

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**MONDAY, THE TWENTY SIXTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

SECOND APPEAL NOS: 163 & 166 OF 2020

SECOND APPEAL NO: 163 OF 2020

Appeal under Section 100 of C.P.C against the Judgment and Decree Dated 24/02/2020 made in A.S. No. 348 of 2014 on the file of the Court of the XXVI Additional Chief Judge, City Civil Court, Hyderabad, Preferred against the Judgment and Decree passed in O.S. No.1979/2012 Dated 04/12/2014 on the file of the Court of the II Senior Civil Judge, City Civil Court, Hyderabad.

Between:

Smt. Mori Devi, W/o. Late Bhopal Singh. Aged about 68 years, Occ. Business,
R/o. H.No.6-3-834/A, Ameerpet, Hyderabad-500 016. **...APPELLANT**

AND

1. R.Parvathi, W/o. Late R.Kukuteshwar Rao, Aged about 53 years, Occ. Household, R/o. H.No.6-3-834/A, Ameerpet, Hyderabad-16
2. R.Jyothirmai, D/o. Late R.Kukuteshwar Rao, Aged about 40 years, Occ. Household, R/o. H.No.6-3-834/A, Ameerpet, Hyderabad-16
3. R.Ravichand, S/o. Late R.Kukuteshwar Rao, Aged about 33 years. Occ. Pvt. Employee, R/o. H.No.6-3-834/A, Ameerpet, Hyderabad-16
4. K.Raja Ramana, S/o. Late K.Rama Rao, Aged about 50 years, Occ. Pvt. Employee, R/o. H.No.6-3-834/A, Ameerpet, Hyderabad-16
5. K.Vijaya Madurai, D/o. Late K.Rama Rao, Aged about 42 years, Occ. Household, R/o. H.No.6-3-834/A, Ameerpet, Hyderabad-16.

...RESPONDENTS

IA NO: 2 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in O.S.No.1979/2012 on the file of II Senior Civil Judge, City Civil Court, Hyderabad, pending disposal of the above S.A.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, praying to grant permission to further argue Petitioner case along with the additional grounds in the petition to enable the Court to frame the substantial questions of law and grant me the relief prayed for in the interest of justice.

SECOND APPEAL NO: 166 OF 2020

Appeal under Section 100 of C.P.C against the Judgment and Decree Dated 24/02/2020 made in A.S. No. 26 of 2018 on the file of the Court of the XXVI Additional Chief Judge, City Civil Court, Hyderabad, Preferred against the Judgment and Decree passed in I.A.No.82 of 2015 in O.S. No.1979 of 2012 Dated 19/12/2017 on the file of the Court of the II Senior Civil Judge, City Civil Court, Hyderabad.

Between:

Smt. Mori Devi, W/o. Late Bhopal Singh, Aged about 68 years, Occ. Business, R/o. H.No.6-3-834/A, Ameerpet, Hyderabad-500 016.

...APPELLANT

AND

1. R.Parvathi, W/o. Late R.Kukuteshwar Rao, Aged about 53 years, Occ. House hold R/o. H.No.6-3-834/A, Ameerpet, Hyderabad-16
2. R.Jyothirmmai, D/o. Late R.Kukuteshwar Rao, Aged about 40 years, Occ.Household, R/o. H.No.6-3-834/A, Ameerpet, Hyderabad-16
3. R.Ravichand, S/o. Late R.Kukuteshwar Rao, Aged about 33 years, Occ.Pvt. Employee, R/o. H.No.6-3-834/A, Ameerpet, Hyderabad-16
4. K.Raja Ramana, S/o. Late K.Rama Rao, Aged about 50 years, Occ. Pvt. Employee, R/o. H.No.6-3-834/A, Ameerpet, Hyderabad-16
5. K.Vijaya Madurai, D/o. Late K.Rama Rao, Aged about 42 years, Occ.Household, R/o. H.No.6-3-834/A, Ameerpet, Hyderabad-16.

