

\$~46(Appellate)

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

+ RSA 142/2022 & CM APPL.49425/2022, CM
APPL.49426/2022

POONAM

..... Appellant

Through: Mr.Sundaram Ojha, Ms.Neha
Tripathi and Mr.Shikhar Srivastava, Advs.

versus

RADHA RANI AND ORS

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

%

22.11.2022

1. CS 114/2017 was instituted by Respondent 1 against the appellant and three other defendants. The four defendants in the suit were Chandan Bhatia, Reena, Vishal Bhatia and Poonam. Poonam is the present appellant. Reena is the wife of Chandan Bhatia and Poonam is the wife of Vishal Bhatia.

2. The respondent-plaintiff Radha Rani is the mother of Chandan Bhatia and Vishal Bhatia and, therefore, the mother-in-law of Reena and Poonam.

3. The suit pertains to the first floor of a property situated at House No. 1551-52, G-Block, Jahangirpuri, Delhi-110033 ("the suit property" hereinafter). Respondent 1-Radha Rani, as the plaintiff in the suit, claimed to be the owner of the suit property. She claimed that all the defendants in the suit were staying in the property as gratuitous licensees, with the appellant – Poonam and Respondent 3 – Reena

residing in the property by virtue of their marriage with Vishal Bhatia and Chandan Bhatia respectively.

4. Documents of title, in respect of the property at House No. 1151 were claimed, by Radha Rani, to have been executed in her favour by the erstwhile owner of the property Balbir Singh. Radha Rani further claimed that title in respect of property No. 1552 was acquired by her husband Krishan Lal Bhatia by virtue of similar documents of title executed by Balbir Singh.

5. Krishan Lal Bhatia expired on 3rd February 1990. His surviving legal heirs were Radha Rani, his two sons Chandan Bhatia and Vishal Bhatia and one married daughter Pooja. Radha Rani claimed, in the plaint, that all the said legal heirs of Krishan Lal Bhatia executed a registered relinquishment deed in favour of Radha Rani, in respect of the property situated at G-1551-52, Jahangirpuri, Delhi.

6. Thus, claimed the plaint, Radha Rani became the sole and absolute owner of both of the properties situated at G-1551 and G-1552, Jahangirpuri, Delhi.

7. The plaint further claimed that the petitioner and Reena, consequent to their marriage to Vishal Bhatia and Chandan Bhatia respectively, were permitted to stay in the suit property by Radha Rani as gratuitous licensees. It was alleged, in the plaint, that, as Chandan Bhatia and Vishal Bhatia started misbehaving with her, Radha Rani disowned them by a public notice published in the Indian Express. She, thereafter, asked them to vacate the suit property. On their failure to do so, Radha Rani instituted CS 114/2017, wherefrom the present proceedings emanate.

8. Chandan Bhatia, Vishal Bhatia and Reena did not contest the suit. At the very inception of the proceedings, they submitted that they were willing to vacate the suit property. They were, directed, to do so, *vide* order dated 22nd May 2017 passed by the learned Additional Senior Civil Judge (the learned ASCJ). On 25th September 2017, Chandan Bhatia, Reena and Vishal Bhatia vacated the suit property.

9. The appellant Poonam, however, did not do so, and continued to contest the suit.

10. Poonam's stand, both before the learned ASCJ as well as before the learned ADJ in first appeal, was that she was residing in the suit property as it was her "shared household" and matrimonial home.

11. In the circumstances, the learned SCJ framed the following issues on 16th December 2017:

- "1. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP
2. Whether the plaintiff is entitled for relief of mandatory injunction as prayed for? OPP
3. Whether the present suit is not maintainable being without cause of action? OPD
4. Whether the plaintiff is not the absolute owner of the suit property? OPD 4
5. Relief."

12. Radha Rani examined herself as PW-1 and also relied on a complaint dated 5th October 2016 which was exhibited as Ex PW-1/6.

The appellant Poonam, however, did not lead any evidence or cite any witness. Her right to lead evidence, was, therefore, closed *vide* order dated 12th March 2020. Apparently, the said order was also not challenged.

