

(2023) 09 SHI CK 0073

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 266 Of 2019

Station Commander, Air Force Station, Dalhousie And Another	APPELLANT
Vs	
Ranbir Singh And Others	RESPONDENT

Date of Decision : 28-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 133(1)(a)
Code Of Civil Procedure, 1908 — Section 100, 109, Order 1 Rule 8

Citation : (2023) 09 SHI CK 0073

Hon'ble Judges : Rakesh Kainthla, J

Bench : Single Bench

Advocate : Shashi Shirshoo, Neeraj Gupta, Rinki Kashmirim, Prashant Sen, Avni Kochhar

Final Decision : Dismissed

Judgement

Rakesh Kainthla, J

1. The present appeal is directed against the judgment and decree dated 27.09.2016, passed by learned Additional District Judge, Chamba, vide which the appeal filed by the appellants (defendants before the learned Trial Court) was dismissed and judgment and decree dated 24.11.2014, passed by the learned Civil Judge, (Junior Division), District Chamba, H.P. was upheld. (Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiffs filed a civil suit before the learned Trial Court seeking a mandatory injunction directing the defendants to remove the encroachment on the part of the passage shown in the red in the site plan out of Gair Mumkin Rasta bearing Khasra No. 1197, measuring 00-22-05 hectares and allow the access to the plaintiffs for the beneficial use of their property comprised in Khasra Nos. 1173, 1174, 1175, 1176, 1177, 1178 & 1179, measuring 00-34-83 hectares, situated in Mauza Moti Tibba, Tehsil and District Chamba, H.P. A mandatory injunction was also prayed

to direct the defendants to maintain the remaining motorable passage comprised in Khasra No. 1197 by providing parapet at proper places by making proper drains, maintaining street lights and mateling the passage. It was asserted that plaintiff No.1 is a resident of 12 Fair View Estate, Moti Tibba Dalhousie. Plaintiffs No. 2 and 3 are residents of Pine Tree Lodge, Moti Tibba, Dalhousie. Plaintiffs No.2 and 3 are lessees of the land measuring 0-34-83 hectares bearing Khasra Nos. 1173, 1174, 1175, 1176, 1177, 1178 and 1179, situated in Up-Mohal Moti Tibba, Tehsil Dalhousie, District Chamba, H.P. A Gair Mumkin Rasta Sare -Aaam exists over Khasra No. 1196, 1197 and 1206, which is owned by the State of H.P. and possessed by Municipal Council, Dalhousie. This passage is the only link to approach the property of the plaintiff from the General Post Office. Defendant No. 2 put the steel gates on Khasra No. 1196 and restricted the movement of civilians through the passage. Plaintiffs No. 2 and 3 filed a Civil Suit No. 75 of 2006 in the Court of Learned Civil Judge, (Junior Division), Dalhousie. The suit was compromised on 17.6.2006 and defendant No.2 agreed to allow temporary access for three months through Air Force Road bearing Khasra No. 1194 to plaintiffs No.2 and 3. Defendant No. 5 agreed to repair the Road in Khasra No. 1196 within three months. Defendant No. 2 removed the steel gates and Defendant No. 5 repaired part of the road comprised in Khasra No. 1196. Defendant No. 2 encroached upon the road bearing Khasra No. 1197 by constructing a septic tank, a drain, a steel barrier and a guard post. A signboard was erected mentioning "the Defence area ahead, trespassers will be prosecuted". The steel mesh on the boundary of Air Force land has given way and has become dangerous for humans. There is an open garbage pit on the slopes between the Officer's accommodation and the boundary fence. The defendants have no right to encroach upon the passage. Defendant No.2 is maintaining a guard post at a distance of 72 meters and a septic tank at a distance of approximately 95 meters from the joining point of Khasra No. 1197. The plaintiffs are not being allowed to use the part of Khasra No. 1197; hence the suit was filed to seek the relief mentioned above.

