
(2010) 08 SC CK 0126

In the Supreme Court Of India

Case No : Civil Appeal No. 7207 OF 2010 (Arising out of SLP (C) No. 352 of 2008)

James Joseph

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 100(1), 100(3), 100(4)
Income Tax Act, 1961 — Section 260A
Kerala Forest (Appeal to the High Court) Rules, 1981 — Rule 2, 2(1)
Kerala Forest Act, 1961 — Se

Citation : (2010) 9 JT 294 : (2010) 9 SCC 642

Hon'ble Judges : R. V. Raveendran, J;H. L. Gokhale, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

R.V. Raveendran, J.—Leave granted.

2. This appeal relates to the scope of an appeal against an appellate order u/s 12A of the Kerala Forest Act, 1961 ('Act' for short). The State Government issued a notification u/s 4 of the Travancore Forest Regulation II of 1068 ME proposing to declare certain lands including the disputed lands as revenue forest. The appellant's predecessor in title filed a written statement before the Forest Settlement Officer u/s 6 of the Act in (claim case No. 2/1955) claiming title to the disputed lands, which formed part of the proposed reserve forest. The Forest Settlement Officer by common order dated 14.11.1969 rejected his claim inter alia holding that the notified areas were lands at the disposal of the government and the government was entitled to constitute the same as a reserve forest. Feeling aggrieved the appellant's predecessor filed an appeal against the order of the Forest Settlement Officer u/s 11 of the Act. The appeal was allowed by the first Additional District Judge, Ernakulam by common judgment dated 23.6.1980 holding that the Royal Neet of 1928 ME to which the appellant traced back his title was a genuine document and the notification issued by the Government in

respect of the proposed reserve forest was without jurisdiction.

3. The State Government filed an appeal against the said appellate judgment before the High Court u/s 12A of the Act. (MSA No. 1/1981). The High Court allowed the second appeal and reversed the judgment of the District Judge. The order of the High Court was challenged by the appellant. This Court by order dated 25.11.2003 allowed the civil appeal filed by the appellant and remanded the matter to the High Court for fresh consideration, with the following observation:

... some decisions have also been referred, to that the jurisdiction u/s 12A of the Act is akin to Section 100 C.P.C. We feel that since the matter is fit to be remanded for fresh decision this question as raised may also be better canvassed before the High Court for its consideration.

4. When the matter was pending before the High Court on remand, the appellant (who is the 33rd respondent in the said appeal) filed an application (IA No. 955/2005) praying that the High Court be pleased to formulate the substantial questions of law before proceeding with the hearing of appeal. He contended that the appeal u/s 12A was a second appeal; that a second appeal was available only if the case involved any substantial question of law and was governed by the provisions of Section 100 of the CPC ('Code' for short); and that the High Court should therefore, before hearing the second appeal, formulate the questions of law involved in the appeal. The High Court by the impugned order dated 23.3.2007 dismissed the said application. The High court held that Section 12A of the Act did not provide for a "second appeal", but only provides for an appeal against an appellate order and therefore the question of importing the requirements of Section 100 of the Code into such an appeal did not arise; that the intention of the legislature in enacting Section 12A of the Act, granting a right of appeal against an order passed by the District Court u/s 11 of the Act, was not limited to substantial questions of law; and therefore the question of formulating any substantial questions of law before hearing the appeal did not arise.

5. The said order of the High Court is challenged in this appeal by special leave. The appellant contends that an appeal u/s 12A of the Act is a 'second appeal'; that a second appeal is available only in regard to questions of law and not in regard to any question of fact; that whenever there is a second appeal from a District Court/Civil Court to the High Court, such second appeal will be governed by Section 100 of the Code and it will be maintainable only if it involves a substantial question of law; and that where the High Court is satisfied that the second appeal involves any substantial questions of law, it should formulate the said questions of law.

Questions for considerations

6. On the contentions raised, the questions that therefore arise for our consideration in this appeal are:

(i) Whether an appeal u/s 12A of the Kerala Forest Act, 1961 against an appellate order u/s 11 of the said Act, would lie only if it involves a substantial question of law?

(ii) If so, whether the Memorandum of appeal shall have to state the substantial question of law involved in the appeal and whether the High Court is bound to formulate the substantial question/s of law, while admitting the appeal or before posting the appeal for hearing.