...RESPONDENTS

IA NO: 2 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of Common Judgment and Decree dt. 24-02-2020 in A.S.No. 26 of 2018 passed by the Hon'ble XXVI Additional Chief Judge, City Civil Court, Hyderabad, confirming Order (Decreetal Order) in 1.A.No.82 of 2015 in O.S.No.1979/2012 on the file of II Senior Civil Judge, City Civil Court, Hyderabad by staying all further proceedings in O.S.No.1979/2012 on the file of II Senior Civil Judge, City Civil Court, Hyderabad, during pendency of second appeal.

Counsel for the Appellant in both cases : Sri H. C. Upadhyay

Counsel for the Respondents in both cases : Sri Pottigari Sridhar Reddy

The Court delivered the following :

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

SA.NO.163 OF 2020

AND

SA.NO.166 OF 2020

COMMON JUDGMENT:

Being aggrieved by the common judgment and decree in AS.No.348 of 2014 and AS.No.26 of 2018 dated 24-02-2018, where under, the learned XXVI Addl. Chief Judge, City Civil Court, Hyderabad, dismissed her appeals against the judgment in OS.No.1979 of 2012 and order in IA.No.82 of 2015, the defendant in the above said OS.No.1979 of 2012 and respondent in IA.No.82 of 2015 has filed these two second appeals under Section 100 of Civil Procedure Code (for short 'C.P.C.') vide SA.No.163 of 2020 and SA.No.166 of 2020.

2. As could be seen from the entire material placed before this Court, it appears that the plaintiffs in OS.No.1979 of 2012 have filed the said suit against the sole defendant, who is appellant in the present appeals, seeking her eviction from the suit schedule property and for recovery of arrears of rent. The said suit was decreed in favour of the plaintiffs. The plaintiffs have filed IA.No.82 of 2015 for determination of

quantum of *mesne* profits. The trial Court allowed the Interlocutory Application and decided the *mesne* profits @ Rs.5,000/- per month.

3. Being aggrieved by the judgment in OS.No.1979 of 2012, the defendant therein has filed AS.No.348 of 2014 and also filed AS.No.26 of 2018 challenging the decree and order in IA.No.82 of 2015. The first appellate Court has dismissed both the appeals under a common judgment. The defendant being not happy with the said common judgment, filed these two second appeals on the following grounds.

4. The first appellate Court ought to have allowed the appeal instead of dismissing the same but the first appellate Court did not appreciate that the respondents did not choose to renew the lease deed on 01-10-2020 or enter into new lease deed and received the rents paid by the appellant. The first appellate Court failed to appreciate that the appellant did not stop payment of rents even after the death of original owner and continued the payment of rent with good faith. The first appellate Court failed to consider the failure of the respondents to prove their entity as owners and legal heirs. The respondents who did not renew the lease deed and without entering into a new lease agreement could

not have insisted the appellant for payment of the property tax. The first appellate Court ought to have verified whether the plaintiffs are the legal heirs of M.Rama Rao before concluding the tenancy of the appellant is terminated through legal notice dated 05-09-2012. The first appellate Court failed to consider that the respondents failed to prove their title and ownership over the suit schedule property. The Court below ought to have considered that the appellant herein was doing business in the schedule property for eking out her livelihood. There was failure by the respondents to renew the lease deed. The trial Court was wrong in accepting the evidence of PW.2, a neighbouring tenant who claimed to pay Rs.7,200/- per month, thereby, fixing monthly rent of suit schedule property as Rs.5,000/- but could have fixed a fair rent. The first appellate Court was wrong in accepting the contention of respondent/landlord that the premises would fetch Rs.5,000/- per month. The trial Court and first appellate Court could have considered if monthly rent of Rs.300/- is enhanced to Rs.5,000/- per month, it would cause hardship to the appellant herein, thereby, prayed for setting aside the impugned judgment in the suit as well as order in the Interlocutory Application. The appellant has claimed that

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the trial Court and first appellate Court failed to appreciate the evidence in a proper way, thereby, the judgment and decree referred above are perverse. The fixing of rent as Rs.5,000/- per month on the evidence of PW.2 is incorrect. Therefore, sought for setting aside the impugned judgment and order in Interlocutory Application.

