

HON'BLE SMT JUSTICE ANIS

SECOND APPEAL No.459 of 2016

JUDGMENT:

This appeal is filed by the appellants-plaintiffs in O.S.No.668 of 2007 under Section 100 C.P.C. against the judgment and decree dated 03.03.2016 in A.S.No.76 of 2009, passed by the VI Additional District Judge, East Godavari, Kakinada, confirming the decree and judgment in O.S.No.668 of 2007 dated 02.01.2009.

2. The appellants herein are the plaintiffs in O.S.No.668 of 2007 on the file of the II Additional Senior Civil Judge, Kakinada, and the respondents herein are the defendants in the aforesaid suit.

3. For the sake of convenience, the parties are referred to as arrayed in O.S.No.668 of 2007 before the II Additional Senior Civil Judge, Kakinada.

4. Heard both sides on admission of the Second Appeal.

5. Learned counsel for the appellants argued that the Court below failed to give a finding under Section 16 of the Hindu Marriage Act and considered the irrelevant material such as matrimonial relationship of the deceased Testator with reference to Smt. Rani and further the Court below rightly held that Section 68 of the Indian Evidence Act is not duly complied with in view of the admitted evidence of PW2 in

support of Ex.A1. Therefore, learned counsel prayed the Court to formulate the following substantial question of law:

“Whether Courts below erred in ignoring the provisions of Section 16 of Hindu Marriage Act to ascertain the relationship of deceased testator with the plaintiffs in view of adducing the evidence of Ex.A4 to A6 clearly speaks of the relationship with the plaintiff on one hand and the deceased testator on the other and whether the said approach is justified or correct?

Learned counsel relied upon the decision of the Supreme Court in **State Bank of India v. S.N.Goyal**¹, the relevant paragraph of the said decision relied on by the counsel is given hereunder:

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 on 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 High Court concerned so far as the State is concerned), arises for consideration in the case. But this statement has to be

¹ (2008) 8 SCC 92

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 High Court concerned), 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 High Court concerned) 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 High Court concerned) 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.

Learned counsel finally prayed the Court to admit the appeal by framing the above substantial question of law.

6. On the other hand, learned counsel for the respondents argued that the trial Court clearly gave a finding that the mother of plaintiffs is not the legally wedded wife of late Sadhanala Sattiraju and defendant No.1-Sadhanala Chittemma alone is the legally wedded wife of Sadhanala Sattiraju and dismissed the suit. The said finding of trial Court was upheld by the First Appellate Court. Therefore, in this case again going into the material facts does not arise.

Further, there is no substantial question of law in this case to decide the Second Appeal. Learned counsel also argued that when W.P.No.9042 of 1994 was filed by Sadhanala Sattiraju, wherein he sought a direction from this Court to cultivate the land in an extent of Ac.4.93 cents in Survey No.254/16 situated at Patavala village, Tallarevu Mandal, East Godavari District and during pendency of the case Sadhanala Sattiraju died and the defendants 1 and 2 were added as legal representatives of Sadhanala Sattiraju and at no point of time the plaintiffs and their mother claimed that they are the legal heirs of Sadhanala Sattiraju and finally argued that when both the Courts gave concurrent findings regarding the factual aspect, this Court cannot interfere on the ground that there exists a substantial question of law. Learned counsel finally prayed the Court to dismiss the Second Appeal at the stage of admission.

7. Now the point that arises for consideration in this appeal is whether there exists any substantial question of law as claimed by the appellants?

8. **POINT:** A perusal of the record shows that the appellants, who are the plaintiffs, filed the suit in O.S.No.668 of 2007 on the file of the II Additional Senior Civil Judge, Kakinada for declaration of their right in the plaint schedule property and for consequential permanent injunction restraining the defendants from interfering with the peaceful

possession and enjoyment of the suit schedule property in an extent of Ac.5.00 cents in Survey No.254/16B in Patavala Village. During the trial both the parties adduced the evidence and the trial Court held that the mother of plaintiffs is not the legally wedded wife of Sadhanala Sattiraju and held that defendant No.1-Sadhanala Chittemma is the legally wedded wife of Sadhanala Sattiraju and dismissed the suit. In the plaint, the plaintiffs stated that they claimed the suit schedule property from Sadhanala Sattiraju under a registered Will Deed dated 09.07.1998. It is an admitted fact that Sadhanala Sattiraju died on 21.08.2000. Aggrieved by the judgment of the trial Court, the plaintiffs preferred an appeal in A.S.No.76 of 2009 on the file of the VI Additional District Judge, East Godavari, Kakinada. After considering the evidence on record, the First Appellate Court held that the mother of plaintiffs Sadhanala Rani is not the wife of Sadhanala Sattiraju and held that the defendant No.1-Sadhanala Chittemma is the wife of Sadhanala Sattiraju and confirmed the judgment of trial Court and dismissed the appeal, filed by the plaintiffs. The First Appellate Court also noticed that when the Sadhanala Sattiraju filed the writ petition before this Court and during pendency of the case he died and the defendants 1 and 2 were brought on record in the writ petition as the legal representatives of late Sadhanala Sattiraju and the plaintiffs have not chosen to get implead

themselves as legal representatives of Sadhanala Sattiraju in the said writ petition.

9. Aggrieved by the concurrent findings of both the Courts below, the plaintiffs filed the present Second Appeal.

10. The main contention of the appellants is that both the Courts below erred in ignoring the provisions of Section 16 of the Hindu Marriage Act. The appellants are the plaintiffs in the suit and they never claimed about the legitimacy of void and voidable marriages and there is no pleading to that effect, but on the other hand they claimed to be the children of late Sadhanala Sattiraju. Therefore considering the documentary evidence viz., exhibits A4 to A6 the Second Appeal does not arise. Further, there is no reply given by the counsel for appellants to the effect that the defendants 1 and 2 were brought on record as the legal representatives of Sadhanala Sattiraju in W.P. No.9042 of 1994 for the same suit schedule property. Therefore, the appellants failed to prove that there exists the above substantial question of law to be decided in the present Second Appeal. There is no dispute under Section 100 C.P.C. Any question of law, which affects the final decision in a case is the substantial question of law in as between the parties. In the present case, both the Courts below concurrently gave a finding about the final decision of the case. Therefore, there is no substantial question of law in

the present case as between the parties. In view of the same, the Second Appeal is liable to be dismissed.

In the result, the Second Appeal is dismissed at the stage of admission. No order as to costs. Miscellaneous Petitions, if any, pending shall stand closed.

ANIS, J

25.04.2017
MVA