The relevant legal provisions

7. The answers to the questions raised depend upon the scheme of chapter II of the Act relating to Reserved forests. The relevant portions of Sections 4, 5, 6, 8, 9, 11, 12A and 83 of the Act are extracted below:

4. Notification by Government.- Whenever it is proposed to constitute any land a Reserved Forest, the Government shall publish a notification in the Gazette- x x x

[c] appointing an officer (hereinafter called the Forest Settlement Officer) to inquire into and determined the existence, nature and extent of any rights claimed, by or alleged to exist in favour of any person in or over any land comprised within such limits, or to any forest produce of such land and to deal with the same as provided in this Act.

5. Suits barred.- Except as hereinafter provided, no Civil court shall between the dates of publication of the notification u/s 4, and of the notification to be issued u/s 19, entertain any suit against the Government to establish any right in or over any land, or to the forest produce of any land, included in the notification published u/s 4.

6. Proclamation by Forest Settlement Officer.-

(1) When a notification has been issued u/s 4, the Forest Settlement Officer shall publish in the Gazette and at the headquarters of each Taluk in which any portion of the land included in such notification is situate, and in every town, village and headquarters of Panchayats in the neighbourhood of such land a proclamation.

(a) specifying, as nearly as possible, the situation and limits of the land proposed to be included within the Reserved Forest.

(b) setting forth the substance of the provisions of Section 7,

(c) explaining the consequences which as hereinafter provided will ensure on the reservation of such forest, and

(d) fixing a period of not less than three and not exceeding six months from the date of publishing such proclamation in the gazette, and requiring every person claiming and right referred to in Section 4 either to present to such Officer, within such period, a written statement specifying or to appear before him within such period and state, the nature of such right and in either case, to produce, all documents and other evidence in support thereof.

(2) The Forest Settlement Officer shall also serve a notice to the same effect on every known or reputed owner or occupier of any land included in or adjoining the land proposed to be constituted a Reserved Forest or on his recognized agent or manager. Such notice may be sent by registered post.

8. Inquiry by Forest Settlement Officer.-

(1) The Forest Settlement Officer shall inquire into all claims made u/s 6 recording all statements and the evidence in the manner prescribed by the CPC for appealable cases.

(2) He shall, at the same time, consider and record any objection which the Forest Officer, if any, appointed u/s 4 to attend at the inquiry on behalf of the Government, may make to any such claim.

(3) He may also inquire into and record the existence of any rights referred to in Section 4 and not claimed in answer to the notice issued u/s 6, so far as they are ascertainable from the records of the Government and the evidence of any person likely to be acquainted with the same.

9. Powers of Forest Settlement Officer.- For the purpose of such inquiry, the Forest Settlement Officer may exercise the following powers, namely:

(a) the power to enter by himself or to authorize any officer to enter upon and land, and to survey, demarcate and make a map of the same; and (b) the powers of a Civil Court in the trial of suits.

11. Appeals from the Orders of Settlement Officer.-

(1) Where a claim is rejected wholly or in part, the claimant may, within ninety days from the date of the order prefer an appeal to the District Court in respect of such rejection only. The time taken for obtaining copies of the order appealed against shall be excluded in computing the period of ninety days.

(2) Whenever a claim is admitted in the first instance wholly or in part, a like appeal may be preferred on behalf of Government by the Forest Officer appointed u/s 4, or other person generally or specially empowered by the Government in this behalf.

12A. Appeal to the High Court.-

(1) The Government or any person objecting to any order of the District Court in an appeal u/s 11 may, within a period of ninety days from the date of that order, appeal against such order to the High Court:

xxxxxx

83. Decision or order of Forest Settlement Officer to have the effect of District Court decrees.- Any decision or order passed by a Forest settlement Officer under this Act and any order passed in appeal there from shall be enforceable by the District Court within whose jurisdiction the land is situated as if it were a

decree passed by such District Court under the Code of Civil Procedure, 1908.

8. The following hierarchical structure in regard to appeals emerges from the provisions of the Act:

(a) The claims to any land proposed to be included in the reserved forest under the Act, are inquired into and determined by the Forest Settlement Officer;

(b) If the claims are rejected an appeal lies to District Court at the instance of the claimant and if the claim is admitted, an appeal lies to the District Court at the instance of the State Government.

