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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RSA 107/2022, CM APPL. 40129/2022, CM APPL. 40130/2022, CM APPL. 40131/2022, CM APPL. 40132/2022 and CM APPL. 40133/2022

VIJAY SINGH VERMA & ORS. Appellants
Through: Mr. Abid Ibrahim and Mr. Abul Kalam Yusuf, Advs.

versus

KANWAR SINGH VERMA Respondent
Through: Respondent in person

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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13.09.2022

1. Averring that he was the owner of a property situated at 802/1 Ward No. 6, Khasra No. 1151/3 Min, Lal Dora Abadi, Mehrauli, New Delhi ("the suit property"), the respondent instituted CS 8226/2015 (*Kanwar Singh Verma v. Vijay Singh Verma*), against the appellants before the learned Additional Senior Civil Judge ("the learned ASCJ"), seeking an injunction, restraining the appellants from obstructing the respondent in keeping and maintaining a water tank at the roof of the suit property, as well as from accessing the roof of the suit property, in connection therewith.

2. According to the averments in the plaint, the respondent was the occupant of the ground floor of the suit property, whereas the appellants, as the defendants in the suit, were in possession of one



room on the ground floor, the entire first floor and one room on the second floor, along with roof. The respondent asserted ownership rights over the suit property, claiming to have purchased the suit property through Shakuntala Devi, his mother, who, it was asserted, had purchased the suit property from Mamchand Tanwar, who, in turn, had purchased the suit property from one Nathu Ram through General Power of Attorney (GPA), Agreement to Sell, Affidavit, Receipt and registered Will dated 6th August 1980. The respondent averred that, *vide* registered Sale Deed dated 18th September 2007, the suit property was sold by Shakuntala Devi to the respondent. Consequent to acquiring ownership over the suit property, the plaintiff averred that the respondent had installed a water pipe in the property and had a cemented water tank installed on the roof over the staircase of the first floor, from where water was supplied to the entire suit property.

3. It was alleged, in the plaint, that Appellant 1 Vijay Singh Verma (Defendant 1 in the suit) had broken the water tank, resulting in disconnection of water supply to the suit property. It was further alleged that the appellants were preventing the respondent from having access to the roof of the suit property. In connection with the damage allegedly caused to the water tank by Appellant 1, the plaintiff asserted that the respondent had lodged a complaint at P.S. Mehrauli on 26th November 2014.

4. Contesting the suit, the appellants, in their written statement, sought stay of trial in the suit under Section 10 of the Code of Civil



Procedure, 1908 (CPC) on the ground that the subject matter in issue in the suit instituted by the respondent was directly and substantially in issue in Suit No. 8226/2015, instituted prior in point of time by the appellants against the respondent. It was also sought to be contended that the suit was barred by Section 41(h) of the Specific Relief Act, 1963.

5. The appellants disputed the title of the respondent's mother Shakuntala Devi. They sought to contend that Shakuntala Devi did not have a valid title and could not, therefore, have transferred a valid title to the respondent. For this purpose, it was further contended that the original owner of the suit property, Mamchand Tanwar had merely executed an Agreement to Sell in respect of the suit property, in favour of Shakuntala Devi, without any subsequent Sale Deed having been executed. Mamchand Tanwar had also, it was asserted, executed an irrevocable GPA in favour of Appellant 1. It was further alleged that, while the respondent had not made any payment towards purchase of the suit property, Appellant 1 had paid ₹ 20,000/- to Mamchand Tanwar as consideration in that regard. As a holder of an irrevocable GPA, it was contended that Appellant 1 had sold the suit property to Appellant 2, his wife.

6. The following issues were framed by the learned Civil Judge, on 27th March 2017:

“(1) Whether the suit is not maintainable in its present form as hit by Section 41(h) of Specific Relief Act? OPD

(2) Whether the plaintiff is entitled to relief of permanent injunction as prayed in clause (a)? OPP



(3) Whether plaintiff is entitled to relief of permanent injunction as prayed in clause (b)? OPP

(4) Relief.”

7. Addressing the issues seriatim, the learned Civil Judge held that the suit instituted by the respondent was not barred by Section 41(h) of the Specific Relief Act, as a simplicitor suit for injunction, restraining against interference with peaceful possession of the suit property, was maintainable without proof of title. Reliance was placed, for this purpose, on the judgment of the Supreme Court in *Anathula Sudhakar v. P Buchi Reddy*¹. This issue was not pressed before me during arguments.

8. As a person admittedly in possession of the suit property, it was held by the learned Civil Judge that the suit simplicitor for injunction against interference with his possession of the suit property was maintainable at the instance of the respondent. In such a simplicitor suit for injunction, the learned Civil Judge held that “title to the suit property is not a question which is directly and substantially in issue”. For that reason, the learned Civil Judge held that the suit could not be said to be barred by Section 10 of the CPC or Order II Rule 2 thereof.