5. While advancing arguments before admission, the learned counsel for the appellant has filed additional grounds which are nothing but reproduction of the averments made in the present appeal and the learned counsel for the appellant has submitted that there is substantial question of law for admission of the appeals.

6. Before advertng to the grounds and arguments advanced by the learned counsel for the appellant, it is just and necessary to see the legal position for admission of second appeal. It is settled proposition of law that unless there is substantial question of law, the second appeal cannot be admitted.

7. In Judgment **Kanhaiyalal v. Anupkumar**¹, wherein it was held that:

¹ AIR 2003 SC 689

"After the amendment, a second appeal can be filed only if a substantial question of law is involved in the case. The memorandum of appeal must precisely state the substantial question of law involved and the High Court is obliged to satisfy itself regarding the existence of such a question. If satisfied, the High Court has to formulate the substantial question of law involved in the case. The appeal is required to be heard on the question so formulated. However, the respondent at the time of hearing of the appeal has a right to argue that the case in the Court did not involve any substantial question of law. The proviso to the section acknowledges the powers of the High Court to hear the appeal on a substantial point of law, though not formulated by it with the object of ensuring that no injustice is done to the litigant where such a question was not formulated at the time of admission either by mistake or by inadvertence."

8. In a Judgment between '**Lisamma Antony v. Kathriyayani**²', it was observed that unless there is substantial question of law involved, no second appeal can be admitted under Section 100 of CPC. Merely because on appreciation of evidence another view could have been taken, it cannot be said that the High Court can assume jurisdiction by terming such a question as substantial question of law.

9. The Hon'ble Supreme Court in the case of **Narayanan Rajendran v. Lekshmy Sarojini**³ has broadly

² 2015 (11) SCC 782

³ Civil Appeal No.745 of 2001

discussed about the admissibility of the Second Appeal, wherein it was held thus:

"38. In Kamti Devi (Smt.) and Anr. v. Poshi Ram (2001) 5 SCC 311 the court came to the conclusion that the finding thus reached by the first appellate court cannot be interfered with in a second appeal as no substantial question of law would have flowed out of such a finding."

10. The Hon'ble Supreme Court taking into consideration the principles of law in the cases of **Thiagarajan v. Sri Venugopalaswamy B.Koil⁴, Commissioner, Hindu Religion and Charitable Endowments v. P. Shenmugama⁵, State of Kerala v. Mohd. Kunhi⁶, and Madhavan Nair v. Bhaskar Pillai⁷**, has observed that the High Court has no jurisdiction in Second Appeal to interfere with the findings of fact.

11. This Second Appeal has been filed under Section 100 of the Code of Civil Procedure, 1908 (for short, C.P.C.) which corresponds to Section 584 of the old Civil Procedure Code of 1882. The Section 100 (prior to 1976 amendment) reads as under:

"100. Second appeal – (1) *"Save where otherwise provided in the body of this Code or by any other law for the*

⁴ (2004) 5 SCC 762

⁵ (2005) 9 SCC 232

⁶ (2005) 10 SCC 139

⁷ (2005) 10 SCC 553

time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court on any of the following grounds, namely :

(a) the decision being contrary to law or to some usage having the force of law;

(b) the decision having failed to determine some material issue of law or usage having the force of law;

(c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

(2) An appeal may lie under this section from an appellate decree passed ex parte."

12. The Privy Council, in **Luchman v. Puna**⁸, observed that a second appeal can lie only on one or the other grounds specified in the present section.

13. The Privy Council, in another case **Pratap Chunder v. Mohandranath**⁹, the limitation as to the power of the court imposed by sections 100 and 101 in a second appeal ought to be attended to, and an appellant ought not to be allowed to question the finding of the first appellate court upon a matter of fact.