(c) Either the State Government or any person objecting to any order of the District Court in an appeal u/s 11 of the Act can file an appeal against the appellant order, to the High Court.

9. Section 12A does not use the words "second appeal". It provides that an appeal would lie against an appellate order u/s 11 to the High Court. The word 'appeal' is not defined either under the Act or under the Code. Black's Law dictionary, (7th edn.) defines an appeal as "a proceeding undertaken to have a decision reconsidered by bringing it to a higher authority."

10. The classic definition of an appeal in *Chappan v. Moidin Kutti* ILR (1899) 22 Madras 68, by a Full Bench of the Madras High Court, adopted by this Court, in *Tirupati Balaji Developers Pvt. Ltd. and Others Vs. State of Bihar and Others*, , is as follows:

Appeal implies in its natural and ordinary meaning the removal of a cause from any inferior court or tribunal to a superior one for the purpose of testing the soundness of decision and proceedings of the inferior court or tribunal. The superior forum shall have jurisdiction to reverse, confirm, annul or modify the decree or order of the forum appealed against and in the event of a remand the lower forum shall have to rehear the matter and comply with such directions as may accompany the order of remand. The appellate jurisdiction inherently carries with it a power to issue corrective directions binding on the forum below. ... An appeal is a process of civil law origin and removes a cause, entirely subjecting the facts as well as the law, to a review and a retrial.

(emphasis supplied)

11. In *Hari Shankar v. Rao Girdhari Lal Chowdhury* 1962 Supp. (1) SCR 933, this Court held:

A right of appeal carries with it a right of rehearing on law as well as fact, unless the statute conferring the right of appeal limits the rehearing in some way as, we find, has been done in second appeals arising under the Code of Civil Procedure.

(emphasis supplied)

12. In *Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat*, , this Court referred to the statement in *Story on Constitution (of United States)*, Vol.

2, Article 1761 that the essential criterion of appellate jurisdiction is that it revises and corrects the proceedings in a cause already instituted and does not create that cause. The appellate jurisdiction may be exercised in a variety of forms and, indeed, in any form in which the Legislature may choose to prescribe. An appeal is a process of civil law origin and removes a cause, entirely subjecting the fact as well as the law to a review and a retrial.

13. In *Sri. Raja Lakshmi Dyeing Works and Others Vs. Rangaswamy Chettiar*, , this Court held:

Ordinarily, appellate jurisdiction involves a rehearing, as it were, on law as well as fact and is invoked by an aggrieved person. Such jurisdiction may, however, be limited in some way as, for instance has been done in the case of second appeal under the Code of Civil Procedure, and under some Rent Acts in some States.

This Court thereafter proceeded to explain the scope of revisional jurisdictional and then concluded that the question of the extent of appellate or revisional jurisdiction has to be considered in each case with reference to the language employed by the statute.

14. Section 100 of the Code is a classic example of limiting the jurisdiction in an appeal. It specifically provides that the second appeal will be available only where there exists substantial question of law. Some enactments do not specify that the second appeal will be restricted to substantial questions of law, but incorporate Section 100 of the Code by reference, in regard to appeals from appellate orders. Section 18(1) of the Telecom Regulatory Authority of India Act, 1997 is an example:

18. Appeal to Supreme Court - (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in any other law, an appeal shall lie against any order, not being an interlocutory order, of the Appellate Tribunal to the Supreme Court on one or more of the grounds specified in Section 100 of that Code.

Some other statutes have provisions in regard to appeals from appellate orders placing specific limitations on the extent and scope of the appellate jurisdiction by providing that a second appeal will lie only if it involves substantial questions of law or questions of law, without reference to Section 100 of the Code. We may by way of illustration, refer to the following:

Section 260A of Income Tax Act, 1961.

Appeal to High Court. 260A. (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law.

(2) The Chief Commissioner or the Commissioner or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court

and such appeal under this Sub-section shall be -

(a) filed within one hundred and twenty days from the date on which the order appealed against is received by the assessee or the Chief Commissioner or Commissioner;

(b) [omitted]

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents 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.

(5) The High Court shall decide the question of law so formulated and deliver such Judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit. (6) The High Court may determine any issue which -

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in Sub-section (1).

