AIR 2009 SC 758 : (2008) 6 ALT 35 : (2009) 1 GLH 64 : (2009) 64 GLH 1 : (2009) 2 MhLj 436 : (2009) 2 MLJ 285 : (2009) MPLJ 492 : (2008) 13 SCALE 444 : (2008) 9 SCC 759

Supreme Court of India

Case No: Civil Appeal No. 6087 of 2008 (Arising out of S.L.P. (C) No. 11713 of 2007)

Dharam Singh		APPELLANT
	Vs	
Karnail Singh and Others		RESPONDENT

Date of Decision: Oct. 13, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100, 100(3), 100(4), 100(5)

Citation: AIR 2009 SC 758 : (2008) 6 ALT 35 : (2009) 1 GLH 64 : (2009) 64 GLH 1 : (2009) 2 MhLj 436 : (2009) 2 MLJ 285 : (2009) MPLJ 492 : (2008) 13 SCALE 444 : (2008) 9 SCC 759

Hon'ble Judges: J. M. Panchal, J; Arijit Pasayat, J

Bench: Division Bench

Advocate: Kuldip Singh, R.K. Pandey, T.P. Mishra and H.S. Sandhu, for the Appellant; Arvinder Singh and Jitendra Kumar, for the Respondent

Final Decision: Disposed Of

Judgement

Arijit Pasayat, J.
Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Punjab and Haryana High Court allowing the second appeal filed in terms of Section 100 of the Code of Civil Procedure, 1908 (in short `the Code''). The second appeal was filed by the respondents before the High Court questioning correctness of the judgment and decree dated 25.10.1999 passed by learned Additional District Judge, Ropar. The learned Additional District Judge had dismissed the appeal against the judgment and decree dated 25.09.1997 passed by learned Civil Judge (Senior Division), Kharar, vide which the Suit of the present appellant, who was the defendant in the Suit was decreed. The Suit was filed for a declaration to the effect that plaintiff had become owner of the suit property

by way of extinguishment of equity of redemption qua the rights of the defendants and further with consequential relief of restraining the defendants from transferring the suit property in favour of any body, as detailed in the head note of the plaint. The respondents contested the suit and filed written statements. Four issues were framed and evidence was laid. After considering the evidence brought on record, learned Additional Civil Judge (Senior Division), Kharar, vide judgment and decree dated 25.09.1997 decreed the Suit. Aggrieved by the said judgment and decree, appeal was filed before the First Appellate Court, which was dismissed by learned Additional District Judge by judgment and decree dated 25.10.1999.

3. As noted above, the defendants filed the second appeal. By the impugned judgment, the High Court allowed the appeal and set aside the judgments and decrees of the courts below and the Suit was dismissed. In support of the appeal, learned Counsel for the appellant submitted that the second appeal was dismissed without formulating any question of law, which is a mandatory requirement of Section 100 of the CPC. Several other points on the merits of the case were also urged.

4. In response, learned Counsel for the respondents submitted that on considering the memorandum of appeal and the grounds indicated therein, the High Court had allowed the second appeal and, therefore, there was nothing wrong. It is stated that after considering the materials on record, the High Court had recorded its findings that the suit deserves to be dismissed.

5. It is further submitted that though no substantial question of law was formulated before the Second Appeal was adjudicated, yet that is permissible, because proviso to Sub-section (5) of Section 100 of the Code permits the High Court to decide a second appeal on a different substantial question of law subject to recording of reasons.

6. Section 100 of the Code deals with "second appeal". The provision reads as follows:

100 (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.

7. A perusal of the impugned judgment passed by the High Court does not show that any substantial question of law has been formulated or that the second appeal was heard on the question, if any, so formulated. That being so, the judgment cannot be maintained.

8. In 296277 this Court in para 10 has stated thus:

10. Now u/s 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.

9. Yet again in 272631 this Court has expressed that the jurisdiction of a High Court is confined to appeals involving substantial question of law. Para 7 of the said judgment reads:

7. It is to be reiterated that u/s 100 CPC jurisdiction of the High Court to entertain a second appeal is confined only to such appeals which involve a substantial question of law and it does not confer any jurisdiction on the High Court to interfere with pure questions of fact while exercising its jurisdiction u/s 100 CPC.

10. The position has been reiterated in 264454

11. In 293941 , it was observed thus:

6. In view of Section 100 of the Code the memorandum of appeal shall precisely state substantial question or questions involved in the appeal as required under Sub-section (3) of Section 100. Where the High Court is satisfied that in any case any substantial question of law is involved, it shall formulate that question under Sub-section (4) and the second appeal has to be heard on the question so formulated as stated in Sub-section (5) of Section 100.

12. The position was highlighted by this Court in 295108 300238 and in 261538 .

13. The plea about proviso to Sub-section (5) of Section 100 instead of supporting the stand of the respondent rather goes against them. The proviso is applicable only when any substantial question of law has already been formulated and it empowers the High Court to hear, for reasons to be recorded, the appeal on any other substantial question of law. The expression "on any other substantial question of law" clearly shows that there must be some substantial question of law already formulated and then only another

substantial question of law which was not formulated earlier can be taken up by the High Court for reasons to be recorded, if it is of the view that the case involves such question.

14. Under the circumstances, the impugned judgment is set aside, we remit the matter to the High Court so far as it relates to Second Appeal No. 285 of 2000 for disposal in accordance with law. The appeal is disposed of on the aforesaid terms with no order as to costs.