

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

SECOND APPEAL No.1021 of 2016

JUDGMENT:

This court has heard both the learned counsel, appearing for the appellant and the respondents. The suit is filed for partition. The contention of the learned counsel for the appellant in the second appeal, who is defendant No.1 in the suit, is that item-1 and item-2 are self-acquired properties and that item-3 is ancestral property, which is liable to partition. The trial court came to the conclusion that items-1 and 3 are liable to be partitioned into 5 equal shares. Questioning the same, A.S.No.88 of 2013 was filed. The first appellate court also confirmed the findings of the trial court.

The second appeal is now filed stating that there was a prior partition and that once the property has already been partitioned, it loses its character of ancestral property etc. In addition, the learned counsel for the appellant submits that the description of item-1, which is mentioned as site admeasuring Ac.5.23 gts is not correct and it is part of larger extent. Therefore, the learned counsel submits that the substantial questions of law, which are described in paragraph No.5A of Grounds of Appeal arise and they are to be considered and decided in the present second appeal.

In reply thereto, the learned counsel for the respondents submits that these are pure questions of fact which are being agitated as questions of law. The learned counsel for the respondents submits on a mere question of law, the court cannot admit the second appeal. The learned counsel points out that in the trial court the defendant/appellant

did not file any documentary evidence whatsoever to prove that there was a prior partition as alleged. The learned counsel also submits that the extent of item-1 is correctly described. He points out that even in the trial court a single issue is framed. In the first appellate court also a single point has been framed with respect to item-1 as to whether item-1 is coparcenary property as on the date of filing of the suit. The learned counsel submits that the order passed as far as item-3 is also given up as it was not challenged in the first appeal.

This court notices that the court below considered all these aspects and came to the conclusion that points Nos.1 and 2 are decided in favour of the respondents and against the appellant/defendant No.1.

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. In *SBI v. S.N.Goyal*¹ the Hon'ble Supreme Court explained the terms "substantial question of law" and observed as under:

"13.....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 partiesany 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

¹ (2008) 8 SCC 92

to when a substantial question of law arises in a case."
(emphasis added)

This Court should be satisfied that the case involves a substantial question of law and not a mere question of law. Both the courts below have rightly considered the contentions raised by the parties. There is no erroneous appreciation either in law or on facts and no interference is called for. The questions framed do not arise out of the pleadings/evidence introduced. This Second Appeal cannot be entertained as it does not involve any substantial questions of law in view of the concurrent findings of the both the courts below.

The Second Appeal is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 15.12.2018
Dsr

D.V.S.S.SOMAYAJULU,J

