

(2006) 05 UK CK 0035

In the Uttarakhand High Court

Case No : Writ Petition No's. 61 of 2000 and 285 of 2001 (M/S)

Baikunth Nath Kaushik

APPELLANT

Vs

Anand Swaroop Kaushik (deceased) and Others

RESPONDENT

Date of Decision : 06-05-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Constitution of India, 1950 — Article 201
General Clauses Act, 1897 — Section 8(1)
Limitation Act, 1963 — Section 5
Monopolies and Restrictive Trade Practices Act, 1969 — Section 55
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 1, 1(3),
331, 331(4), 341

Citation : (2006) 3 AWC 2547 : (2006) 1 RD 831 : (2005) 2 RD 416 : (2006) 2 UC 1111 : (2006) 1 UD 525

Hon'ble Judges : Rajeev Gupta, C.J.; Prafulla C. Pant, J

Bench : Division Bench

Advocate : Rajendra Dobhal, for the Appellant; Alok Singh and V.D. Bisen, for the Respondent

Judgement

Prafulla C. Pant, J.—This reference has been made by learned single Judge of this Court, while hearing Writ Petition No. 61 of 2000 (M/S) and Writ Petition No. 285 of 2001 (M/S}, both between the same parties, for being answered on following questions:

1. Whether sub-section (4) of Section 331 of U.P. Zamindari Abolition and Land Reforms Act, 1950, is legislation by incorporation or by reference and its effect?
2. Whether the provisions of Section 331 (4) of the U.P. Zamindari and Land Reforms Act, 1950, shall be deemed to have been substituted after the amendment made in Section 100 of the CPC and, therefore, Section 100 of the CPC as amended w.e.f. 1.2.1977 will also apply to sub section (4) of Section 331 of U.P. Zamindari Abolition and Land Reforms Act, 1950?
2. We heard learned Counsel for the parties at length on both the above points.

3. Before further discussion in the matter, we feel it necessary to reproduce the relevant provision of law. Sub-section (4) of Section 331 of U.P. Zamindari Abolition and Land Reforms Act, 1950, reads as under:

(4) A second appeal shall lie on any of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 from the final order or decree, passed in an appeal under sub-section (3) to the authority, if any, mentioned against it in column 6 of the Schedule aforesaid.

U.P. Zamindari and Land Reforms Act, 1950, received the assent of the President of India on January 24, 1951 under Article 201 of the Constitution of India and published in the U.P. Gazette Extraordinary dated January 26, 1951, and came into force at once except provision mentioned in sub-section (3) of Section 1 of said Act.

4. In the year 1951, Section 100 of Code of Civil Procedure, 1908, contained following grounds for second appeal:

- (a) the decision being contrary to law or to some usage having the force of law;
- (b) the decision having failed to determine some material issue of law or usage having the force of law ; and
- (c) a substantial error or defect in procedure provided by the Code or any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

5. After the amendment in Section 100 of Code of Civil Procedure, 1908, vide Act No. 104 of 1976, w.e.f. 1.2.1977, it reads as under:

100. Second appeal.-(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 subsection 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.

As such now only one ground i.e. substantial question of law on which a second appeal can be maintained u/s 100 of the Code of Civil Procedure, 1908, as against the three available earlier under said Section read with Section 331 (4) of U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act No. 1 of 1951). The question therefore is whether amendment made in Section 100 of the Code of Civil Procedure, after Section 331 (4) of the aforesaid U.P. Act No. 1 of 1951, would automatically be applicable for the purposes of maintaining a second appeal under the said U.P. Act No. 1 of 1951 or not?

6. On behalf of the petitioner, Shri Rajendra Dobhal, learned Counsel, argued that the amendments made in the CPC are applicable as the provisions of the CPC are applicable to the proceeding under U.P. Act No. 1 of 1951, by reference. In this connection, he drew our attention to the provisions contained in Section 341 of U.P. Zamindari Abolition and Land Reforms Act, 1950, which reads as under:

341. Application of certain Acts to the proceedings of this Act.-Unless otherwise expressly provided by or under this Act, the provisions of the Indian Court Fees Act, 1870, the Code of Civil Procedure, 1908 and Limitation Act, 1963 including Section 5 thereof shall apply to the proceedings under this Act.

On the other hand, Shri Alok Singh, senior advocate on behalf of the respondents argued that though the provisions contained in CPC are applicable to the proceedings under U.P. Act No. 1 of 1951 but at the same time the amendments made in Section 100 of the Code has no effect after the commencement of U.P. Act No. 1 of 1951. In other words, learned Counsel for the respondents contended that the provision of Section 100 stood adopted by incorporation.

