

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CIVIL APPLICATION [MCA] NO.771 OF 2014
IN
SECOND APPEAL NO.192 OF 2013

Appellant : **Hetram Baniram Rahangdale,**
Aged about 43 years, Occ. Agriculturist,
R/o Pindkepar, Tah. & District Gondia.

-- Versus --

Non-Applicant : **1] Smt. Mayabai w/o Chotiram Goplani,**
Aged about 51 years, Occ : Cultivation,
R/o Civil Lines, Gondia, Tah. & District Gondia.

2] Bachuram s/o Arjundas Wadhwani,
Aged about 46 years, Occ : Business,
R/o Vivekanand Nagar, Balaghat,
Tah. & District Balaghat (M.P.)

3] Sunilkumar s/o Ramchand Bharani,
Aged about 45 years, Occ. Business,
R/o Bhambhani Banjar,
Tah. & District Mandla (M.P.)

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Dr. (Mrs.) R.S. Sirpurkar, Advocate for the Applicant.
Shri A.N. Vastani with Shri V.R. Borkar, Advocate for the Respondents.

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CORAM : **S.M. MODAK, J.**
RESERVED ON : **27th AUGUST, 2021.**
PRONOUNCED ON : **3rd SEPTEMBER, 2021.**

J U D G M E N T :-

The issue arising in this review application is “whether
not formulating substantial question of law while disposing of the

second appeal” amounts to an error apparent on the face of record?” The grievance is, while disposing of the second appeal, this Court ought to have framed substantial question of law “about not considering the agreement for sale even though it was not registered”. This is an application for review by the original defendants under the provisions of Order 47 of the Code of Civil Procedure.

02] Heard learned Advocate Dr. R.S. Sirpurkar for the applicant/defendant and learned Advocate Shri A.N. Vastani for the non-applicants/plaintiffs. I have perused the record with their assistance. Both of them have relied upon certain judgments. Perused them too.

03] Certain facts need to be stated. The plaintiffs’ suit for specific performance on the basis of the agreement, dated 11/08/2003 was decreed by the trial Court and the defendant was directed to execute the sale-deed. The trial Court has not accepted his case of denial of execution. When the plaintiffs tendered in evidence the agreement for sale, the trial Court has impounded and deficit stamp duty and penalty was paid by the plaintiffs. Accordingly, the agreement [Exh.38] was read in evidence (Paragraph 11 of trial Court’s judgment).

04] There is a consensus amongst both the sides that “the plea of non-registration of the agreement” was not taken before the trial Court. When the matter reaches to the first appellate Court, there also the plaintiffs could not succeed and specific performance decree was confirmed by the first appellate Court. My attention is brought to the memo of the first appeal and more particularly, ground No.12. It reads as follows :

“The trial Court must have appreciated that the agreement of sale coupled with possession is compulsorily needs registration under the provisions of Indian Registration Act and consequently was inadmissible in evidence”.

The grievance is, in spite of raising this ground, the first appellate Court has not given finding on it. Whereas, according to the learned Advocate for the non-applicants, merely raising ground in appeal memo is not sufficient, but they need to agitate that ground while arguing the appeal. So also, it is submitted that not considering a particular ground, even though raised, by the Court in the judgment, is not amenable to the review jurisdiction.

05] My attention is also brought by learned Advocate Dr. Sirpurkar to the substantial question of law suggested in the memo

of the second appeal and ground No.(iii) (at page No.4). It reads as follows :

“iii) Whether the denied and unregistered agreement of sale can be relied upon for specific performance of contract?”

06] That is how, my attention is brought to the contents of the judgment given by this Court in the second appeal. The learned Advocate for the applicant insisted that the substantial question of law needs to be formulated. However, according to learned Advocate for the non-applicants, when this Court has already observed that *“in view of the settled position of law reproduced above, there is no substantial question of law involved in the present appeal. There is no reason why I should interfere with the concurrent findings of fact recorded by the Courts below”*, there is no need to frame substantial question of law.

07] It will be material to consider the judgments relied upon by both the sides on requirement to frame substantial question of law. In the case of **Chadat Singh vs. Bahadur Ram & others - [(2004) 6 SCC 359]**, the Hon’ble Supreme Court by setting aside the judgment, remanded the matter back to the High Court. The

High Court allowed the second appeal and decreed the suit for specific performance by reversing the judgment of the first appellate Court. No substantial questions of law were framed. Whereas, in the case of **G. Susheela (dead) through Lrs. vs. M. Rajyalakshmi & another - [(2007) 15 SCC 491]**, the Hon'ble Supreme Court was pleased to remand the matter to the High Court of Andhra Pradesh by setting aside the judgment in a second appeal. Second appeal was at the instance of the plaintiff and the judgment of the first appellate Court thereby reversing the judgment of the trial Court was set aside and suit was decreed. There also, there was an emphasis on framing of substantial question of law.

08] In the case of **Bhag Singh vs. Jaskirat Singh & others - [(2010) 2 SCC 250]** also, the matter was remanded to the High Court. On the basis of facts, it was observed that consideration of two appeals involved substantial question of law. This is a case of wrong exercise of jurisdiction by the High Court. This case does not imply a situation wherein substantial questions of law were not at all framed. The remand was for the reason that the second appeal was decided without giving cogent reasons.