(7) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

Section 15Z of the Securities and Exchange Board of India Act, 1992 15Z. Appeal to Supreme Court.- Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order

15. Some enactments impliedly incorporate the provisions of Section 100 of the Code. In *Chunilal Vithal Das v. Mohanlal Motilal Patel* (1966) Supp SCR 180, this Court dealt with such a provision contained in Section 28(1) of the Saurashtra Rent Control Act, 1951, extracted below:

Notwithstanding anything contained in any law, but subject to the provisions of the Provincial Small Cause Court Act, as adapted and applied to the State of

Saurashtra, an appeal shall lie from a decree or order made by a Civil Judge or a Munsiff exercising jurisdiction u/s 27 to the District Court and a second appeal to the High Court.

It was contended by the appellant-tenant therein that an appellate court is competent to examine the correctness of the decision appealed from on the ground that the decision is erroneous in point of law or fact, and in the absence of any express provision to the contrary, restrictions imposed on the power of the High Court under one statute cannot be imported merely because of similarity of nomenclature, when exercising jurisdiction under another statute unless those restrictions are imposed by express enactment or necessary intendment. It was further contended that as no restriction was imposed upon the power of second appeal u/s 28 of the Rent Act, the High Court was competent and indeed bound to entertain all objections to the correctness of the judgment including those relating to questions of fact. This Court negatived the said contention. This Court held that a second appeal u/s 28 of the Saurashtra Act can be entertained by a High Court within the limits prescribed by Section 100 of the CPC and it is not open to the parties to demand re-appraisal of the evidence by the High Court. This Court held that the scheme of Saurashtra Act did not confer any special jurisdiction upon the courts described therein, but it only intended to provide for a second appeal in terms of Section 100 of the Code. This Court held that the Saurashtra Act merely declared that a second appeal will lie to the High Court against decrees or orders passed by the courts exercising jurisdiction u/s 27, but thereby the essential character of a second appeal under the Code was not altered and the procedure in the trial of suit, applications and proceedings under the Act, was the procedure prescribed by the CPC and therefore it had to be held that the legislature intended to confer a right of second appeal subject to the restrictions imposed by Section 100 of the Code.

16. We may therefore formulate the following principles with reference to appeals:

(i) An appeal is a proceeding where an higher forum reconsiders the decision of a lower forum, on questions of fact and questions of law, with jurisdiction to confirm, reverse, modify the decision or remand the matter to the lower forum for fresh decision in terms of its directions.

(ii) The appellate jurisdiction can be limited or regulated by the legislature and its extent has to be decided with reference to the language employed by the statute conferring the appellate jurisdiction.

(iii) The width of jurisdiction or the limitations on jurisdiction with reference to an appeal, does not depend on whether the appeal is a first appeal or a second appeal, but depends upon the limitations, if any, placed by the statute conferring the right of appeal.

(iv) If the Legislature's intention is to limit the jurisdiction in an appeal, it may indicate such limits in the provision providing for appeal. Alternatively, it may

expressly or impliedly incorporate the provisions of Section 100 of the Code, into the provision for appeals.

(v) Generally statutory provisions for appeals against original orders or decrees (that is, first appeals) will not have any limitations and therefore rehearing on both law and fact is contemplated; and statutory provisions for appeals against appellate orders (that is, second appeals) will be restricted to questions of law. But such restriction is not on account of any legal principle that all second appeals should always be with reference to questions of law, but would depend upon the wording of the statute placing the restrictions upon the scope of second appeal.

(vi) Where the statute does not place any limitations or restrictions in regard to the scope and width of the appeal, it shall be construed that the appeal provides a right of rehearing on law as well as facts. If the Legislature enacts a self contained provision for second appeals, without any limitation upon the scope of the second appeal and excludes the possibility of reading the provision of Section 100 of the Code, into such provision, then, it will not be permissible to read the limitations of Section 100 of the Code into the special provision.

17. We may now examine the scope of Section 12A of the Act with reference to the above principles. For convenience we have juxtapositioned Section 100 of the Code with Section 12A of the Act, to ascertain the scope of Section 12A of the Act.

