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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RA-RS-55-C-2013 IN
RSA-1791-1987 (O&M)
Date of decision : 11.02.2016**

Ram Phal and others

...Applicants/appellants

Versus

Khazani Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. O.P. Goyal, Senior Advocate with
Mr. Mukesh Verma, Advocate
for the applicants/appellants.

Mr. Kabir Sarin, Advocate
for the LR's of non-applicant/respondent No.1.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

CM-9649-C-2011

Prayer in this application filed under Order 22 Rules 3 read with Section 151 CPC is for impleading the Legal Representatives of late Sh. Mukhtiar (appellant No.6) who is stated to have died on 21.06.2011.

For the reasons stated in the application, the application is allowed and the Legal Representatives of late

Sh. Mukhtiar (appellant No.6) are permitted to be brought on record.

CM stands disposed of.

Main Cases

This order of mine shall dispose of Review Application bearing No.55-C of 2013 filed under Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure (hereinafter called 'CPC') for review of the order dated 03.10.2013, vide which the RSA bearing No.1791 of 1987 was dismissed holding that no substantial question arose for determination.

Mr. O.P. Goyal, learned Senior Counsel assisted by Mr. Mukesh Verma, appearing on behalf of the applicants-appellants submits, that the aforementioned appeal had been decided without framing the substantial questions of law which were placed on record vide CM No.770-C of 2011, such application was allowed vide order dated 21.01.2011. In support of his contentions, he relies upon the provisions of Section 100 CPC and also cited the judgments of Hon'ble Supreme Court passed in **"Chadat Singh V/s Bahadur Ram and others" 2004(3) RCR (Civil) 781, "Sasikumar and others V/s Kunnath Chellappan Nair and others" Civil Appeal No.976 of 1998 decided on 19.10.2005, "Gian Dass V/s The Gram Panchayat, Village Sunner Kalan and others" in Civil Appeal No.3086 of 2006 decided on 21.07.2006, "Dharam Singh V/s Karnail Singh and others" 2009(1) CCC 435 (SC)** and the judgment of this Court in **"Dayal**

Sarup V/s Om Parkash (since deceased) through LRs and others" 2010(3) RCR (Civil) 564, to contend that where Regular Second Appeal is to be tried and heard by the High Court, it has to be only on the substantial questions of law, thus, there is an error apparent on the face of record in the judgment sought to be reviewed, and prays for recalling/review of the order.

Mr. Kabir Sarin, learned counsel appearing on behalf of the LRs of respondent No.1, submits that the learned Single Judge of this Court decided the RSA holding therein that there was no substantial questions of law and the same was dictated orally, in essence, the High Court as per the provisions of Section 100 CPC had not formulated any substantial questions of law and prays for dismissal of the review application.

I have heard the learned counsel of the parties and appraised the paper book and am of the view that the review application is liable to be dismissed for the following reason, that there is no error apparent on the face of record.

It would be apt to reproduce Section 100 CPC which reads thus:-

"100. Second appeal: - (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this Section from an

appellate decree passed ex parte.

(3) In an appeal under this Section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question."

As per the provisions of Section 100 CPC, it is essential that every memorandum of appeal has to contain the substantial questions of law. Since, the memorandum of appeal was filed prior to the judgment rendered by this Court in **"Ishwar Dass Jain V/s Sohan Lal" 2000(1) RCR (Civil) 168** and **"Kulwant Kaur V/s Gurdial Singh Mann (D) through LRs" 2001 (2) RCR (Civil) 277**, it had become incumbent upon the applicant-appellant to move an application to place on record the substantial questions of law. The provisions of Section 100 CPC also provides formulation of substantial questions of law by the High Court. In case, this Court upsets the impugned findings, substantial questions of law are to be formulated, in essence, this Court while deciding the appeal did not formulate the substantial questions of law and decided the regular

second appeal finding, that the appeal did not involve any substantial questions of law. For the sake of brevity, the operative part of the judgment sought to be reviewed reads thus:-

It may also be added that the suit land is also not proved to be ancestral land of Ram Nath, since deceased. The defendants did not lead any evidence to depict that plaintiff's father Ram Nath inherited the suit land from his own father. Consequently, the suit land is not proved to be ancestral in the hands of Ram Nath. In fact, there appears to be also no pleading by the defendants that suit land was ancestral in the hands of Ram Nath. In this view of the matter also, the suit land being self-acquired property of Ram Nath, the plaintiff being his daughter could not be excluded from inheritance by distant collaterals. Defendants are said to be collaterals of Ram Nath in sixth degree. Consequently, they could not inherit the land from Ram Nath and his wife to the exclusion of plaintiff who is daughter of Ram Nath. For the reasons aforesaid, I find that suit of the plaintiff has been rightly decreed by the Courts below. There is concurrent finding recorded by both the Courts below in favour of the plaintiff. The said finding is not shown to be perverse or illegal or based on misreading or misappreciation of the evidence on record so as to call for interference by this Court in exercise of second appellate jurisdiction. No question of law, much less substantial question of law, arises for adjudication in this second appeal. The appeal is meritless and is accordingly dismissed leaving, however, the parties to suffer their respective costs throughout."

There is no dispute to the ratio decidendi culled out in

the judgments referred to above, but in all cases, the High Court had allowed the regular second appeal by setting aside the impugned judgment and decree of the Courts below (therein) without formulating the substantial questions of law. However, the case in hand is totally different in view of what has been noticed above.

Keeping in view the aforementioned facts, I do find any error apparent on the face of record. No ground is made out for interference, accordingly, the review application is dismissed.

11.02.2016
yogesh

**(AMIT RAWAL)
JUDGE**