7. We have considered the above rival contentions. After a close scrutiny of the provisions contained in Sections 331 (4) and 341 of U.P. Act No. 1 of 1951 and provision of Section 100 of the Code of Civil Procedure, 1908, we are of the view that while Section 341 of U.P. Zamindari Abolition and Land Reforms Act, 1950, adopts all other provisions of the Code of Civil Procedure, 1908, by reference, the provisions contained in Section 100 of the Code of Civil Procedure, 1908, incorporated by making its specific reference as to the "grounds" on which the second appeal would be maintainable u/s 331 (4) of U.P. Act No. 1 of 1951. Had that been not the intention of the Legislature, it would not have specifically mentioned Section 100 of the Code of Civil Procedure, 1908 in Section 331(4) of U.P. Act No. 1 of 1951 as all the provisions of the CPC were made applicable u/s 341 of U.P. Act No. 1 of 1951 to the proceedings under said Act. Otherwise also, on further amendment like repeal of Section 100 of Code of Civil Procedure, 1908, Section 331(4) of U.P. Zamindari Abolition and Land Reforms Act, 1950 Act No. 1 of 1951) may lead to a situation of no meaning, for then there would be no ground on which second appeal u/s 331 of U.P. Act No. 1 of 1951 can be

maintained. In other words, we are of the clear opinion that to the extent of "grounds" mentioned in Section 100 of Code of Civil Procedure, 1908, as it existed in the year 1951, the same stood incorporated u/s 331(4) of U.P. Zamindari Abolition and Land Reforms Act (U.P. Act No. 1 of 1951) while all other provisions of the Code stood adopted by reference u/s 341 of U.P. Act No. 1 of 1951.

8. In Mahindra and Mahindra Ltd. Vs. Union of India (UOI) and Another, , in the similar circumstances, while interpreting Section 55 of Monopolies and Restrictive Trade Practices Act, 1969 (Act No. 54 of 1969), the Apex Court has held that substituted/amended Section 100 of Code of Civil Procedure, 1908, does not affect the provisions of Section 55 of aforesaid Act No. 54 of 1969, which permits second appeal on the grounds mentioned in Section 100 (as it existed in the year 1969). Hon"ble the Supreme Court in said case has laid down this principle after considering Section 8(1) of the General Clauses Act, 1897. Section 8(1) of General Clauses Act, 1897, reads as under:

8. Construction of references to repeated enactments.-(1) Where this Act or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

In Ram Sanehi v. Board of Revenue 1993 RD 208, Allahabad High Court has also taken the same view as above, holding that it is not necessary for the Board of Revenue to dismiss the second appeal if it is not on the substantial questions of law but on the grounds specified in Section 100 as it existed in the year 1951.

9. Learned Counsel for the petitioner drew our attention to the principle of law contained in Sudhir G. Angur v. M. Sanjeev 2006(62) ALR 135 and submitted that the procedural law as it existed on the date of the trial of the suit or appeal, is applicable even to the pending suits or appeals. We have gone through said case law and in our view in Sudhir G. Angur (supra), the Supreme Court has not examined the issue whether any provision which is adopted by another enactment has done so by incorporation or by reference. Only general principle as to the applicability of procedural law is discussed in said case.

10. As far as, the principle of law laid down in Shankareppa M. Mutanki Vs. B.M. Mutanki, , Kshitish Chandra Purkait Vs. Santosh Kumar Purkait and others, and Sheet Chand v. Prakash Chand 1998(3) AWC 2347 (SC) : 1998(89) RD 623 are concerned, it is sufficient to mention here that in these cases, the only point interpreted by the Supreme Court is that where the amended Section 100 of the Code of Civil Procedure, 1908 is applicable, what the substantial question of law means and how much necessary is it to"" formulate the same.

11. For the reasons as discussed above, particularly in view of the principle of law laid down by the Apex Court in similar situation in Mahindra and Mahindra

case (supra), we have no hesitation in holding that the opinion expressed by learned single Judge of this Court in Gurdeep Singh v. Daulat Rama 2004(1) UD 607 and the one expressed by learned single Judge of Allahabad High Court in Ved Pal v. Board of Revenue 2004(97) RD 119, that the provision to Section 100 of Code of Civil Procedure, 1908, as amended by Act No. 104 of 1976, are applicable for the purposes of maintaining second appeal u/s 331(4) of U.P. Zamindari Abolition and Land Reforms Act, 1950, does not reflect correct opinion and appears to be per incurium.

12. Therefore, both the questions referred as mentioned above by learned single Judge of this Court, are answered as under:

Answer to Question No. 1.- Sub-section (4) of Section 331 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act No. 1 of 1951) adopts provision of Section 100 of Code of Civil Procedure, 1908 by incorporation as it existed in 1951 but rest of the provisions of the Code are adopted by reference u/s 341 of U.P. Act No. 1 of 1951.

Answer to Question No. 2.- The amended provision of Section 100 of Code of Civil Procedure, 1908, (as amended vide Act No. 104 of 1976, would not apply to sub-section (4) of Section 331 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act No. 1 of 1951) and the said subsection cannot be deemed to have been substituted after the amendment made in Section 100 of the Code.

Writ petitions be listed before appropriate Bench with aforesaid answers.