

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

SECOND APPEAL No.221 of 2012

JUDGMENT:

The unsuccessful plaintiff throughout in O.S.No.846 of 2007 on the file of the Principal Junior Civil Judge, Ongole, and A.S.No.169 of 2010 on the file of the Principal District Judge, Ongole, preferred this second appeal, under Section 100 of the Code of Civil Procedure, 1908, ('the Code', for brevity) challenging the dismissal of the suit and the appeal by both the Courts below recording concurrent findings.

2. The appellant herein is the plaintiff and the respondents herein are the defendants before the trial Court and for convenience of reference, the parties will be hereinafter referred to as plaintiff and defendants.

3. The plaintiff filed suit claiming damages of Rs.1,00,000/- for the delay that caused in issuance of Pattadar Passbook under the provisions of the Andhra Pradesh Record of Rights in Land and Pattadar Pass Books Act, 1971, ('the Act', for brevity) and that the plaintiff is forced to approach this Court by way of filing a writ petition and also a Consumer Dispute before the District Consumer Forum. The writ petition filed by the plaintiff was disposed of by this Court, directing the respondents therein (defendants herein) to consider the representation of the plaintiff, whereas, in the consumer dispute in C.D.No.381 of 2005, the District Consumer Forum directed the respondents to issue Pattadar Pass Book to the plaintiff under the Act and awarded costs of Rs.2,000/- against the respondents. But later, proceedings under the Land Acquisition Act were initiated against the plaintiff and the land was acquired after issuing Pattadar Pass Books and title deeds under the provisions of the Act.

4. The defendants denied their liability to pay damages and

explained the reasons for delay in issuing the Pattadar Pass Book in the written statement.

5. The trial Court disbelieved the claim of the plaintiff, i.e., the damages sustained by the plaintiff on account of delay in issuance of Pattadar Pass Book under the provisions of the Act, recording reasons.

6. Aggrieved by the decree and judgment of the trial Court in O.S.No.846 of 2007, the unsuccessful plaintiff filed an appeal in A.S.No.169 of 2010 before the first appellate Court, which ended in dismissal confirming the judgment passed by the trial Court, recording concurrent findings. Aggrieved by the judgment of the first appellate Court and concurrent findings recorded by the trial and the appellate Court, the present second appeal is preferred by the plaintiff formulating substantial questions of law, but all the substantial questions of law raised are either questions of fact or questions of law, but not substantial questions of law.

7. The jurisdiction of this Court, under Section 100 of the Code is limited to substantial questions of law, but not to the questions of fact or questions of law. This Court, in a second appeal, cannot record any findings of fact, since the jurisdiction of this Court under Section 100 of the Code is confined to substantial question of law. What is substantial question of law under Section 100 of the Code depends upon the various circumstances; and, the Apex Court, in ***Union of India and Ibrahim Uddin and Another***^[1], held in para Nos.47,48,50,54,55 and 56 as follows:

47. Section 100 CPC provides for a second appeal only on the substantial question of law. Generally, a Second Appeal does not lie on question of facts or of law.

48. In State Bank of India & Ors. v. S.N. Goyal, AIR 2008 SC 2594, this Court explained the terms “substantial question of law” and observed as under :

“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. 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 on the final outcome, will not be a substantial question of law. There cannot, therefore, be a straitjacket definition as to when a substantial question of law arises in a case.”

(Emphasis

added)

Similarly, in *Sir Chunilal V. Mehta & Sons Ltd. v. Century Spinning and Manufacturing Co. Ltd.*, AIR 1962 SC 1314, this Court for the purpose of determining the issue held:-

“The proper test for determining whether a question of law raises in the case is substantial, would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties.....”

(Emphasis added)

50. The Court, for the reasons to be recorded, may also entertain a second appeal even on any other substantial question of law, not formulated by it, if the Court is satisfied that the case involves such a question. Therefore, 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. The second appeal does not lie on the ground of erroneous findings of facts based on appreciation of the relevant evidence.