Section 12A of the Act. "Appeal to the High Section 100 of the Code - "Second appeal". Court".- --

(1) The Government or any person objecting to (1) Save as otherwise expressly provided in the any order of the District Court in an appeal body of this Code or by any other law for the under section 11 may, within a period of ninety time being in force, an appeal shall lie to the days from the date of that order, appeal against High Court from every decree passed in appeal such order to the High Court: by any Court subordinate to the High Court, if Provided that High Court may admit an appeal the High Court is satisfied that the case preferred after the expiration of the period of involves a substantial question of law. ninety days aforesaid if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(2) An appeal may lie under this section from ----- an appellate decree passed ex parte.

(2) An appeal under sub-section (1) shall be in (3) In an appeal under this section, the the prescribed form and shall be verified in the memorandum of appeal shall precisely state the prescribed manner and shall be accompanied substantial question of law involved in the by a fee of one hundred rupees. appeal.

(3) On receipt of an appeal under sub-section (4) Where the High Court is

satisfied that a (1), the High Court may, after giving the substantial question of law is involved in any parties a reasonable opportunity of being heard, case, it shall formulate that question. either in person or by a representative:- (5) The appeal shall be heard on the question so (a) confirm or cancel the order of the District formulated and the respondent shall, at the Court appealed against; or hearing of the appeal, be allowed to argue that the case does not involve such question: (b) set aside such order and remand the case to the District Court for decision after such further Provided that nothing in this sub-section enquiry as may be directed; or shall be deemed to take away or abridge the power of the Court to hear, for reasons to be (c) pass such other orders as it may think fit. recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question. (4) Every order passed in appeal under this section shall be final. -----

(5) Any order passed by the High Court under this section shall be enforceable by the District Court within whose jurisdiction the land is situated, as if it were a decree passed by such ----- District Court under the Code of Civil

The form of memorandum of Appeal referred to in Section 12A(2) of the Act is prescribed by the Kerala Forest (Appeal to the High Court) Rules 1981.

The said form is extracted below:

Form Of Appeal [See Rule 2]

- (1) Name or names (with full address/addresses of the appellant/appellants.
- (2) Name or names (with full address/addresses) of the person/persons who shall be impleaded or brought on record as respondent/respondents.
- (3) Statement of facts.
- (4) Grounds of Appeal.
- (5) Prayer.

Signature Appellant(s)/Counsel for Appellant

The facts stated above are true to the best of my knowledge and belief.

Signature Appellant(s)/Counsel for Appellant

18. The following differences in the two provisions demonstrate that Section 12A of the Act is intended to be self contained in so far as appeals under the Act to the High Court, deliberately deviating from the provisions of Section 100 of the Code:

(i) Sub-sections (1), (3) and (4) of Section 100 of the Code provide specifically that the second appeal would lie only where substantial questions of law are involved. On the other hand, Sub-section (1) of Section 12A provides for an appeal against the order of the appellate authority u/s 11 of the Act would lie,

without specifying any limitation or restriction.

(ii) Section 100 of the Code begins with the words "Save as otherwise expressly provided ... by any other law". This means that a second appeal can be to a court or Tribunal other than the High Court, or that second appeal need not be restricted to substantial questions of law, if so provided by other law. Section 12A of the Act is one such provision of other law, expressly providing otherwise.

(iii) Where the Act wants to adopt the provisions of the Code, it expressly provided so. For example, Sub-section (5) of Section 12A and Section 83 expressly refer to and make applicable the provisions of the Code in other contexts. But when it comes appeals to High Court, Section 12A of the Act deliberately chalks a different path from Section 100 of the Code.

(iv) While Sub-section (3) of Section 100 of the Code requires the appellant to precisely state the substantial question of law in the memorandum of appeal, Sub-section (2) of Section 12A of the Act read with Rule 2(1) and the form of appeal under the Kerala Forest (Appeal to the High Court) Rules 1981, does not require the appeal memorandum to state any questions of law, substantial or otherwise. The provisions of Sub-section (3) of Section 12A also clearly reiterates by implication that the jurisdiction of the High Court u/s 12A is not subject to any limitations.

19. In view of the above, the High Court was right in holding that the appeal u/s 12A of the Act is available both in respect of questions of fact and questions of law. Therefore there is no need for the High Court to frame any substantial question of law. The appeal is dismissed as having no merit.