3. The suit was opposed by defendant no. 2 by filing a written statement taking preliminary objections regarding lack of maintainability, locus-standi and cause o action, the plaintiffs being estopped from filing the suit by their acts and conduct and the suit having not been properly valued for the purpose of Court fee and jurisdiction. The contents of the plaint were denied on merits. However, it was admitted that Khasra Nos. 1196, 1197 and 1206 are Gair Mumkin Rasta Sare-Aam, owned by the State of H.P. and possessed by the Municipal Council, Dalhousie. It was asserted that the passage is being used by the people of the locality without any interference from defendant no.2. An alternative path is available to the plaintiffs to reach their property through Khasra No.1206. It was admitted that a civil suit was filed earlier, which was compromised. It was asserted that a temporary guard post in the form of a removable canopy of 3x3 ft. was placed on the extreme corner, which would be removed on the completion of the newly constructed guard post. It was also admitted that a board was

placed on the extreme side of the road. It was asserted that this was done to alert the walkers that there was a defence installation. The canopy and board are not causing any interference to the plaintiffs and the general public. These are placed for security reasons and as precautionary measures. The septic tank was constructed in early 1970 and is being used by the Air Force continuously. The passage is not a motorable road but is being used as a footpath. The suit was filed without any basis; hence it was prayed that the suit be dismissed.

4. A separate written statement was filed by defendant no.3 and 4, taking preliminary objections regarding the suit being barred under Order 1 Rule 8, and the suit being bad for mis-joinder of parties. The contents of the plaint were denied on merits; however, it was admitted that Khasra Nos. 1196, 1197 and 1206 are Gair Mumkin Rasta Sare-Aam owned by the State of H.P. and possessed by the Municipal Council, Dalhousie. It was also asserted that a Civil Suit No.75 of 2005 was filed against the defendants, which was compromised in the Court. It was asserted that the suit was not properly filed; hence, it was prayed that the suit be dismissed.

5. A separate written statement was filed by defendant no.5 taking preliminary objections regarding lack of maintainability, locus standi and cause of action, the plaintiffs being estopped from filing the suit by their acts and conduct, the suit having not been properly valued for the purpose of court fees and jurisdiction. The contents of the plaint were denied on merits; however, it was admitted that Khasra Nos.1196, 1197 and 1206 are Gair Mumkin Rasta. It was asserted that an alternative road is available to the plaintiffs to reach their property. It was claimed that the road was earlier repaired with the funds allocated by learned Deputy Commissioner, Chamba. The road would be repaired after the availability of funds. Therefore, it was prayed that the suit be dismissed.

6. Learned Trial Court framed the following issues on 2. 03.2010:-

1. Whether the plaintiffs are entitled for mandatory injunction for issuance of directions to the defendants for the removal of encroachment on passage i.e. "Gair Mumkin-Rasta" comprised in Khasra No.1197, as claimed? OPP.

2. Whether the plaintiffs are entitled for further mandatory injunction for directing the defendants to maintain the remaining passage comprised in Khasra No.1197 by providing parapet etc., as claimed. OPP.

3. Whether the suit of the plaintiff is not maintainable in the present form, as alleged? OPD-1, 2 and 5.

4. Whether the plaintiffs have no locus standi to file the present suit, as alleged? OPD-1, 2 and 5.

5. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct, as alleged? OPD-1, 2 and 5.

6. Whether the plaintiffs have no cause of action to file the present suit, as

alleged? OPD-1, 2 and 5.

7. Whether the suit is bad for mis-joinder of the parties, as alleged? OPD-3 and 4.

8. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction, as alleged? OPD-1, 2 and 5.

9. Whether the suit is bad for want of permission under Order 1 Rule 8 CPC? OPD-3 and 4.

10. Relief.

7. The parties were called upon to produce the evidence and plaintiff no.1 examined himself (PW-1), Vishal Suri (PW-2) and Rajneesh Raja (PW-3). The defendants examined M. Marukaran(DW-1) and Pradeep Sood (DW-2).

