

**RSA-1036-1993 (O&M)****1****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****139****RSA-1036-1993 (O&M)
Date of decision : 20.05.2024**

Purshotam Dass

... Appellant(s)

Versus

Subhash Chand and Another

...Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vijay Sharma, Advocate for the appellant.

Service of respondent No.1 already dispensed with
vide order dated 01.05.2023.

Mr. Sandeep Kumar Yadav, Advocate for respondent No.2.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the plaintiff-appellant against the judgment and decree dated 19.09.1991 passed by the Trial Court and the judgment and decree dated 20.01.1993 passed by the First Appellate Court.

2. Learned counsel for the plaintiff-appellant would contend that a specific issue was framed in the present case i.e. issue no.6 as to “whether the Civil Court had no jurisdiction”. It is further the contention that the Trial Court returned a finding on issue no.6 that the Civil Court had no jurisdiction to try this case under Section 46 of the Administration of Evacuee Property Act, 1950. The said finding was affirmed by the First



Appellate Court and the plaint was ordered to be returned. He further contends that once the Court holds that it has no jurisdiction, no finding on merits could have been given. In support of his arguments learned counsel has relied upon **R.S.D.V. Finance Company Pvt. Ltd. vs. Shree Vallabh Glass Works Ltd. [(1993) 2 SCC 130]** and **Athmanathswami Devasthanam vs. Gopalaswami Ayyangar [AIR 1965 SC 338]**.

3. Learned counsel for the defendant-respondent states that the Civil Court has rightly returned the findings and has infact left the question whether the suit property was evacuee property open to be decided in appropriate proceedings.

4. I have heard the learned counsel.

5. In the case **R.S.D.V. Finance Company Pvt. Ltd. (supra)** in para no.7, the Hon'ble Supreme Court held as under:

“7. xxx The Division Bench was totally wrong in passing an order of dismissal of suit itself when it had arrived to the conclusion that the Bombay Court had no jurisdiction to try the suit. The only course to be adopted in such circumstances was to return the plaint for presentation to the proper court and not to dismiss the suit. It may be further noted that the Learned Single Judge trying the suit had recorded a finding that the Bombay Court had jurisdiction to entertain and decide



the suit. Sub-sec.(1) of Section 21 of the Code of Civil Procedure provides that no objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement and unless there has been consequent failure of justice. The above provision clearly lays down that such objection as to the place of suing shall be allowed by the appellate or revisional court subject to the following conditions :

- (i) that such objection was taken in the Court of first instance at the earliest possible opportunity;*
- (ii) in all cases where issues are settled then at or before such settlement of issues;*
- (iii) there has been a consequent failure of justice.”*

6. In **Athmanathswami Devasthanam** (supra) in para no.13, the Hon’ble Supreme Court held as under :

“13. The last point urged is that when the civil court had no jurisdiction over the suit, the High Court could not have dealt with the cross-objection filed by the appellant with respect to the adjustment of certain amount paid by

**RSA-1036-1993 (O&M)****4**

the respondent. This contention is correct. When the Court had no jurisdiction over the subject matter of the suit it cannot decide any question on merits. It can simply decide on the question of jurisdiction and coming to the conclusion that it had no jurisdiction over the matter had to return the plaint.”

7. It has been held by the Trial Court and the First Appellate Court that the Civil Court has no jurisdiction to try the matter and in such a case the only option was to return the plaint and no finding could have been recorded on merits.

8. As per the law laid down by a Constitution Bench of the Hon’ble Supreme Court in the case of **Pankajakshi (dead) through LR’s & Ors. vs. Chandrika & Ors. [2016 (6) SCC 157]** there is no requirement for framing of substantial questions of law.

9. In view of the above, the findings recorded by both the Courts regarding jurisdiction are upheld, however, the findings on merits of the case are hereby set aside. Appeal stands disposed off accordingly. Pending miscellaneous applications, if any, also stand disposed off.

20.05.2024
Ankur

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO