

(2010) 07 DEL CK 0374

Delhi High Court

Case No: Regular Second Appeal No. 116 of 1982

Pt. Ganga Prasad Sharma

APPELLANT

Vs

Dr. Beni Prasad Sharma

RESPONDENT

Date of Decision: July 9, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100, 100(4), 100(5), 151

Hon'ble Judges: Aruna Suresh, J

Bench: Single Bench

Advocate: Jos Chiramel, Joel John and Rohan Chapagain, for the Appellant; Seeraj Bagga, for the Respondent

Judgement

Aruna Suresh, J.

CM No. 3088/2006 (Under Section 100(4) read with Section 151 CPC)

1. Respondent/plaintiff had filed a suit for possession in respect of suit property admeasuring 186.5 square yards, which is in possession of the appellant/defendant. Trial Court dismissed the suit of the respondent holding that the land conveyed to the respondent vide Ex.PW-1/1 was not the land for which possession was sought and that respondent had failed to prove his ownership qua the land shown in yellow color in the site plan Ex.PW-4/1. Trial Court also observed that appellant was in continuous possession of the suit property for more than twelve years before filing of the suit.

2. Respondent filed an appeal challenging the judgment and decree of the Trial Court. Appellate Court vide its impugned judgment and decree dated 26th March 1982, set aside the judgment and decree of the Trial Court and decreed the suit of the respondent. Hence, this appeal u/s 100 of the CPC (hereinafter referred to as "CPC").

3. This application has been filed by the appellant seeking formulation of substantial questions of law, as according to him no substantial question of law was formulated by this Court and without formulating substantial question of law; appeal could not be heard and finally decided by this Court. He suggested substantial questions of law in para-4 of the application.

4. Application has been duly contested by the respondent alleging that it is misuse of process of law. This Court after taking into consideration the grounds of appeal and the decisions of the courts below admitted this appeal on 26th April, 1982 by formulating a substantial question of law. Therefore, the applicant while seeking review of the said order has sought reformulation of substantial questions of law and introducing them in the order of admission dated 26th April, 1982 cannot be allowed as the said order can neither be reviewed nor modified after twenty five years. It is also averred that application u/s 100 Sub-section (4) CPC is not maintainable and no substantial question of law, as sought by the appellant can be framed now at this stage and that on 26th April 1982, appellant did not plead, nor urged before the Court to frame any other question mentioned in ground No. XXII, meaning thereby that the Court had declined to frame any substantial question of law on the said grounds on 26th April, 1982. It is also averred that the application is patently barred by period of limitation as without suggesting formulation of substantial questions of law, appeal could not have been filed. This application having been filed now makes the appeal barred by period of limitation. It is urged that under these circumstances, application being not maintainable deserves dismissal.

5. Section 100 CPC permits a party to file an appeal from a 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. As per Sub-section (4) of Section 100 CPC, where the High Court is satisfied that substantial question of law is involved in any case, it shall formulate that question. By virtue of Sub-section (5) this Court is required to hear the party on the question so formulated and the respondent at the hearing of the appeal has to be allowed to argue that the case does not involve such question. Proviso to this Section protects the powers of this 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.

6. Appellant suggested substantial questions of law which are required to be formulated in this appeal in para XXII of the appeal. These very questions, as suggested, have also been suggested in the instant application. On 26th April 1982, while admitting the appeal, this Court passed the following order:

Admitted.

The appeal involves substantial question of law as to the interpretation of boundaries of the properties forming subject matter of the two sale deeds in the

suit, namely PW.1/1 and DW. 3/1.

7. Perusal of this order makes it clear that while observing that appeal involved substantial question of law, this Court did not formulate any substantial question of law and the notice was sent to the respondent on admission of the appeal. Since the appeal was admitted, it seems that it was listed before the Court in the category of "Regular Matters". However, it was dismissed for non- prosecution on 11th October, 2004. On an application of the appellant, it was restored on 11th January, 2005. Court had asked the appellant to file translated copies of the documents which were in Urdu. On 8th May 2007, this Court listed the matter for 29th August, 2007 for arguments on admission/formulation of substantial questions of law, if any.