13. In the circumstances, *vide* judgment and decree dated 3rd August 2021, the learned ASCJ decreed the suit in favour of Radha Rani and against Poonam. It was found, by the learned SCJ, that Radha Rani had been able to prove her ownership over the suit property by virtue of her affidavit and examination-in-chief. The learned ASCJ further noted that the appellant Poonam had admitted the fact that she had been disowned by Radha Rani by official notice published in the Indian Express, as the assertion to that effect, as contained in the plaint, was stated to be “a matter of record” in the written statement filed by the appellant.

14. Apropos the contention of the appellant that she was entitled to reside in the suit property as it was her, “shared household” with her husband Vishal Bhatia, the learned ASCJ holds thus:

“12.3 But the defendant No.4 has pleaded that she is residing at the first floor of the suit property with her children as the same is her matrimonial home and defendant No.1 to 3 with the connivance of the plaintiff want to get rid of her and defendant No.3, who is her husband, is still residing in the ground floor in the suit property with the plaintiff. One is said to be living with other in a shared household if the two have been living in a domestic relationship with each other. It implies that two should be living in single dwelling unit where they should cook, feed, live and share the joys and sorrows together. It is deposed by the plaintiff that defendant No.3 got married with defendant No.4 in the year 2003 and they both started living in the suit property with her consent and permission as a licensee and after four months of the marriage, they started living at the first floor of the suit property. It has been pleaded by the defendant No.4 in her written statement that plaintiff is residing at the ground floor. She has nowhere pleaded

those properties of ground floor and first floor were used as single dwelling unit where only one kitchen was being maintained and all the rooms, articles etc Were being shared without any distinction. It implies that plaintiff and defendant No. 3 & 4, though living in the suit property but there were two different dwelling units in which they were living separately. The plaintiff was residing in dwelling unit on the first floor whereas defendant No. 3 and 4 had been residing in other on first floor. Hence, there were two units of household and plaintiff and defendant No. 4 has not entered into the witness box to prove the contrary. The deposition of the plaintiff that the defendant No. 3 & 4 started residing separately on the first floor after three to four months of their marriage, has also not been rebutted during the cross examination. In fact, not even a single question is put to the witness to challenge or counter this deposition. Hence, the defendant has been unable to prove that the suit property is the shared household in which she should have right to reside irrespective of any right, title or beneficial interest in the same as per the Protection of Woman under Domestic Violence Act, 2005. Further, though it has been pleaded by defendant no. 4 that defendant No. 3, who is her husband, is residing in the same property despite making the statement before this Court and the suit is collusive in nature, this fact is not proved by the defendant No. 4. Hence, the defendant No. 4 is proved to be residing with her husband on first floor of the suit property with the consent and permission of the plaintiff being her daughter-in-law, hence in the capacity of licence only. Now the plaintiff has deposed to have terminated this license and the husband of the defendant No. 4 i.e. the defendant No. 3 is also not proved to be residing therein, hence she has no right to remain in possession and occupation of the first floor of the suit property, more specifically when her husband, against whom she could claim right of residence, is not proved to be residing therein and the defendant No. 4 owes an obligation to hand over the possession of the property in her possession to the plaintiff.”

15. In view of the aforesaid, the learned ASCJ decreed the suit in favour of Respondent 1-Radha Rani and against the appellant.

16. Aggrieved thereby, the appellant Poonam appealed to the learned ADJ *vide* RCA DJ 27/2021.

17. The learned ADJ has, by the impugned judgment dated 30th September 2022, dismissed the appeal. On the contention of the appellant that she was residing in the suit property as it was her

“shared household”, the learned ADJ has held thus:

“28. In order to qualify for shared household, the appellant must have been living or have lived with respondent No.1 in domestic relationship. Domestic relationship has been defined as relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or a family members living together as joint family.