8. The learned Trial Court held that the existence of passage over Khasra No. 1196, 1197 and 1206 was not disputed. It was also not disputed that a signboard, guard post and septic tank were constructed. The plaintiffs had a right to use the common passage and the defendants had no right to obstruct the same. Hence, the suit was decreed. Defendant No.2 was directed to remove the guard post and the board from Khasra No. 1197. Defendant No.5 was directed to maintain the septic tank so as not to cause any obstruction to the plaintiffs from using the passage.

9. Being aggrieved from the judgment and decree passed by the learned Trial Court, the defendants filed an appeal before the learned First Appellate Court. Learned First Appellate Court held that the existence of the passage, septic tank, drain, and signboard were not disputed. Defendant No.5 was directed to maintain the road and no appeal was filed by defendant No.5. The defendants had no right to obstruct the passage. Learned Trial Court had rightly granted the injunction. Hence, the appeal was dismissed.

10. Being aggrieved from the judgments and decrees passed by the learned Courts below, the present appeal has been filed asserting that the learned Courts below had not properly appreciated the material placed before them. The site plan was wrongly prepared behind the back of the defendants at the instance of the plaintiffs to give benefit to the plaintiffs. No demarcation report was placed on record. The leave of the Court was not obtained before filing the suit. The plaintiffs have no locus standi to file the present suit. Hence, it was prayed that the present appeal be allowed, and judgments & decrees passed by learned Courts below be set aside.

11. The following substantial questions of law were proposed in the memorandum of appeal:-

1. Whether the judgment and decree passed by the learned First Appellate Court below is vitiated for non-appreciation of the evidence led by the appellants?

2. Whether both the Courts below have rightly appreciated Ex.PW-3/A which

itself creates doubts regarding its authenticity and genuineness as the same was prepared behind the back of the appellants?

3. Whether the judgment and decree of the First Appellate Court is not sustainable because the First Appellate Court has not discussed the oral and documentary evidence which has materially prejudiced the case of the appellants?

12. I have heard Mr. Shashi Shirshoo, learned Central Government Standing Counsel for the appellants/defendants and Mr. Neeraj Gupta, learned Senior Advocate, assisted by Ms Rinki Kashmiri, Advocate, for respondents/plaintiffs no.2 and 3 and Mr. Prashant Sen and Ms. Avni Kochhar, Learned Deputy Advocate Generals, for the State.

13. Mr. Shashi Shirshoo, learned Counsel for the appellants/defendants submitted that the learned Courts below did not properly appreciate the evidence. The site plan was not properly proved. An alternative way is available to the plaintiffs and the learned Courts below erred in decreeing the suit. Therefore, he prayed that the present appeal be allowed and judgments and decrees passed by learned Courts below be set aside.

14. Mr. Neeraj Gupta, learned Senior Advocate, submitted that the passage is owned by the State Government and possessed by the Municipal Council, Dalhousie. The defendants have a right to use the passage and they cannot obstruct it. They have been directed to remove the obstruction and there is no infirmity in this direction. Hence, he prayed that the appeal be dismissed. Mr. Prashant Sain and Ms Avni Kochhar, learned Deputy Advocate Generals for the respondents-State submitted that the State was wrongly impleaded as a party as it is not causing any obstruction. Hence they prayed that the appeal be dismissed against the State.

15. I have given considerable thought to the rival submissions at the bar and have gone through the records carefully.

16. The facts are not in dispute in the present case. The defendants specifically admitted in their written statement that a passage exists over Khasra Nos.1196, 1197 and 1206. Defendant No.2 admitted in the written statement that the plaintiffs are using the passage. It was asserted that no interference or obstruction was being caused by defendant no.2. Even Group Captain Pradeep Sood (DW-2), Chief Administrative Officer stated in his proof affidavit (Ex.DW-2/A) that Khasra Nos. 1196, 1197 and 1206 are Gair Mumkin Rasta owned by the State of Himachal Pradesh and possessed by the Municipal Council, Dalhousie. He also stated that the passage was being used by the people of the locality without any interference. Thus, the existence of passage, its ownership, possession and use by the public including the plaintiffs are not in dispute.