14. In **Durga Chowdharani v. Jawahar Singh**¹⁰, the Privy Council held that the High Court had no jurisdiction

⁸ (1889) 16 Calcutta 753 (P.C.)

⁹ (1890) ILR 17 Calcutta 291 (P.C.)

¹⁰ (1891) 18 Cal 23 (PC)

to entertain a second appeal on the ground of erroneous finding of fact, however gross or inexcusable the error may seem to be. The clear declaration of law was made in the said judgment as early as in 1891. This judgment was followed in the case of **Ramratan Shukul v. Mussumat Nandu**¹¹ and many others. The court observed:

"It has now been conclusively settled that the third court...cannot entertain an appeal upon question as to the soundness of findings of fact by the second court, if there is evidence to be considered, the decision of the second court, however unsatisfactory it might be if examined, must stand final."

15. In the case of **Ram Gopal v. Shakshaton**¹², the court emphasized that a court of second appeal is not competent to entertain questions as to the soundness of a finding of facts by the courts below.

16. The same principle has been reiterated in **Rudra Prasad v. Baij Nath**¹³. The court observed that a judge to whom a memorandum of second appeal is presented for admission is entitled to consider whether any of the grounds specified in this section exist and apply to the case, and if they do not, to reject the appeal summarily.

¹¹ (1892) 19 Cal 249 (252) (PC)

¹² (1893) ILR 20 Calcutta 93 (P.C.)

¹³ (1893) ILR 15 Allahabad 367

17. The Amendment Act of 1976 has introduced drastic changes in the scope and ambit of Section 100 C.P.C. A second appeal under Section 100 C.P.C. is now confined to cases where a question of law is involved and such question must be a substantial one. Section 100, as amended, reads as under:

"100. Second Appeal:

(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question."

Cases decided after 1976 amendment:

18. In **Bholaram v. Amirchand**¹⁴, a three- Judge Bench of Supreme Court reiterated the statement of law, and observed that the High Court, seems to have justified its interference in second appeal mainly on the ground that the judgments of the courts below were perverse and were given in utter disregard of the important materials on the record particularly misconstruction of the rent note, and held that even if reason given by the High Court is accepted, the utmost that could be said was that the findings of fact by the courts below were wrong or grossly inexcusable but that by itself would not entitle the High Court to interfere in the absence of a clear error of law.

19. In **Kshitish Chandra Purkait v. Santosh Kumar Purkait**¹⁵, a three judge Bench of Supreme Court held:

"(a) that the High Court should be satisfied that the case involved a substantial question of law and not mere question of law;

(b) reasons for permitting the plea to be raised should also be recorded;

¹⁴ (1981) 2 SCC 414

¹⁵ (1997) 5 SCC 438

(c) it has the duty to formulate the substantial questions of law and to put the opposite party on notice and give fair and proper opportunity to meet the point. The court also held that it is the duty cast upon the High Court to formulate substantial question of law involved in the case even at the initial stage."

20. In **Kanai Lal Garari v. Murari Ganguly**¹⁶ the Hon'ble Supreme Court has observed that it is mandatory to formulate the substantial question of law while entertaining the appeal in absence of which the judgment is to be set aside. In **Panchugopal Barua v. Umesh Chandra Goswami**¹⁷ and **Santosh Hazari v. Purushottam Tiwari**¹⁸, the court reiterated the statement of law that the High Court cannot proceed to hear a second appeal without formulating the substantial question of law.

21. In **Ishwar Dass Jain v. Sohan Lal**¹⁹, the Hon'ble Supreme Court observed as under:

"Now under Section 100 CPC, after the 1976 Amendment, it is essential for the High Court to formulate a substantial question of law and it is not permissible to reverse the judgment of the first appellate court without doing so."