29. Shared household has been defined as household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned, or tenanted by either of them in respect of which either person or the respondent, or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

30. Hon’ble Supreme Court in **Satish Chander Ahuja v. Sneha Ahuja**¹ has occasion to interpret expression “person aggrieved lives at any stage has lived” occurring in Section 2(s) of the D.V. Act in the definition of “shared household”, and held as under:-

“The expression “at any stage has lived” has been used to protect the women from denying the benefit of right to live in a shared household on the ground that on the date when application is filed, she was excluded from possession of the house or temporarily absent. The use of the expression “at any stage has lived” is for the above purpose and not with the object that wherever the aggrieved person has lived with the relatives of husband, all such houses shall become shared household, which is not the legislative intent. The shared household is contemplated to be the household, which is a dwelling place of aggrieved person in present time. When we look into the different kinds of orders or reliefs, which can be granted on an application filed by aggrieved person, all orders contemplate providing protection to the women in reference to the premises in which aggrieved person is or was in possession. Our above conclusion is further fortified by statutory scheme as delineated by Section 19 of the Act, 2005. In event, the definition of shared household as occurring in Section

¹ (2021) 1 SCC 414

2(s) is read to mean that all houses where the aggrieved person has lived in a domestic relationship along with the relatives of the husband shall become shared household, there will be number of shared household, which was never contemplated by the legislative scheme. The entire Scheme of the Act is to provide immediate relief to the aggrieved person with respect to the shared household where the aggrieved person lives or has lived. As observed above, the use of the expression “at any stage has lived” was only with intent of not denying the protection to aggrieved person merely on the ground that aggrieved person is not living as on the date of the application or as on the date when Magistrate concerned passes an order under Section 19...”

31. As per her own pleading, appellant has been living on first floor with separate mess on the day when the suit was filed and was thus not in domestic relationship with respondent No.1. Further, in *Satish Chander Ahuja* (supra) it was also held that when one resist the suit for eviction/possession on the ground of it being her shared household, she had to prove her claim in the suit both by pleadings and evidence. Admittedly in the present case, appellant though has pleaded the suit property to be her shared household but has not led any evidence to prove the same. Once she has not led any evidence and there is nothing in the pleading and evidence of the plaintiff/respondent No.1 from which it could be inferred that suit property was the shared household of the appellant, no fault could be found in the impugned judgments and decree which has also attempted to look for matter to see if the suit property could qualify for being termed as share household of the appellant. Admittedly, appellant has not claimed any other right, title or interest in the suit property and therefore she did not have any right, title or interest to retain the suit property.”

18. Aggrieved by the aforesaid decision of the learned ADJ, the present second appeal, under Section 100 of the CPC has been filed by Poonam.

19. Mr. Ojha, learned Counsel for the appellant reiterates the contention, urged by the appellant before both courts below, that the suit property was the appellant’s shared household. He submits that both the courts below have erred in failing to notice that it was an admitted position, even in the plaint instituted by Radha Rani, that,

consequent to the marriage of the appellant with Vishal Bhatia, the two of them were staying together in the suit property with the consent of Radha Rani. It could not, therefore, be held, according to Mr. Ojha, that the appellant was not entitled to continue to reside in the said property treating it as her “shared household”.

20. Mr. Ojha has also sought to impress the fact that, if the appellant is evicted from the suit property, she would have nowhere to go. In these circumstances, Mr. Ojha places reliance on certain guidelines framed by a Coordinate Bench of this Court in its decision in *Vinay Varma v. Kanika Pasricha*², which seek to harmonise the conflicting interests of parents who are entitled to be provided shelter by their children and the right of the daughter-in-law to continue to stay in the matrimonial home.

