by the concerned High Court so far as the State is concerned), arises for consideration in the case. But this statement has to be understood in the correct perspective. Where there is a clear enunciation of law and the lower court has followed or rightly applied such clear enunciation of law, obviously the case will not be considered as giving rise to a substantial question of law, even if the question of law may be one of general importance. On the other hand, if there is a clear enunciation of law by this Court (or by the concerned High Court), but the lower court had ignored or misinterpreted or misapplied the same, and correct application of the law as declared or enunciated by this Court (or the concerned High Court) would have led to a different decision, the appeal would involve a substantial question of law as between the parties. Even where there is an enunciation of law by this court (or the concerned High Court) and the same has been followed by the lower court, if the appellant is able to persuade the High Court that the enunciated legal position needs reconsideration, alteration, modification or clarification or that there is a need to resolve an apparent conflict between two view points, it can be said that a substantial question of law arises for consideration. There cannot, therefore, be a strait-jacket definition as to when a substantial question of law arises in a case. Be that as it may."

18. The Hon'ble Supreme Court, in the case of **Suresh Lataruji Ramteke Vs. Sau. Sumanbai Pandurang Petkar; JT 2003 (9) SC 481**, while retreating the principles for considering a second appeal under Section 100 C.P.C. and its jurisprudence considered the judgment of a three judge Bench of Hon'ble Supreme Court in the case of **Santosh Hazari Vs. Purshottam Tiwari; 2001 (3) SCC 179** in regard to what constitutes a substantial question of law and one of them is material bearing on the decision of case. The relevant paragraph 13 containing paragraph 13.03 is extracted here-in-below:-

"13. The jurisprudence on Section 100, CPC is rich and varied. Time and again this Court in numerous judgments has laid down, distilled and further clarified the requirements that must necessarily be met in order for a Second Appeal as laid down therein, to be maintainable, and thereafter be adjudicated upon. Considering the fact that numerous cases are filed before this Court which hinge on the application of this provision, we find it necessary to reiterate the principles.

*13.1 The requirement, most fundamental under this section is the presence and framing of a "substantial question of law". In other words, the existence of such a question is sine qua non for exercise of this jurisdiction.⁹ 13.2 The jurisdiction under this section has been described by this Court in *Gurdev Kaur v. Kaki*¹⁰ (Two Judge Bench) stating that post 1976 amendment, the scope of Section 100 CPC stands drastically curtailed and narrowed down to be *9 Panchugopal Barua v. Umesh Chandra Goswami and Ors. (1997) 4 SCC 713* Two Judge Bench *10 (2007) 1 SCC 546* Two Judge Bench restrictive in nature. The High Court's jurisdiction of interfering under Section 100 CPC is only in a case where substantial questions of law are involved, also clearly formulated/set out in the memorandum of appeal. It has been observed that:*

“At the time of admission of the second appeal, it is the bounden duty and obligation of the High Court to formulate substantial questions of law and then only the High Court is permitted to proceed with the case to decide those questions of law. The language used in the amended section specifically incorporates the words as “substantial question of law” which is indicative of the legislative intention. It must be clearly understood that the legislative intention was very clear that legislature never wanted second appeal to become “third trial on facts” or “one more dice in the gamble”. The effect of the amendment mainly, according to the amended section, was:

(i) The High Court would be justified in admitting the second appeal only when a substantial question of law is involved;

(ii) The substantial question of law to precisely state such question;

(iii) A duty has been cast on the High Court to formulate substantial question of law before hearing the appeal;

(iv) Another part of the section is that the appeal shall be heard only on that question.”

Gurdev Kaur (supra) was referred to and relied upon in **Randhir Kaur v. Prithvi Pal Singh & Ors.** (2019) 17 SCC 71; Two Judge Bench

13.3 In *Santosh Hazari v. Purushottam Tiwari*¹² a Bench of three Judges, held as under in regard to what constitutes a substantial question of law:

a) Not previously settled by law of land or a binding precedent.

b) Material bearing on the decision of case; and (c) New point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. Therefore, it will depend on facts of each case.

*Such principles stand followed in **Government of Kerala v. Joseph** [2023 SCC OnLine SC 961] (Two Judge Benh) and Chandrabhan Vs. Saraswati [2022 SCC OnLine SC1273] (Two Judge Bench).*

13.4 *Nonformulation of substantial question(s) of law renders proceedings “patently illegal”. This Court’s decisions in Umerkhan v. Bimillabi¹⁵ and Shiv Cotex v. Tirgun Auto Plast Pvt Ltd. & Ors.¹⁶ indicate this position. .”*

19. In view of above and considering the over all facts and circumstances of the case, this Court is of the view that this second appeal has been filed on misconceived and baseless grounds and no substantial question of law arises in this case to be adjudicated between the parties here-in. Thus, the appeal lacks merit.

20. The second appeal is, accordingly, **dismissed**.

(Rajnish Kumar, J.)

Order Date :- 15.3.2024

Haseen U.