

(2013) 04 AHC CK 0324

Allahabad High Court

Case No: Second Appeal No. 310 of 2013

State of U.P.

APPELLANT

Vs

Shanti Devi

RESPONDENT

Date of Decision: April 4, 2013**Citation:** (2014) 1 AWC 192**Hon'ble Judges:** Sudhir Agarwal, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Sudhir Agarwal, J.

Heard learned standing counsel for appellants.

2. Plaintiff-respondents instituted a suit for injunction, possession and demolition in respect to property in dispute. They set up claim on the basis of ownership rights. Defendant-appellants contested the suit asserting that they are in possession of property in dispute for more than 50 years and, therefore, they cannot be evicted from property in dispute. Trial court decided issues No. 1 and 2 regarding ownership etc. only on the ground that plaintiffs could not give the boundaries of their property and, therefore, it was not identifiable. Lower appellate court, however, found that so far as the disputed property is concerned, parties were admittedly in a position to understand as to what property is in dispute and that is how defendants had raised plea that they are in possession for several years. However, pleadings of defendants were short of satisfying requirement of adverse possession and requisite pleadings of adverse possession was also missing. Lower appellate court also found that ownership rights of plaintiffs were not found to be challenged or assailed and on the contrary, were proved with adequate documentary evidence, referred to in lower appellate court's judgment.

3. Before this Court the findings of lower appellate court have not been attempted to be shown perverse. It is not the case of defendant-appellants that they adduced any evidence before the court below that ownership rights and possession of property in

dispute are with them and they raised construction thereon as owner or on the basis of any other valid and legal right. It is in these circumstances, it is evident that defendants were either trespassers or unauthorized occupants or licensees but had no right to continue to remain in possession thereof against real owner.

4. In the context of right of ownership sought to be established on the basis of adverse possession, specific pleadings are of utmost importance and in absence thereof, mere length of time of possession shall not attract the aforesaid principle. On this aspect, detailed discussion has been made by this Court in Second Appeal No. 970 of 1982, U.P. Gandhi Smarak Nidhi v. Aziz Mian and other connected matters decided on 8.2.2013 and Misc. Single No. 6612 of 1990. State of U.P. through Estate Officer, Civil Secretariat, U.P. Lucknow v. 1st Additional District Judge. Lucknow and others and other connected matters decided on 21.2.2013.

5. Since the appellants failed to show any legal entitlement to hold possession of property in dispute, their status becomes that of ownership-less-occupant. There is an attempt on the part of appellant to continue with this nefarious kind of possession merely because they are the authority of State depriving rightful owner to get possession. Though learned standing counsel has sought to argue that there do involve certain questions of law but I am afraid and is inclined to observe that the alleged question are abstract legal proposition but on a deeper scrutiny of the judgments of courts below and facts of this case, I find that either no substantial question of law has arisen in this matter or that the questions raised are already covered by the several authorities of Apex Court and this Court, and, on a simple application thereof to the facts of this case, the entire edifice of defendant-appellants would shatter or the questions do not arise at all in this case.

6. In my view the arguments advanced by learned counsel for appellants, though per se, may involve some questions of law but either none is arising in this case, or, well-settled and require only application. In any case it cannot be said that substantial questions of law is arising in this case. Hence the appeal deserve to be dismissed in limine under Order XLI, Rule 11 of the CPC (hereinafter referred to as the "Code").

7. u/s 100 of Code, a second appeal can be entertained by this Court, only if, it involves substantial question of law. In other words it does not confer any jurisdiction on this Court to interfere with pure questions of fact, which have been considered and adjudicated by courts below after appreciation of evidence recording well considered findings. If there is a finding of fact, based on proper appreciation of evidence, and, material on record, and no perversity, illegality or irregularity in those findings are found, the second appeal is not at all entertainable by this Court u/s 100 of the Code. Even mere illegality or irregularity in findings would not permit interference. They require something more.

8. There are two situations in which, ordinarily, interference with findings of fact is permissible, namely, (a) when material or relevant evidence is not considered, which if considered, would have led to opposite conclusion, and (b) where a finding has been

arrived at by court below by placing reliance on inadmissible evidence, which if would have been omitted, an opposite conclusion would have been possible. I derive these principles from some of the authorities of Apex Court and, briefly, it would be appropriate to refer the same.

9. In [Dilbagrai Punjabi Vs. Sharad Chandra](#), the Court affirmed the observations of High Court that first appellate court is under a duty to examine entire relevant evidence on record and if it refuses to consider important evidence having direct bearing on the disputed issue, and the error which arises is of magnitude that it gives birth to a substantial question of law, the High Court would be entitled to set aside the finding.

10. In [Jagdish Singh Vs. Natthu Singh](#), it was said, where finding by court of facts is vitiated by non-consideration of relevant evidence or by an essentially erroneous approach to the matter, the High Court is not precluded from recording proper finding.

11. In [Sri Chand Gupta Vs. Gulzar Singh and another](#), the Court upheld interference by High Court in second appeal where the lower appellate court relied an admission of third party treating it as binding on the defendant though it was inadmissible against the said defendant.

12. In [Sundra Naicka Vadiyar \(dead\) by LRs. and another Vs. Ramaswami Ayyar \(dead\) by his LRs.](#), the Court said where certain vital documents for deciding the question of possession were ignored, such as compromise, an order of revenue court relying on oral evidence was unjustified.

