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C.M.P.No.19020 of 2024
in
S.A.No.1205 of 2011

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N.SENTHILKUMAR, J.

This petition has been filed to formulate the following additional substantial questions of law in the above second appeal.

2. Additional Substantial Questions of Law to be formulated are as follows:

- a) *Whether the impugned judgment of the First Appellate Court is vitiated in law due to non-compliance of the mandate contained in Order 41 Rule 31 of Civil Procedure Code?*
- b) *Whether the learned First Appellate Court is right in coming to the conclusion that alleged stray admission with regard to the title of the plaintiff in the written statement of the Defendant would confer title upon the plaintiff when there is not even an iota of oral and documentary evidence to prove the same independently as per the procedure established by law? Is such finding not perverse and opposed to the well settled principle of law that no estoppel can be claimed against statute?*

3. Learned counsel for the petitioner relied upon the judgment of the



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Hon'ble Supreme Court reported in **(2021) 10 SCC 777**, in the case of **K.Karuppuraj Vs. M.Ganesan**, wherein the Hon'ble Supreme Court has held as follows:

“7. In the present case, the original plaintiff instituted a suit for specific performance of the contract. On appreciation of evidence, the learned trial court held the issue of readiness in favour of the plaintiff. However, refused to pass the decree for specific performance of the contract on the ground that the plaintiff was not willing to purchase the property with tenants. Therefore, the issue with respect to willingness was held against the plaintiff. In an appeal filed before the High Court under Section 96 read with Order 41 by the impugned judgment and order, the High Court has allowed the said appeal and has quashed and set aside the decree passed by the learned trial court dismissing the suit and consequently has decreed the suit for specific performance. Having gone through the impugned judgment and order passed by the High Court, it can be seen that there is a total non-compliance of Order 41 Rule 31 CPC. While disposing of the appeal, the High Court has not raised the points for determination as required under Order 41 Rule 31 CPC. It also appears that the High Court being the first appellate court has not discussed the entire



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matter and the issues in detail and as such it does not reveal that the High Court has re-appreciated the evidence while disposing of the first appeal. It also appears that the High Court has disposed of the appeal preferred under Order 41 CPC read with Section 96 in a most casual and perfunctory manner. Apart from the fact that the High Court has not framed the points for determination as required under Order 41 Rule 31 CPC, it appears that even the High Court has not exercised the powers vested in it as a first appellate court. As observed above, the High Court has neither re-appreciated the entire evidence on record nor has given any specific findings on the issues which were even raised before the learned trial court.”

4. Another judgment relied upon by the learned counsel for the petitioner reported in **1965 SCC Online SC 52**, in the case of **Ambika Prasad Thakur and Others Vs. Rama Ekbal Rai (dead) by his legal representatives and others**, wherein the Hon'ble Supreme Court has held as follows:

“14. The claim of title based upon clause (1) of Section 4 of Regulation 11 of 1825 was not clearly made in the pleading. It was clearly put forward for the first time in the High Court. It was contended that the



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decision in Suits Nos. 22 to 31 and 199 of 1937 conclusively established this claim. The High Court rightly pointed out that those suits did not relate to any portion of the subject-matter in the

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present suit, and the decision in those suits cannot operate as res judicata. The plaintiffs now contend that the judgment is admissible to show that the plaintiffs' ancestors asserted title to other Taufir lands as an accretion to frontier Dubha Mal plots under the Regulation and their claim was recognised. But the plaintiffs' ancestor did not consistently assert such a title. In Attestation Dispute Cases Nos. 1 to 253 of Village Dubha they claimed title to the lands in suit as an accretion to their 77 bighas, and this claim was negated.”

5. There is no representation on behalf of the first respondent.

6.Mr.Ramesh, learned Government Pleader appearing for respondents 2 and 3 has no objection.

7. In view of the above, the civil miscellaneous petition is **ordered**.

8. Registry is directed to include the additional substantial questions of law in S.A.No.1205 of 2011 and list the second appeal after two weeks.



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