There may be a question, which may be a “question of fact”, “question of law”, “mixed question of fact and law” and “substantial question of law.” Question means anything inquired; an issue to be decided. The “question of fact” is whether a particular factual situation exists or not. A question of fact, in the Realm of Jurisprudence, has been explained as under:-

“A question of fact is one capable of being answered by way of demonstration. A question of opinion is one that cannot be so answered. An answer to it is a matter of speculation which cannot be proved by any available evidence to be right or wrong.” (Vide: *Salmond, on Jurisprudence*, 12th Edn. page 69, cited in *Gadakh Yashwantrao Kankarrao v. E.V. alias Balasaheb Vikhe Patil & ors.*, AIR 1994 SC 678).

54. There is no prohibition to entertain a second appeal even on question of fact provided the Court is satisfied that the findings of the courts below were vitiated by non-consideration of relevant evidence or by showing erroneous approach to the matter and findings recorded in the court below are perverse. (Vide: *Jagdish Singh v. Nathu Singh*, AIR 1992 SC 1604; *Smt. Prativa Devi (Smt.) v. T.V. Krishnan*, (1996) 5 SCC 353; *Satya Gupta (Smt.) @ Madhu Gupta v. Brijesh Kumar*, (1998) 6 SCC 423; *Ragavendra Kumar v. Firm Prem Machinery & Co.*, AIR 2000 SC 534; *Molar Mal (dead) through Lrs. v. M/s. Kay Iron Works Pvt. Ltd.*, AIR 2000 SC 1261; *Bharatha Matha & Anr. v. R. Vijaya Renganathan & Ors.*, AIR 2010 SC 2685; and *Dinesh Kumar v. Yusuf Ali*, (2010) 12 SCC 740).

55. In *Jai Singh v. Shakuntala*, AIR 2002 SC 1428, this Court held that it is permissible to interfere even on question of fact but it may be only in “very exceptional cases and on extreme perversity that the authority to examine the same in extenso stands permissible it is a rarity rather than a regularity and thus in fine it can thus be safely concluded that while there is no prohibition as such, but the power to scrutiny can only be had in very exceptional circumstances and upon proper circumspection.”

Similar view has been taken in the case of *Kashmir Singh v. Harnam Singh & Anr.*, AIR 2008 SC 1749.

56. Declaration of relief is always discretionary. If the discretion is not exercised by the lower court “in the spirit of the statute or fairly or honestly or according to the rules of reason and justice”, the order passed by the lower court can be reversed by the superior court. (See: *Mysore State Road Transport Corporation v. Mirja Khasim Ali Beg*

& Anr., AIR 1977 SC 747).

8. In view of the principles laid down in the above judgment, the questions raised in the grounds of appeal are not the substantial questions of law.

9. Referring to various judgments, the Apex Court held that a question of general importance is not a substantial question of law. In ***Boodireddy Chandraiah and others Vs. Arigela Laxmi and another***^[2], the Apex Court held that the phrase "substantial question of law", as occurring in the amended Section 100 of the CPC is not defined in the Code. The word substantial, as qualifying "question of law", means of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the CPC or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance.

10. In view of the law laid down by the Apex Court in the two decisions referred *supra*, a question of law, to become substantial question of law, must have substance to decide the real controversy between the parties. But the plaintiff, in the case on hand, failed to prove the actual damage sustained by him by producing any evidence. Except examining the plaintiff before the trial Court and producing Exs.A.1 to A.35, no other documents are produced as to how the plaintiff sustained substantial loss or damage, which is to be compensated by the defendants for the delay that caused in issuance of Pattadar Passbook. In the absence of any evidence to prove the

actual damage sustained by the plaintiff before the trial and first appellate Court, the concurrent findings recorded by both the Courts below cannot be held to be perverse. Even otherwise, the damage sustained by the plaintiff has to be proved by producing cogent and satisfactory evidence and it is purely a question of fact. Both the trial and the first appellate Courts have concurrently held that there is no evidence to establish the actual loss sustained by the plaintiff. Therefore, I find no question of law, much less substantial question of law, to exercise power under Section 100 of the Code to interfere with the concurrent findings recorded by both the Courts below.

11. In view of the foregoing discussion, I find that there are no substantial questions of law involved in this appeal. The judgment under challenge does not suffer from any infirmity or perversity and the same is liable to be dismissed, being *de void* of merit.

12. In the result, the appeal is dismissed at the stage of admission. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

27th July, 2016.
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[\[1\]](#) 2012 8 SCC 148

[\[2\]](#) AIR 2008 SC 380