17. Group Captain Pradeep Sood (DW- 2) stated that a temporary guard post (which is a removable canopy about 3x3 ft. dimension) was placed temporarily on the extreme corner. A signboard was also placed on the extreme side of the

road; however, it did not interfere with the use of the passage. Similarly, M. Marukaran (DW-1) also stated that the passage was being used by the plaintiffs and the general public. A guard post and signboards were constructed on the site of the road. Hence, the existence of the guard post and sign board have also not been disputed by the witnesses of the defendants.

18. The defendants have not shown any right to put the signboard or construct a guard post on the side of the public passage and to claim that the trespassers would be prosecuted. The passage is admittedly owned by the State and not by defendant No. 2. Hence, the learned Courts below had rightly directed to remove all these obstructions.

19. It was submitted that an alternative passage is available to the plaintiffs to approach their land. The existence of an alternative passage would have been material had the claim been based on easement of necessity. However, the claim has been made based on the existence of a public passage dedicated to the public; therefore, the availability of an alternate passage will not help the defendants.

20. The plaintiffs served a notice upon the defendants. A report was called from Patwari who submitted the report (Ex.PW-3/E). He specifically mentioned in the report that a septic tank, drain, fence pole and board were constructed in Khasra No.1197. One guard post was constructed at the beginning of Khasra No.1123.

21. It was submitted that this report was prepared behind the back of defendant No. 2 and the learned Courts below erred in relying upon the report. This is not acceptable. The report was prepared by the owner of the land regarding the condition of the land. Defendant No. 2 is merely a user of the land as are the plaintiffs and members of the general public. The owner is the best person to report about the condition of the property owned by it and there is no requirement to associate any user. No provision of law was brought to the notice of this Court, which would oblige an owner to associate the user while reporting about the property owned by it. Therefore, the submission that the report is bad because it was prepared in the absence of defendant No. 2, cannot be accepted.

22. It was submitted that the learned First Appellate Court below had not discussed the entire evidence; hence, the judgment passed by the learned First Appellate Court is bad. This submission is not acceptable. Learned First Appellate Court affirmed the judgment and decree passed by the learned Trial Court and it was sufficient for it to express its agreement with the reasoning of the learned Trial Court as per the judgment of the Hon'ble Supreme Court in Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179: 2001 SCC OnLine SC 375, wherein it was observed at page 188:-

"15.... First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues

arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. The task of an appellate court affirming the findings of the trial court is an easier one. The appellate court agreeing with the view of the trial court need not restate the effect of the evidence or reiterate the reasons given by the trial court; expression of general agreement with reasons given by the court, the decision of which is under appeal, would ordinarily suffice (See *Girijanandini Deviv. Bijendra Narain Choudhary* [AIR 1967 SC 1124])." (Emphasis supplied).

23. In any case, the learned First Appellate Court had noticed the admissions made by defendant No. 2, the ownership of the passage and the right of the plaintiffs to use the same which were material in the present case; therefore, the judgment is not bad.

24. It was laid down by the Hon'ble Supreme Court of India in *Naresh Kumar v. Hemant*, 2019 SCC Online SC 1490 that the jurisdiction under Section 100 of the Civil Procedure Code, is confined to substantial question of law alone. It is not permissible for the Court to upset the pure findings on fact. It was observed:

"12. The High Court therefore manifestly erred by interfering with the concurrent findings on facts by the two courts below in the exercise of powers under Section 100, Civil Procedure Code, a jurisdiction confined to substantial questions of law only. Merely because the High Court may have been of the opinion that the inferences and conclusions on the evidence were erroneous, and that another conclusion to its satisfaction could be drawn, cannot be justification for the High Court to have interfered.

