

(2013) 05 AHC CK 0264

In the Allahabad High Court

Case No : Second Appeal No's. 140 and 141 of 2013 & Second Appeal No. 140 of 2013 (with SA No. 141713)

Akhand Pratap Tiwari and Others

APPELLANT

Vs

Kashi Nath and Others

RESPONDENT

Date of Decision : 01-05-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2013) 05 AHC CK 0264

Hon'ble Judges : Saeed-Uz-Zaman Siddiqi, J

Final Decision : Dismissed

Judgement

SaeedUzZaman Siddiqi, J.

These two appeals have been preferred against a common judgment and decree passed by learned Additional District Judge/Special Judge S.C./S.T. Act, Faizabad, in Civil Appeal No.92 of 2012 and Civil Appeal No.93 of 2012, which have been decided against the judgment and decree dated 31.05.2011, passed by the learned Civil Judge (JD), Sadar, Faizabad, in Regular Suit No.149 of 2007, by which the plaintiffs' suit for permanent injunction was dismissed and crossobjections filed by the defendants were allowed.

Heard learned counsel for both the parties as respondents have put in appearance and gone through the records.

The suit relates to a simple dispute of village land relating to Plot No.174 and Plot No.148. The Survey Commission was issued to determine the khasra numbers of the disputed property which has been confirmed and both the Courts below have relied upon the report of Survey Commission, in the light of evidence led by the parties. Both the Courts below have made exhaustive discussions in accordance with evidence and settled law on the point. The Survey Commissioner has tested the disputed property by measuring to "sihaddas" and after crossing some distance measurements have also been tallied to other

"sihaddas". No substantial question of law is involved in these appeals. All the disputes relate to assessment of evidence which is not possible in second appeal unless wrong interpretation of evidence has been assigned on the part of both the Courts below. Since the correct principles for survey have been applied by the two courts below, that too, detailed discussion, no infirmity or perversity can be assigned in the impugned orders. Learned counsel for the appellants has relied upon the law laid down by this Court in the case of Raymond Banerjee (Dead) through LRs and others v. C.J. Victor (Dead) and others, [2008 (104) RC 552], which is not applicable in the cases in hand.

A detailed hearing and perusal of the judgment and orders of both the Courts below made it abundantly clear that no substantial question of law is involved in these appeals. Even appreciation of evidence by the two Courts below has not been assailed before this Court.

In Sir Chunnilal V. Mehta & Sons Ltd. Vs. Century Spinning and Manufacturing Co. Ltd., reported in A.I.R. 1962 S.C., 1314, the Hon'ble Apex Court for the purposes of determining the issue has held :

"The proper test for determining whether a question of law raises in the case is substantial, would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties."

Further in Rajeshwari Vs. Purnan Indoria, reported in (2005) 7 S.C.C., 60, it was held :

"The Court, for the reasons to be recorded, may also entertain a second appeal even on any other substantial question of law, not formulated by it, if the Court is satisfied that the case involves such a question. Therefore, the existence of a substantial question of law is a sinequanon for the exercise of jurisdiction under the provisions of Section 100 C.P.C. The second appeal does not lie on the ground of erroneous findings of facts based on appreciation of the relevant evidence."

In Smt. Bibhabati Devi Vs. Ramendra Narayan Roy & Ors., reported in A.I.R. 1947 PC 19, it has been held :

"the Privy Council has provided the guidelines as in what cases the second appeal can be entertained, explaining the provisions existing prior to the amendment of 1976, observing that miscarriage of justice means such a departure from the rules which permeate all judicial procedure as to make that which happen not in the proper sense of the word a judicial procedure at all. That the violation of some principles of law or procedure must be such erroneous proposition of law that if that proposition to be corrected, the finding cannot stand, or it may be the neglect of some principle of law or procedure, whose application will have the same effect. The question whether there is evidence on which the Courts could arrive at their finding, is such a question of law."

In Vijay Kumar Talwar Vs. Commissioner of Income Tax, New Delhi, reported in

(2011) 1 S.C.C. 673, it has been held :

"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 circumstances 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."

In the case of Union of India Vs. Ibrahim & Another in Civil Appeal No.1374 of 2008, decided on July 17, 2012, the Hon"ble Apex Court has held :

"There may be exception circumstances where the High Court is compelled to interfere, notwithstanding the limitation imposed by the wording of Section 100 CPC. 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."

In view of the law as discussed above, both the second appeals are dismissed.