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

+ RSA 9/2017 & CM APPL. 575/2017, CM APPL. 43503/2017,
CM APPL. 63037/2023,

VED PRAKASH LAMBA

..... Appellant

Through: Appellant in person

versus

SATYAPAL LAMBA

..... Respondent

Through: Mr. Harry Chhibber and Mr.
Gaurav Tyagi, Advs. with son of the
respondent in person

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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02.02.2024

1. The appellant Ved Prakash Lamba and the respondent Satyapal Lamba are brothers. This, therefore, is a plain case of sibling rivalry.

2. This second appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) emanates from Suit 146/2010 which was instituted by the respondent against the appellant. The suit was decreed by the learned Civil Judge by judgment dated 23 May 2015.

3. The appellant appealed against the said judgment and decree to the learned Additional District Judge ("the learned ADJ") *vide* RCA

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10/2015 (*Ved Prakash Labma v. Satyapal Lamba*).

4. The appeal has been dismissed by the impugned judgment dated 24 September 2016. The original defendant is in second appeal before this Court under Section 100 of the CPC.

5. A perusal of the orders passed by the learned Civil Judge and the learned ADJ reveal that the disputes between the parties were purely disputes of fact. There is no question of law involved therein.

6. It is trite law that pure findings of fact would not merit case for interference in second appeal under Section 100 of the CPC, as they would not result in any substantial question of law, unless the findings are perverse.

7. There is a wide swathe of authorities on the point, of which two of the most recent to be found in the judgments of the Supreme Court in *Chandrabhan v. Saraswati*¹ and *P Kishore Kumar v. Vitthal K. Patkar*².

8. The relevant passages from the said decisions may be reproduced thus:

From *Chandrabhan*:

“27. The guidelines to determine what is a substantial question of law within the meaning of Section 100 CPC has been laid down

¹ 2022 SCC OnLine SC 1273

² (2023) SCC OnLine SC 1483



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by this Court in *Sir Chunnilal V. Lal Mehta & Sons v. Century Spinning and Manufacturing Co. Ltd.*³

28. In *Sir Chunilal V. Mehta and Sons*, this Court agreed with and approved a Full Bench judgment of the Madras High Court in *Rimmalapudi Subba Rao v. Noony Veeraju*⁴ which laid down the principles for deciding when a question of law becomes a substantial question of law.

29. In *Hero Vinoth v. Seshamma*⁵, this Court followed *Sir Chunilal v. Mehta & Sons* and other judgments and summarized the tests to find out whether a given set of questions of law were mere questions of law or substantial questions of law.

30. The relevant paragraphs of the judgment of this Court in *Hero Vinoth* are set out herein below:

“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 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 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* :)

³ AIR 1962 SC 1314

⁴ AIR 1951 Mad 969

⁵ (2006) 5 SCC 545

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



“[W]hen 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.”

31. The proper test for determining whether a question of law raised in the case is substantial would 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. 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 the question raised is palpably absurd, the question would not be a substantial question of law.

32. 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 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*⁷).

33. The principles relating to Section 100 of the 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 the High Court will not interfere with findings of facts arrived at by 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.

34. In this case, it cannot be said that the First Appellate Court acted on no evidence. The Respondents in their Second Appeal before the High Court did not advert to any material evidence that had been ignored by the First Appellate Court. The Respondents also could not show that any wrong inference had been drawn by



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the First Appellate Court from proved facts by applying the law erroneously.

35. In this case, as observed above, evidence had been adduced on behalf of the Original Plaintiff as well as the Defendants. The First Appellate Court analysed the evidence carefully and in effect found that the Trial Court had erred in its analysis of evidence and given undue importance to discrepancies and inconsistencies, which were not really material, overlooking the time gap of 34 years that had elapsed since the date of the adoption. There was no such infirmity in the reasoning of the First Appellate Court which called for interference.

36. Right of appeal is not automatic. Right of appeal is conferred by statute. When statute confers a limited right of appeal restricted only to cases which involve substantial questions of law, it is not open to this Court to sit in appeal over the factual findings arrived at by the First Appellate Court.”