13. In *Madamanchi Ramappa vs. Muthaluru Bojappa*, (1964) 2 SCR 673, this court with regard to the scope for interference in a second appeal with facts under Section 100 of the Civil Procedure Code observed as follows:

"12.....The admissibility of evidence is no doubt a point of law, but once it is shown that the evidence on which courts of fact have acted was admissible and relevant, it is not open to a party feeling aggrieved by the findings recorded by the courts of fact to contend before the High Court in a second appeal that the said evidence is not sufficient to justify the findings of fact in question. It has been always recognised that the sufficiency or adequacy of the evidence to support a finding of fact is a matter for the decision of the court of facts and cannot be agitated in a second appeal. Sometimes, this position is expressed by saying that like all questions of fact, sufficiency or adequacy of evidence in support of a case is also left to the jury for its verdict. This position has always been accepted without dissent and it can be stated without any doubt that it enunciates what can be properly characterised as an elementary proposition. Therefore, whenever this Court is satisfied that in dealing with a second appeal, the High Court has, either unwittingly and in a casual manner, or deliberately as in this case, contravened the limits prescribed by s. 100, it becomes the duty of this Court to intervene and give effect to the said provisions. It may be that in

some cases, the High Court dealing with the second appeal is inclined to take the view that what it regards to be justice or equity of the case has not been served by the findings of fact recorded by courts of fact; but on such occasions, it is necessary to remember that what is administered in courts is justice according to law and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law. If in reaching its decisions in second appeals, the High Court contravenes the express provisions of section 100, it would inevitably introduce in such decisions an element of disconcerting unpredictability which is usually associated with gambling, and that is a reproach which the judicial process must constantly and scrupulously endeavour to avoid."

14. Though precedents abound on this settled principle of law, we do not consider it necessary to burden our discussion unnecessarily except to rely further on *Gurdev Kaur and others vs. Kaki and others*, (2007) 1 SCC 546, holding as follows:

"71. The fact that, in a series of cases, this Court was compelled to interfere was because the true legislative intent and scope of Section 100 CPC have neither been appreciated nor applied. A class of judges while administering law honestly believe that, if they are satisfied that, in any second appeal brought before them evidence has been grossly misappreciated either by the lower appellate court or by both the courts below, it is their duty to interfere, because they seem to feel that a decree following upon a gross misappreciation of evidence involves injustice and it is the duty of the High Court to redress such injustice. We would like to reiterate that justice has to be administered in accordance with the law.

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73. The Judicial Committee of the Privy Council as early as 1890 stated that there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be, and they added a note of warning that no court in India has the power to add to, or enlarge, the grounds specified in Section 100.

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81. Despite repeated declarations of law by the judgments of this Court and the Privy Council for over a century, still the scope of Section 100 has not been correctly appreciated and applied by the High Courts in a large number of cases. In the facts and circumstances of this case, the High Court interfered with the pure findings of fact even after the amendment of Section 100 CPC in 1976. The High Court would not have been justified in interfering with the concurrent findings of fact in this case even prior to the amendment of Section 100 CPC. The judgment of the High Court is clearly against the provisions of Section 100 and in no uncertain terms clearly violates the legislative intention.

82. In view of the clear legislative mandate crystallised by a series of judgments

of the Privy Council and this Court ranging from 1890 to 2006, the High Court in law could not have interfered with pure findings of facts arrived at by the courts below. Consequently, the impugned judgment is set aside and this appeal is allowed with costs."

25. A similar view was taken by this court in *Shanta Devi v. Kaushalya Devi*, 2020 SCC OnLine HP 1828= 2020 (2) Latest HLJ 1304 wherein it was observed:

14. Hon'ble Apex Court in Civil Appeal Nos.2843/2844/2010 titled *Nazir Mohamed Vs. J. Kamala & Ors* decided on 27.08.2020, held that a second appeal only lies on a substantial question of law. It is not open to re-agitate facts or to call upon the High Court to re-analyze or re-appreciate evidence in a second appeal. Section 100 of the Code of Civil Procedure restricts the right of second appeal only to those cases, where a substantial question of law is involved. Relevant paras of the aforesaid judgment read as under:-

"25. A second appeal, or for that matter, any appeal is not a matter of right. The right of appeal is conferred by statute. A second appeal only lies on a substantial question of law. If the statute confers a limited right of appeal, the Court cannot expand the scope of the appeal. It was not open to the Respondent-Plaintiff to re-agitate facts or to call upon the High Court to reanalyze or re-appreciate evidence in a Second Appeal.