22. As per the grounds raised in the present appeals and according to the arguments advanced by the learned

¹⁶ (1999) 6 SCC 35

¹⁷ (1997) 4 SCC 713

¹⁸ (2001) 3 SCC 179

¹⁹ (2000) 1 SCC 434

counsel for the appellant, it was specifically submitted that the respondents/plaintiffs were not able to prove their relation with the original landlord, thereby, they cannot claim the eviction of the appellant herein or recovery of the arrears of rent. The learned counsel for the appellant had argued that the suit schedule property was originally owned by one Rama Rao, but the respondents herein were not able to prove that they are legal representatives or children of said Rama Rao, thereby, they could not have raised any claim against the appellant.

23. In fact, the record placed before the Court clearly shows that the appellant herein has filed OS.No.832 of 2012 on the file of V Junior Civil Judge, City Civil Court, and sought for a perpetual injunction to restrain the respondents herein from disturbing her possession over the suit schedule property. However, the said suit was dismissed when she could not prosecute the same. There was no dispute about the appellant herein filing OS.No.832 of 2012 against the present respondents and its dismissal for default on 04-09-2012.

24. The appellant did not raise any objection with regard to ownership and right of respondents to claim eviction

of the appellant from the schedule property before the trial Court or before the first appellate Court. Therefore, she cannot raise this aspect at the stage of second appeal. Even if such a claim is raised that may not be a substantial question of law for consideration or for admitting the appeal.

25. As per the orders of the trial Court in the above referred suit and Interlocutory Application and as per the common judgment impugned in the present appeals, it seems the appellant having occupied the schedule premises under a lease deed dated 01-10-1980 filed a suit for perpetual injunction. The respondents have claimed in the suit that after the death of said M.Rama Rao, the appellant herein used to pay the agreed rent to his daughters, who are shown as first plaintiff and one Late K.Samrajyam. They have claimed as per the agreed terms of the lease between the parties, the rent was Rs.5,000/- per month from October, 2011. When the appellant herein committed default in payment of rent and failed to pay the outstanding municipal tax to the tune of Rs.1,83,389/-, they have asked the appellant herein to vacate the premises by clearing the arrears of rent and municipal tax. They have also claimed that the appellant herein instead of vacating the premises filed a suit against the respondents

herein and having obtained an injunction, started depositing a sum of Rs.300/- per month as rent of the premises.

26. The trial Court has accepted the contentions raised by the respondents/plaintiffs and passed a decree for eviction of the appellant herein giving liberty to file a separate proceeding for determination of the *mesne* profits. The respondents filed the above referred Interlocutory Application for fixing of the mesne profits as Rs.5,000/- per month. Even as per the written statement filed by the appellant herein before the trial Court, there was an admission on her part that the respondents herein, approached her, informed her that they are legal representatives of the original landlord and she started paying monthly rent to the respondents herein.

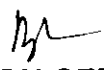
27. Therefore, the appellant cannot now raise any dispute about the ownership of the premises. The contentions of the appellant that the dispute with regard to ownership of the premises in view of the discrepancy in the surname of the appellant cannot be a substantial question of law for admitting the appeal. Therefore, absolutely, there is no substantial question of law for admission of the appeals, as such, both the second appeals are dismissed before admission.

28. In the result, both the Second Appeals are dismissed before admission.

Consequently, Miscellaneous applications if any, are closed. No costs.

SD/- I NAGALAKSHMI,
DEPUTY REGISTRAR.

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SECTION OFFICER

To,

1. The XXVI Additional Chief Judge, City Civil Court, Hyderabad.
(With records if any)
2. The II Senior Civil Judge, City Civil Court, Hyderabad.
3. One CC to Sri H. C. Upadhyay, Advocate [OPUC]
4. One CC to Sri Pottigari Sridhar Reddy, Advocate [OPUC]
5. Two CD Copies

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HIGH COURT

DATED:26/02/2024

COMMON JUDGMENT

SA.No.163 & 166 of 2020



DISMISSING THE SECOND APPEALS BEFORE ADMISSION

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