9. Apropos title, the learned Civil Judge went on to hold that, keeping in view the rival contentions, it could not be said that either of the parties had exclusive roof rights in the suit property.

¹ AIR 2008 SC 2033



10. Thereafter, the learned Civil Judge, proceeding to the entitlement of the respondent to the water tank on the roof of the suit property, observed that the date on which the respondent had constructed the water tank on the roof – which, according to the respondent, was damaged by the appellants – was not disclosed in the plaint. On the other hand, in his cross-examination, the respondent, as PW-1, had acknowledged the existence of an underground water tank in the plot. The learned Civil Judge observed that the respondent had not been able to explain as to why he needed the water tank at the roof of the suit property even when an underground water tank was available. He also observed that the evidence, in the case, did not reflect the allegations of the respondent that Appellant 1 had broken the water tank at the roof of the suit property.

11. The learned Civil Judge further observed that Ex. PW-1/E, which was dated 21st February 2014, reflected the existence of a “broken cemented water tank”. This, he held, belied the assertion of PW-1, in para 10 of his affidavit in evidence (Ex. PW-1/1) that Appellant 1 had broken the cemented water tank in July 2014.

12. In the aforesaid circumstances, the learned Civil Judge observed that it was more probable that the respondent was using the underground water tank, rather than the overhead water tank. As such, he held that the respondent had not been able to make out a case of need to access the roof of the suit property. The prayer for a prohibitory injunction against restricting access of the respondent to the roof of the suit property was, therefore, rejected.



13. Aggrieved thereby, the respondent appealed to the learned Additional District Judge (“the learned ADJ”) *vide* RCA DJ 45/2020. The appeal stands allowed by the learned ADJ *vide* judgment dated 7th May 2022, against which the appellants (the respondents in RCA DJ 45/2020) are in second appeal before this Court under Section 100 of the CPC.

14. Having reproduced the issues framed by the learned Civil Judge, the learned ADJ held, observing that the appellants and respondent were both claiming title through Mamchand Tanwar, with the respondent claiming title by way of an Agreement to Sell in favour of Shakuntala Devi, who was said to have executed a registered Sale Deed in favour of the respondent and the appellants claiming title by way of GPA, said to have been executed in favour of the appellants by Mamchand Tanwar. Any which way, the learned ADJ affirmed the observation of the learned Civil Judge that the question of title was really insubstantial to a resolution of the issue in controversy. The learned ADJ has correctly identified the issue in controversy as “whether the appellants/plaintiffs being the occupants of a portion of the ground floor is entitled to restore the water tank on the roof/terrace of the building, which, according to the plaintiffs/appellants stood damaged/destroyed/removed by the respondent”.

15. The learned ADJ noted that the main ground on which the learned Civil Judge had proceeded to dismiss the suit filed by the respondent was that the evidence seemed to indicate that the



respondent was using the underground water tank rather than the overhead water tank. This, finds the learned ADJ, was erroneous in view of the following recital in the cross-examination on 22nd November 2018, of DW-2:

“It is correct that there was a water tank of 5000 liters of cement installed on the first floor of the suit property. *It is also correct the water from tank was being used by everybody in the suit property. It is correct that my father had demolished the said water tank in the year 2014.* It is wrong to suggest that the said water tank was demolished with a view to harass the plaintiff and his family so that he may vacate the suit property under pressure. One water tank of 7000 liter is installed underground on the ground floor which is being used by the plaintiff and his family members, It is correct that the boundary, wall of the said water tank of three sides is still existing there on the first floor.”

16. The afore-extracted recital, in the record of cross-examination of DW-2, who was a witness of the appellants, holds the learned ADJ, amounted to an admission that Appellant 1 had demolished the water tank on the roof of the suit property in 2014 without the concurrence of the respondent. In these circumstances, the learned ADJ holds that the respondent could not be non-suited merely on the ground that there was an underground water tank in the suit property.

17. Inasmuch as the learned Civil Judge had proceeded basically on the premise that there was an underground water tank in the suit property, which was being used by the respondent, the learned ADJ has reversed the finding of the learned Civil Judge and has, allowing the appeal before him, decreed the suit by holding the respondent to be entitled to have a plastic overhead tank of capacity not more than



5,000 litres installed at terrace as well as access to the terrace without causing inconvenience to other occupants of the building. The learned ADJ has also protected the interest of other occupants of the building including the appellants by restricting the rights of the respondent to access the terrace only for maintenance and upkeep of the overhead tank.