Analysis

21. There are concurrent findings of fact, in the present case, by the learned ASCJ and the learned ADJ that the appellant had failed to prove that the premises of which she was in occupation, i.e. the first floor of the suit property, was her “shared household”, within the meaning of the expression as defined in Section 2(s)³ of the The Protection of Women from Domestic Violence Act, 2005 (“the DV Act” hereinafter). Relying on the judgment of the Supreme Court in *Satish Chander Ahuja*¹, both the courts below have concurrently held that, even if, consequent on her marriage with Vishal Bhatia, the

² (2019) 265 DLT 211

³ (s) “shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or

appellant was staying in the suit property with her husband with the consent of Radha Rani, the appellant had herself acknowledged, in her own written statement, that, thereafter, she was residing in the first floor with her children whereas her husband was residing in the ground floor of the suit property with Radha Rani. The relevant averments, in this context, are as under:

“PRELIMINARY OBJECTION:

1. That the present suit of plaintiff qua the answering defendant is not maintainable as the suit property is the matrimonial home of the answering defendant where she is residing at the first floor with her children since her marriage with the defendant no. 3. And the suit property partakes the character of share hold house/matrimonial house

REPLY PARAWISE:

4. That the contents of Para No.4 of the plaint is admitted up to the extent the defendant No.1 is. the elder son of the plaintiff, defendant no.2 is the wife of defendant No.1, defendant No.3 is the younger son of the plaintiff, and the defendant No.4/answering defendant is the wife of defendant No.3. Rest of the Para is wrong and denied. It is pertinent to mention here that the defendant No. 3 from last 5-6 years is not having good relation with the answering defendant and is presently residing with the plaintiff at the ground floor of the suit property and not maintaining the answering defendant as well as her children. The defendant No.1 being elder son is also residing in the suit property with defendant No.2, however, due to his bad habits he is under huge debts”

The appellant and her husband could not, therefore, be said to have been residing in the suit property as a “shared household” on the date when the suit was instituted, even if they had been so residing in the past.

interest in the shared household.

22. *Satish Chander Ahuja*¹ makes it clear that every household in which the wife may have stayed after marriage without her husband would not be a “shared household” and that the couple must have been cohabiting in the house on the date of institution of the proceedings, with the degree of intimacy envisaged by *Satish Chander Ahuja*¹.

23. No evidence to the contrary having been led by the appellant, the courts below have concurrently held that the appellant could not claim a right to continue to reside in the suit property, treating it as her “shared household”, in view of the law enunciated in *Satish Chander Ahuja*¹.

24. Mr. Ojha submits that the default, on the part of the appellant, in leading any evidence during trial was because of the fault of her Counsel. He presses, into service, the oft-cited principle that a client should not suffer for fault of Counsel. He further impresses, on this Court, to do equity in the matter and ensure that the appellant is not deprived of her sole place of residence.

25. The present proceedings, unfortunately, are under Section 100 of the CPC. This court can interfere only if there is a substantial question of law involved. Where there are concurrent findings of fact, based on evidence, a substantial question of law can be said to be involved, only if the manner in which evidence has been appreciated is perverse. Perversity, in the matter of appreciation of evidence, can be said to exist only where the Court has either taken into account irrelevant evidence or eschewed, from consideration, relevant material, as held by the Supreme Court in *S.R. Tewari v. Union of*

*India*⁴. Else, the Court, under Section 100 of the CPC, is ordinarily required to abstain from interfering, where concurrent findings of fact are involved.

26. One may refer, in this context, to the following passages from *Hero Vinoth v. Seshammal*⁵ and *S. Nagarajan v. District Collector*⁶ as well the orders of this Court in *Vijay Singh Verma v. Kanwar Singh Verma*⁷ and *Sheikh Abeddin v Iqbal Ahmed*⁸, the relevant passages are extracted hereinbelow:

***Hero Vinoth*⁵**

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

(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.”