8. As stated above, appeal had already been admitted on 26th April, 1982. Substantial question of law had not yet been formulated and therefore, it was rightly listed for formulation of substantial questions of law. It is pertinent that appellant had already filed the present application in February, 2006 i.e. much before the Court listed the matter for formulation of substantial questions of law, though the application remained pending. It is no longer res integra that substantial question of law is required to be formulated at the time of admission of the appeal and the respondent is entitled to show that the question so formulated by this Court does not involve such a question. If the Court does not formulate such question at the time of admission and after hearing parties purports to formulate questions, which according to it arise for determination, acts against settled principle of law. It is not legally permissible for a Court to formulate such purported questions while determining the issue in the judgment itself for want of adequate notice to the respondent.

9. In *Corporation of City of Bangalore v. Syed Iqbal Hussain* (2005) 9 SCC 362, Supreme Court has observed that:

8. It is no longer res integra that a second appeal can be admitted for hearing; only in the event the High Court is satisfied that the case involves a substantial question of law, whereupon it shall formulate such a question in terms of Sub-section (4) of Section 100 of the Code of Civil Procedure. Sub-section (5) of Section 100 mandates that 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 a question. In view of the provisions contained in Sub-sections (4) and (5) of Section 100 of the Code of Civil Procedure, there cannot be any doubt whatsoever that a substantial question of law is required to be formulated at the time of the admission of the second appeal and the respondent can be called upon to respond only thereto. Even the respondent is entitled to show that the question so formulated by the High Court does not involve such a question. The hearing of the second appeal, thus, must be confined to the substantial question of law so formulated subject to the exceptions contained in the proviso appended to Sub-section (5) of Section 100 of the Code of Civil Procedure.

10. Thus, it is clear that u/s 100 CPC, jurisdiction of this 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 Court to interfere with a pure question of fact while exercising its jurisdiction u/s 100 CPC. Reference is made to [Dnyanoba Bhaurao Shemade Vs. Maroti Bhaurao Marnor](#), .

11. As per the proviso, the Court should be satisfied that a case involves a substantial question of law and not a mere question of law and the Court must record the reason permitting a substantial question of law to be raised. It is the duty of this Court to formulate the substantial question of law involved in the case at the initial stage and in exceptional cases at a later point of time. When the Court exercises its jurisdiction under the provision to Sub-section (5) of Section 100 CPC in formulating substantial question of law, the opposite party should be put on notice thereon and should be given a fair or proper opportunity to meet the point. Proceeding to hear the appeal without formulating substantial question of law involved in the appeal is illegal and is an abnegation or abdication of the duty cast on the Court. Reference is made to [Kshitish Chandra Purkait Vs. Santosh Kumar Purkait and others](#), .

12. In the instant appeal, appellant has challenged the findings of the Appellate Court. This Court can interfere with the findings recorded by the courts below only on substantial question of law, either framed at the time of admission of the appeal or reframed or substituted later on at the time of arguments. Reference is made to [K.G. Shivalingappa \(dead\) by Lrs. and Others Vs. G.S. Eswarappa and Others](#), .

13. While admitting the appeal, this Court, in a way, formulated a substantial question of law by observing that appeal involved substantial question of law as to the interpretation of boundaries of the properties forming subject matter of the two sale deeds in the suit, namely PW.1/1 and DE. 3/1. According to the appellant, this is not a formulation of substantial question of law by the Court whereas according to the respondent, substantial question of law was formulated. However, under the circumstances, keeping in mind the provisions of Section 100 CPC, it can be safely said that while admitting the appeal, certain observations were made by the Court that appeal involved substantial question of law but, no substantial question of law was properly formulated. Therefore, this Court at the time of hearing is within its right to formulate substantial questions of law.

14. As discussed above, vide order dated 8th May 2007, matter was listed by this Court for formulation of substantial questions of law, if any, on 29th August, 2007. Without formulating substantial questions of law and without affording a fair and proper opportunity to the respondent to submit on the same, appeal cannot be finally decided on merits. Under these circumstances, application stands disposed of in favour of the appellant.

Parties shall submit their arguments on formulation of
substantial questions of law, if any, before the Regular Bench.

Parties shall appear before the Regular Bench on 19th July, 2010.