13. In [Ishwar Dass Jain \(Dead\) Thr. Lrs. Vs. Sohan Lal \(Dead\) By Lrs.](#), the Court in paras 11 and 13 of the judgment clearly mentioned two situations in which inference with findings of fact is permissible. It is said :

11. There are two situations in which interference with findings of fact is permissible. The first one is when material or relevant evidence is not considered which, if considered would have led to an opposite conclusion....."

13. The second situation in which interference with findings of fact is permissible is where a finding has been arrived at by the appellate court by placing reliance on inadmissible evidence which if it was omitted, an opposite conclusion was possible..

14. In [Govindaraju Vs. Mariamman](#), the Court said that existence of substantial question of law is the sine qua non for exercise of jurisdiction u/s 100 of the Code. If a second appeal is entertained u/s 100 without framing substantial questions of law then it would be illegal and would amount to failure or abdication of duty cast on the Court. The Court relied on its earlier decisions in [Kshitish Chandra Purkait Vs. Santosh Kumar Purkait and others](#), [Kamleshwar Prasad Vs. Pradumanju Agarwal \(dead\) by LR's.](#), and [Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others](#),

15. Section 100 of the Code, first of all, places an obligation upon appellant to precisely state in the memorandum of appeal a substantial question of law involved therein which he proposes to urge before the Court. After hearing him this Court has to satisfy itself that a substantial question of law is involved in the case and it shall formulate that question. This is the next stage. This Court after hearing appellant may come to the conclusion that the question stated in memorandum of appeal itself constitutes a substantial question of law but then it has to be formulated by Court on its own. It will become a substantial question of law only when the Court has satisfied itself and put its seal by formulating it. The mere substantial question of law is not sufficient but it must be one such question which is involved in the case. An abstract question of law may be substantial but unless it is one which is involved in the case concerned, it will not satisfy the requirement of Section 100 of the Code.

16. In [Santosh Hazari Vs. Purushottam Tiwai \(Dead\) by Lrs.](#), the Court considered what the phrase "substantial question of law" means. It says that the phrase 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 substances or consequence, or academic merely.

17. A Full Bench of Madras High Court in [Rimmalapudi Subba Rao Vs. Noony Veeraju and Others](#), considered this term and said, "when a question of law is fairly arguable, where there is room for difference of opinion or where the Court thought it necessary to deal with that question at some length and discuss an alternative view, then the question would be a substantial question of law. On the other hand, if the question was practically covered by decision of highest Court or if 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 case, it could not be a substantial question of law."

18. The above observations were affirmed and concurred by a Constitution Bench in [Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd.](#), Referring to above authorities, the Court in Santosh Hazari (supra) said :

A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. 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, in so far 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 circumstances 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.

19. The decision in Santosh Hazari (supra) has been followed in [Thiagarajan and Others Vs. Sri Venugopalaswamy B. Koil and Others](#),

20. There are also two recent authorities of Apex Court on this aspect. In [Vijay Kumar Talwar Vs. Commissioner of Income Tax, Delhi](#), the Court said :

a point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. 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 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. It will, therefore, depend on the facts and circumstance of each case, whether a question of law is a substantial one 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.

21. In [Union of India \(UOI\) Vs. Ibrahim Uddin and Another](#), the Court said :

There, may be exceptional circumstances where the High Court is compelled to interfere, notwithstanding the limitation imposed by the wording of Section 100, C.P.C. It may be necessary to do so for the reason that after all the purpose of the establishment of Courts of justice is to render justice between the parties, though the High Court is bound to act with circumspection while exercising such jurisdiction. In second appeal the court frames the substantial question of law at the time of admission of the appeal and the Court is required to answer all the said questions unless the appeal is finally decided on one or two of those questions or the court comes to the conclusion that the question (s) framed could not be the substantial question(s) of law. There is no prohibition in law to frame the additional substantial question of law if the need so arises at the time of the final hearing of the appeal.

22. In the dispute relating to possession of immovable property, where a person entered into possession in a legal manner, several principles of law may apply, if his ejectment is sought by the plaintiff. Generally, experience of the Court is that, at times, it may find several issues, constituting substantial questions of law but whether they actually arise in the case or that the same are already covered by authorities of Courts and only application thereof is required. Such litigation involving possession is normally prolonged for nefarious reasons. Similarly, in a case, where possession is not founded or has not

commenced in a lawful manner, the incumbent in possession, who is in the capacity of ownership-less-occupant, always try to perpetuate possession by dragging true owners or those entitled to get possession into multifarious litigations. Many a times, such person(s) succeed in deriving benefits of complexities of Rules, procedure and misinterpretation or derailed interpretations etc. At time it is contumacious, but mostly it has been found to be the outcome of dormancy. It is for the Court to be more careful and vigilant in such circumstances so as not to allow them to be misused by such nefarious litigants.

23. In the present case, a Police Station has been set up by State authorities without making any effort to get possession of the land in question in a lawful manner. Neither any order of acquisition nor taking the land on lease nor any document of ownership of State was adduced before the courts below. It is interesting that the State sought to raise plea of title on the basis of adverse possession, but here also the basic required pleadings, necessary for attracting the doctrine of adverse possession, is completely missing.

24. On this aspect, as already said, this Court has discussed the matter in great detail in the above referred authorities, and. I find that whatever has been stated therein, completely apply against the appellant.

25. I am, therefore, of the view that no substantial question of law has arisen in this matter. Besides the discussion made above, learned standing counsel has also failed to point out any "perversity, legal or otherwise in the judgments of courts below, so as to warrant interference by this Court. It is not shown that any admissible and relevant evidence was ignored or any inadmissible evidence was taken into consideration or there is any other perversity, legal or otherwise, in the judgment under appeal.

26. The second appeal lacks merit. Dismissed.