26. Section 100 of the CPC, as amended, restricts the right of second appeal, to only those cases, where a substantial question of law is involved. The existence of a "substantial question of law" is the sine qua non for the exercise of jurisdiction under Section 100 of the CPC."

15. A question of law must arise from the pleadings. It becomes a substantial question of law, if it is debatable, not previously settled by law of land or any binding precedent, and must have a material bearing on the decision of the case. A pure finding of fact is not open to challenge in a second appeal even if appreciation of evidence is palpably erroneous & finding of fact incorrect.

"29. The principles for deciding when a question of law becomes a substantial question of law, have been enunciated by a Constitution Bench of this Court in *Sir Chunilal v. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd.*, where this Court held:-

"The proper test for determining whether a question of law raised 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 and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a

substantial question of law."

30. In *Hero Vinoth v. Seshammal*, this Court referred to and relied upon *Chunilal v. Mehta and Sons* (supra) and other judgments and summarised the tests to find out whether a given set of questions of law were mere questions of law or substantial questions of law.

31. The relevant paragraphs of the judgment of this Court in *Hero Vinoth* (supra) are set out herein below:-

21. The phrase "substantial question of law", as occurring in the amended Section 100 CPC is not defined in the Code. The word substantial, as qualifying "question of law", means having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with- technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In *GuranDitta v. Ram Ditta*, (1928) AIR PC 172 [(1927 -28) 55 IA 235] the phrase the substantial question of law as it was employed in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. In *Sir Chunilal case*, (1962) Supp3 SCR 549: AIR1962 SC 1314] the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in *RimmalapudiSubba Rao v. NoonyVeeraju*, (1951) AIR Madras 969 : (1951) 2 MLJ 222 (FB), (*Sir Chunilal case*, (1962) Supp3 SCR 549: AIR 1962 SC 1314, SCR p. 557)

"When a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand, if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular fact of the case it would not be a substantial question of law."

32. To be "substantial", a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way.

33. To be a question of law "involved 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 Courts of facts, and it must be necessary to decide that question of law for a just and proper decision of the case.

34. Where no such question of law, nor even a mixed question of law and fact was urged before the Trial Court or the First Appellate Court, as in this case, a second appeal cannot be entertained, as held by this Court in *PanchagopalBarua v. Vinesh Chandra Goswami*.

35. Whether a question of law is a substantial one and whether such question is involved in the case or not, would depend on the facts and circumstances of each case. The paramount overall consideration is the need for striking a judicious balance between the indispensable obligation to do justice at all stages and the impelling necessity of avoiding prolongation in the life of any lis. This proposition finds support from *Santosh Hazari v. Purushottam Tiwari*.

36. In a Second Appeal, the jurisdiction of the High Court being confined to substantial question of law, a finding of fact is not open to challenge in a second appeal, even if the appreciation of evidence is palpably erroneous and the finding of fact incorrect as held in *Ramchandra v. Ramalingam*. An entirely new point, raised for the first time, before the High Court, is not a question involved in the case, unless it goes to the root of the matter.

37. The principles relating to Section 100 CPC relevant to this case may be summarised thus:

(i) An inference of fact from the recitals or contents of a document is a question of fact, but the legal effect of the terms of a document is a question of law. The construction of a document, involving the application of any principle of law, is also a question of law. Therefore, when there is a misconstruction of a document or a wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, or answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue.

(iii) A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the Court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iv) The general rule is, that the High Court will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. Some of the well-

recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or

(iii) the courts have wrongly cast the burden of proof. A decision based on no evidence does not refer only to cases where there is a total dearth of evidence but also refers to cases, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.

26. Therefore, in view of the binding precedent of the Hon'ble Supreme Court, it is not permissible for the Court to go into the appreciation of evidence unless the same is found to be perverse. Since no perversity has been found; therefore, no substantial question of law arises in the present case.

Final order:

27. In view of the above, the appeal fails and the same is dismissed. Pending miscellaneous applications, if any, also stand disposed of.