09] Whereas, in the case of **Rajendra Lalitkumar Agrawal vs. Smt. Ratna Ashok Muranjan & another - AIR 2019 SC 702**, the matter was remanded with direction to frame substantial questions of law. On the basis of facts, the Hon'ble Supreme Court felt that it involves substantial questions of law and it ought to have been framed at the time of admission (Paragraph 11).

10] In the case of **K.K. Kannan [Dead] by Lrs. vs. Koolivathukkal Karikkan Mandi & others - [(2010) 2 SCC 239]**, the Hon'ble Supreme Court set aside the judgment of the High Court and remanded the matter back for fresh disposal. The Hon'ble Supreme Court has emphasized on framing of substantial questions of law. It is also observed that *"merely referred to Grounds A to F raised in the memorandum of second appeal as substantial questions of law will not satisfy the mandate of Section 100 of the C.P.C."*.

11] As against this, learned Advocate Shri Vastani for the non-applicants relied upon the judgment in the case of **Madhusudan D. Kinlekar vs. Janardan Ramkrishna Masurkar in Review Petition No.49/2006**. It was a review petition for reviewing the order passed in writ petition. It was observed that *"if*

what is urged on behalf of the petitioner is accepted, then the sanctity and solemnity of judicial orders would stand impaired and the orders of the Court would become vulnerable on such pleas” (Paragraph 4).

12] It was further observed that “*such a case as asserted on behalf of the petitioner would not amount to any error apparent on the face of record*”. He also relied upon a judgment in the case of **Kirpa Ram [Deceased] through Legal Representatives & others vs. Surendra Deo Gaur & others - [2020 SCC Online SC 935]**, wherein it has been observed that substantial questions of law need to be framed only when the High Court is required to formulate it. If no such question arises, it is not necessary to frame them (paragraph 23). The observation in the case of **Ashok Rangnath Magar vs. Shrikant Govindrao Sangvikar - [(2015) 16 SCC 763]** is also referred (Paragraph 25).

13] About the grievance of criticizing the Judges for not dealing with the point raised during arguments, learned Advocate Shri Vastani relied upon the judgment in the case of **State of Maharashtra vs. Ramdas Shrinivas Nayak & another - [AIR 1982 SC 1249]**. In paragraph 4, it was observed thus :

“..... Matters of judicial record are unquestionable. They are not open to doubt, Judges cannot be dragged into the arena..... If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still, fresh in the minds of the Judges, to call the attention..... If no such step is taken, the matter must necessarily end there.....”

14] On this background, if the judgment given by this Court is perused, we do find that this Court felt that no substantial question of law is involved. It is true that specifically this Court has dealt with the objection about necessity of taking prior permission of the Commissioner under Section 89 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (paragraph 6 & 7). That objection was turned down. On perusing the record of the second appeal, it reveals that the notice for final disposal was issued on 03/02/2014 as the plaintiffs/respondents have filed a caveat. Whereas, the second appeal was disposed of on 09/05/2014. So, it is clear that the matter was not admitted, but was decided at the time of admission itself.

15] It is not clear from the judgments relied upon by the applicant as to whether the matters dealt with by the Hon'ble Supreme Court were after admission or at the time of admission. It

is very well true that the Hon'ble Supreme Court in the case of Kirpa Ram, as referred above, has referred to contingencies referred by the Hon'ble Supreme Court in the case of Ashok Magar (Paragraph 25). If those contingencies are considered, it was observed that "substantial questions of law need not be framed when the appeal is disposed of at the admission stage itself". Whereas, they need to be formulated when the High Court is satisfied that the substantial questions of law are involved. I think, in the case before us, the matter was decided at the admission stage itself. This Court could have framed substantial questions of law, if this Court could have felt it necessary. Hence, I do not think that not framing substantial questions of law can be said to be an error apparent on the face of record so as to exercise the review jurisdiction. The contention made on behalf of the applicant is not accepted.

16] There is an argument about the merits of the proposed substantial questions of law. It relates to the necessity to register the agreement. The learned Advocate Shri Vastani for the non-applicants relied upon the judgments in the case of **Swarnendu Das Gupta vs. Smt. Sadhana Banerjee - [AIR 2015 CALCUTTA 46]** and in the case of **S.Kaladevi vs. V.R. Somasundaram & others - [(2010) 5 SCC 401]**. The provisions of Sections 17 & 49

of the Indian Registration Act and the provisions of Section 53A of the Transfer of Property Act were considered. He argued that the agreement for sale does not create any right and as such its registration is not mandatory. It comes under the category of Section 17(2)(v) of the Indian Registration Act. It says about non-requirement of the registration. According to him, if the suit is based on part performance as contemplated under Section 53A of the Transfer of Property Act, such agreements need to be registered. Whereas, according to him, the suit is not based on part performance, but for specific performance and as such registration is optional. I am not making any observation on this issue, because I have already held that the grievance does not fall within the purview of an error on the face of record.

17] For the above reasons, the review application is dismissed. The parties to bear their own costs. Interim order, if any, stands vacated. Interim application, if any, stands disposed of.

(S.M. MODAK, J.)