18. By no stretch of imagination can it be said that the impugned order gives rise to any substantial question of law, within the meaning of Section 100 of the CPC. In this context, apropos Section 100 of the CPC, the Supreme Court has, in *Hero Vinoth (Minor) v. Seshammal*², relying on its earlier decision in *Sir Chunilal V. Mehta & Sons Ltd v. Century Spinning & Manufacturing Co. Ltd*³, ruled thus, on the indicia of a “substantial question of law”:

“18. It has been noted time and again that without insisting for the statement of such a substantial question of law in the memorandum of appeal and formulating the same at the time of admission, the High Courts have been issuing notices and generally deciding the second appeals without adhering to the procedure prescribed under Section 100 CPC. It has further been found in a number of cases that no efforts are made to distinguish between a question of law and a substantial question of law. In exercise of the powers under this section in several cases, the findings of fact of the first appellate court are found to have been disturbed. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in the section must be strictly fulfilled before a second appeal can be maintained and no court has the power to add or to enlarge those grounds. The second appeal cannot be decided on

² (2006) 5 SCC 545

³ AIR 1962 SC 1314



merely equitable grounds. The concurrent findings of facts will not be disturbed by the High Court in exercise of the powers under this section. Further, a substantial question of law has to be distinguished from a substantial question of fact. This Court in *Sir Chunilal V. Mehta and Sons Ltd. v. Century Spg. & Mfg. Co. Ltd.*³ held that: (SCR pp. 557-58)

“The proper test for determining whether a question of law raised 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 and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.”

19. *It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences of fact are possible, the one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible. The High Court will, however, interfere where it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at by ignoring material evidence.*



20. The question of law raised will not be considered as a substantial question of law, if it stands already decided by a larger Bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court. Where the facts required for a point of law have not been pleaded, a litigant should not be allowed to raise that question as a substantial question of law in second appeal. *The mere appreciation of facts, the documentary evidence or the meaning of entries and the contents of the documents cannot be held to be raising a substantial question of law. But where it is found that the first appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as a substantial question of law. Where the first appellate court is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or of procedure requiring interference in second appeal. This Court in **Reserve Bank of India v. Ramkrishna Govind Morey**⁴ held that whether the trial court should not have exercised its jurisdiction differently is not a question of law justifying interference. (See **Kondiba Dagadu Kadam v. Savitribai Sopan Gujar**⁵.)*

21. The phrase “substantial question of law”, as occurring in the amended Section 100 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 Code 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. In **Guran Ditta v. Ram Ditta**⁶ the phrase “substantial question of law” as it was employed in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held*

⁴ (1976) 1 SCC 803

⁵ (1999) 3 SCC 722

⁶ 1927-28) 55 IA 235 : AIR 1928 PC 172



that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. In *Sir Chunilal case*³ the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in *Rimmalapudi Subba Rao v. Noony Veeraju*⁷:

“When a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular fact of the case it would not be a substantial question of law.”

This Court laid down the following test as proper test, for determining whether a question of law raised in the case is substantial: (*Sir Chunilal case*³):

“The proper test for determining whether a question of law raised 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 and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.”

23. *To be “substantial” a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the*

⁷ AIR 1951 Mad 969 : (1951) 2 MLJ 222 (FB)



*decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law “involving in the case” there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case or not, the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis. (See **Santosh Hazari v. Purushottam Tiwari**⁸.)*

24. The principles relating to Section 100 CPC relevant for this case may be summarised thus:

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, *when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.*

(ii) *The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting*

⁸ (2001) 3 SCC 179



contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to “decision based on no evidence”, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

(Emphasis supplied)

19. The issue in controversy, in the present case, was purely factual in nature. There are concurrent findings, by the learned Civil Judge as well as the learned ADJ, that the rights asserted by the respondent did not involve adjudication into the question of title. Even otherwise, both the appellants and the respondent were claiming title through Mamchand Tanwar, with the respondent asserting title on the basis of a registered Sale Deed executed by his mother Shakuntala Devi and the appellants asserting title on the basis of a GPA stated to have been executed by Mamchand Tanwar in favour of Appellant 1. As to whether a mere GPA could result in transfer of title is a matter which may require to be considered. This Court is not expressing any opinion thereon as learned Counsel for the appellants submits that the issue of title is presently *sub judice* in another pending suit.

20. The learned ADJ has correctly relied on the evidence of DW-2 to hold that there existed, at one point of time, a cemented water tank



on the roof of the suit property, which was damaged by Appellant 1 in 2014. In that view of the matter, the learned ADJ cannot be faulted in holding that the respondent was entitled to restoration of the *status quo ante*, by installation of a water tank on the roof of the suit property, as well as access thereto, limited to maintenance and upkeep of the water tank.

21. No substantial question of law, within the meaning of Section 100 of the CPC, therefore, arises in the present appeal. The appeal is dismissed *in limine* with no order as to costs. Miscellaneous applications are also disposed of.

SEPTEMBER 13, 2022

r.bararia

C.HARI SHANKAR, J

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