From *P Kishore Kumar*

29. The first appellate court having examined the facts in extenso, the High Court ought not to have interfered with the findings rendered therein by virtue of being, in second appeal, a court of law. As was astutely said by this Court in *Gurdev Kaur v. Kaki*⁸, a second appellate court is not expected to conduct a “third trial on facts” or be “one more dice in the gamble.” The decision rendered by the first appellate court, not being in violation of the settled position of law, ought not to have been interfered with. With utmost respect to the High Court, we are constrained to observe that the question framed by it could be regarded as one of law, if it all, but did not merit the label of a substantial question of law so as to warrant interference with the first appellate decree under section 100 of the CPC.”

9. The Court is required to be additionally circumspect where there are concurrent findings of fact by both the courts below.

10. Suit 146/2010, from which these proceedings emanate, was instituted by the respondent against the appellant.



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11. The litigation pertains to a house situated at J-31, Rajouri Garden. There is no dispute that the appellant and the respondents are both residing in the suit property.

12. The plaint instituted by the respondent averred that the respondent was residing on the ground floor of the suit property and the appellant was residing on the first floor thereof.

13. The terrace/second floor consisted only of one room, 12' X 12' in dimension. According to the plaint, this room was in common and joint use of the appellant and the respondent.

14. It was further averred in the plaint that there were two staircases leading from the ground floor of the suit property to the first floor and one staircase leading from first floor of the suit property to the second floor. Though the appellant and the respondent, according to the plaint, were using their respective staircases to move from ground floor to the first floor, it was alleged that the appellant had locked the staircase which proceeded from the first floor to the second floor as a result of which the respondent was unable to obtain access to the second floor and to the room on the terrace situated on the second floor.

15. In these circumstances, the respondent, in his suit, sought reliefs of perpetual and permanent injunction, directing the appellant to remove the lock by which access to the staircase to the second floor



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had been blocked and not to interfere with the enjoyment of the room on the second floor which was in the joint possession of the appellant and the respondent.

16. The learned Civil Judge framed the following issues as arising for consideration in the case:

- “1. Whether the plaintiff is entitled to decree of mandatory injunction, as prayed for? OPP
2. Whether the plaintiff is entitled to decree of permanent prohibitory injunction, as prayed for? OPP
3. Relief.”

17. Apropos Issue 1, the learned Civil Judge notes that, in the written statement filed by the appellant/defendant, it was admitted that the suit property was in their joint ownership. It is further observed in the judgment of the learned Civil Judge that though, in the written statement filed by the defendant, it was sought to be averred that there was only one staircase leading from the ground floor to the second floor of the suit property, the inspection report of a learned Local Commissioner, who was appointed to visit the property, revealed that there were, in fact, two staircases leading from ground floor to the first floor as had been averred by the respondent in his plaint.

18. It was further observed that the articles of the appellant and the respondent were both found in the room on the terrace of the suit property, thereby belying the contention of the appellant that the appellant was in exclusive possession of the room on the terrace.



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19. In these circumstances, the learned Civil Judge held that the appellant could not be permitted to block access to the terrace by locking the staircase which led from the first floor to the terrace. Equally, as the property was admittedly in joint possession of the appellant and the respondent, and the goods of both appellant and respondent were found in the room on the terrace, the learned Civil Judge held that the respondent was entitled to a decree of permanent injunction against the appellant prohibiting him from interfering with the respondent's enjoyment of the room on the terrace.

20. As a result, the learned Civil Judge directed the appellant to remove the lock on the staircase leading to the terrace and also enjoined the appellant permanently from interfering with the enjoyment, by the respondent, of the room on the terrace.

21. In first appeal, the learned ADJ has found no cause to interfere with the decision of the learned Civil Judge. He has noted the contention of the appellant that he was in exclusive possession of the room on the terrace and that, if the respondents were to be allowed access to the said room, it would hinder the safety and security of the appellant.

22. The learned ADJ has held that, as the suit property was admittedly in joint ownership and possession of the appellant and the respondent, and as there had been no partition or division of the suit property, the respondent had equal rights to the room on the terrace. As such, the appellant could not block access, by the respondent, to



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the room on the terrace. Inasmuch as the appellant had not suggested any alternative way for the respondent to reach the terrace, the learned ADJ found no infirmity in the decision of the learned Civil Judge directing the appellant to open access to the staircase leading from the first floor to the terrace and not to interfere with the enjoyment of the room on the terrace by the respondent.