***S. Nagarajan*⁶**

“5. The Division Bench after considering these facts has held thus:

“2. It is an established position of law that though jurisdiction under Article 226 of the Constitution is wide, but nevertheless it cannot be exercised as an appellate jurisdiction and it is not open to this Court to appreciate the evidence and come to its own conclusion as long as it is

⁴ (2013) 6 SCC 602

⁵ (2006) 5 SCC 545

⁶ (1997) 2 SCC 571

⁷ 2022 SCC OnLine Del 2899

⁸ 2022 SCC OnLine Del 3069

shown that the fact-finding authority has followed the provision of law correctly and appreciated the evidence in a reasonable manner. In other words, the approach of the fact-finding authority not being perverse and unreasonable and not being vitiated by non-consideration of the evidence on record, the fact that this Court can come to a different conclusion on the very same evidence would not be a ground for interference. Added to that, while considering a similar issue, the Supreme Court in **Madhuri Patil v. Addl. Commr., Tribal Development**⁹ has held as follows: (SCC p. 257, para 15)

“The question then is whether the approach adopted by the High Court in not elaborately considering the case is vitiated by an error of law. High Court is not a court of appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and records a finding, though another view, as a court of appeal may be possible, it is not a ground to reverse the findings. The court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately record the finding. Each case must be considered in the backdrop of its own facts.”

Vijay Singh Verma⁷

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**, relying on its earlier decision in **Sir Chunilal V. Mehta & Sons Ltd. v. Century Spinning & Manufacturing Co. Ltd.**¹⁰, 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

⁹ (1994) 6 SCC 241

¹⁰ AIR 1962 SC 1314

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 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.*¹⁰ 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**¹¹ 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**¹².)

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**¹³ the phrase “substantial question of law” as it was employed in the last clause of the

¹¹ (1976) 1 SCC 803

¹² (1999) 2 SCC 722

¹³ AIR 1928 PC 172

then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held 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*¹⁰ 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*¹⁴:

“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*¹⁰):

“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 decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a

¹⁴ AIR 1951 Mad 969

*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**¹⁵.)*

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 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*

¹⁵ (2001) 3 SCC 179

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)”

Sheikh Abeddin⁸

23. This Court is exercising jurisdiction in the present case under Section 100 of the CPC. There are concurrent findings of fact, to the effect, that Respondent 1 is the owner of the suit property and that the appellant is a caretaker therein inducted by Respondent 2. Concurrent findings of fact are ordinarily not to be interfered with, under Section 100 of the CPC, unless and until they suffer from perversity.

24. A second appeal under S.100 CPC lies only on substantial questions of law. *Hero Vinoth v. Seshammal*² holds thus, on the concept of “substantial question of law” in the context of S.100 of the CPC:

“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*⁴, 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 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*⁵ case 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*⁶ : (*Sir Chunilal*⁵ case, SCR p. 557)

‘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 facts 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 case is substantial : (*Sir Chunilal*⁵ case, SCR p. 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.’”

25. Perversity, in the matter of appreciation of evidence, is said to exist where the Court either takes into account irrelevant material or eschews relevant material for consideration or arrives at a finding which no reasonable person conversant with the facts and the law and the evidence on record would arrive at⁷. Absent such inhibiting factors, the exercise of appreciation of evidence must necessarily stop with the first appellate Court and the second appellate Court, exercising jurisdiction under Section 100 CPC, is not allowed to trespass into that territory.”

27. Possibly on account of default, on the part of the appellant, in

leading any evidence to establish that, on the date when the suit was instituted, she was residing with her husband in the suit property, coupled with the fact that, in her written statement, she had acknowledged that her husband was residing on the ground floor and she, with her children, were residing on the first floor of the suit property with a separate mess, the courts below have concurrently found that the appellant had not been able to make out a case of her residing with her husband in the suit property as a “shared household”.

28. That being so, there is no error in the concurrent findings of the court below that, Radha Rani having proved her ownership over the suit property, and that the appellant was continuing to reside in the suit property only as a gratuitous licensee. The appellant had no right to continue to do so once Radha Rani revoked this license and required her to vacate.

29. As such, the decision of the learned ASCJ to decree the suit in favour of Radha Rani and against the appellant, and the dismissal of the first appeal thereagainst by the learned ADJ, do not suffer from any error either of law or of fact.

30. No substantial question of law arises for consideration in the present second appeal which is accordingly dismissed in *limine*. Miscellaneous applications stand disposed of.

C.HARI SHANKAR, J

NOVEMBER 22, 2022/kr