23. Before me, the appellant has chosen to argue his case in person. He only read ground D in the appeal which is as under:

“D. That the Ld. Lower Appellate Court has overlooked the observation made by Hon'ble Mr. Justice T.V.R. Tatachari in the case of **Prithi Singh Versus Bachitar Singh** in R.S.A. No.91 of 67 (*supra*) wherein it was observed in paragraph 5 of the judgment in the last lines in the following terms:-

“It is now well settled that every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co owners. It is also well settled that where a co owner is in possession of separate parcels under an arrangement consented to by the other co-owners, it is not open to anyone to disturb the arrangement without the consent of others except by filing a suit for partition.”

In the present case also admittedly there is one stair case from first floor to the terrace which is in possession of the appellant and as such, the terrace being the integral part of the first floor and is in actual and physical possession of the appellant which is clear even from the evidence produced by the parties and the possession of the same is with the appellant and the respondent in the garb of the present suit wants to disturb the peaceful possession of the appellant in respect of the terrace over the first floor of the said property. However it is further submitted that the respondent in his statement recorded, has also stated that he could not go to the terrace unless and appellant open the main entry door of the first floor which clearly shows that the terrace is in actual and physical possession of the appellant and the Ld. Trial Court as well as the Appellate Court has completely ignored this aspect of this case and as such the impugned judgment and decree of the Ld. Lower Appellate Court is bad in the eyes of law which has resulted into grave miscarriage of justice to the appellant in view of the fact that in the garb of the injunction, the respondent is seeking the decree



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for partition and possession which is not permissible under the law.”

24. To a query from the Court as to the evidence to indicate that the appellant was in exclusive possession of the room on the terrace, no convincing answer is forthcoming. There are concurrent findings of fact that the room on the terrace is in joint possession of the appellant and the respondent. The appellant, in his written statement, has admitted the fact that the suit property was jointly owned by the appellant and the respondent. It is also an admitted position that there has never been any partition or division of the suit property. Even on this sole ground, the respondent would be entitled to enjoyment of the room on the terrace as much as the appellant.

25. That apart, the learned Civil Judge has also observed that the articles of the appellant and the respondent were both found in the room on the terrace. This is a pure finding of fact, which cannot invite interference in second appeal by this Court. If the articles of both appellant and respondent were found in the room on the terrace, it cannot lie in the mouth of the appellant that he was in exclusive physical possession of said room. No infirmity, whatsoever, therefore can be said to exist in the direction of the learned Civil Judge to the appellant to open access of the staircase leading to the terrace and not to interfere with the joint enjoyment of the room on the terrace, by the respondent.

26. To my mind, this is purely an ego driven dispute. It is a fight amongst siblings. This is not a litigation which actually deserved to



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have travelled upto this Court and occupied valuable court time.

27. Ideally, this second appeal ought to have invited costs on the appellant.

28. Nonetheless, as the appellant is advanced in years and has argued the matter himself, I refrain from doing so.

29. After the judgment was completely dictated, the appellant sought to submit that the finding that the suit property was in joint ownership was incorrect and that there was no such admission.

30. I have drawn the attention of the appellant to paras (C) and (K) of the facts stated in the written statement which read thus:

“C. That Late Shri Inderjeet died on 21.08.1990 bequeathing the property under contention to his wife Late Smt. Leelawati (i.e. mother of plaintiff and Defendant) vide Registered will dated 14.7.71. That Late Smt Leela Devi also demised on 21.11.1999 leaving behind a Registered will dated 25.07.1991 wherein she had bequeathed the property under contention equally to both her sons who are the Plaintiff and Defendant therein.

K. The plaintiff does not allow access to the Defendant in the area under the occupation of the Plaintiff though the property is still undivided. The Defendant has asked the Plaintiff to divide the property equally between themselves but Plaintiff has deliberately refrained from doing so as the Plaintiff has some nefarious design.”

31. The findings of the learned Civil Judge that, in the written statement filed by the appellant, joint ownership of the suit property stood admitted, therefore, suffers from no infirmity.

32. In order to avoid further litigation, it is clarified that the

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appellant shall allow unhindered access to the terrace of the suit property via the staircase which leads from the first floor to the second floor and the respondent shall be entitled to equal ownership and enjoyment of the room on the second floor/terrace along with the appellant.

33. The appeal is accordingly, dismissed.

C. HARI SHANKAR, J.

FEBRUARY 2, 2024

dsm

Click here to check corrigendum, if any