

(2013) 12 BOM CK 0012

In the Bombay High Court

Case No : Second Appeal No. 61 of 1995

T. Ramlingam and Susairaj

APPELLANT

Vs

Eble Egnasis and Francina through Legal Representatives

RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2013) 12 BOM CK 0012

Hon'ble Judges : S.B. Shukre, J

Bench : Single Bench

Advocate : R.L. Khapre, for the Appellant; P.S. Sadavarte, Advocate for Respondent No. 1 and Mr. R.T. Anthony, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Shukre, J.—This appeal arises out of the judgment and decree passed on 26.9.1994 by 7th Additional District Judge, Nagpur in Regular Civil Appeal No. 630 of 1986 confirming the decision of the 20th Joint Civil Judge, Junior Division, Nagpur rendered in Regular Civil Suit No. 131 of 1983 on 11.7.1986 dismissing the suit of the appellants. The appellant No. 1 (dead) and appellant No. 2 are the original plaintiffs and respondent No. 1 and respondent No. 2 (dead) through legal heirs are the original defendants. They are, hereinafter, being referred to as the plaintiffs and the defendants in the order in which they were joined as parties in the suit.

2. The plaintiffs filed the suit claiming possession of the House No. 1091, situated at Sadar-Bazar, Nagpur (for short, "suit house"), which they alleged to be under illegal occupation by the defendant No. 1. They submitted that they were the owners of the suit house and occupying it as an owners. They submitted that the defendant No. 1 was the son-in-law of defendant No. 2 and plaintiff No. 1 was married to one Bubbi alias Francina sister of the defendant No. 2. They submitted that the plaintiff No. 2 was the son of the plaintiff No. 1. They further submitted that the defendant No. 2 was the owner of the house bearing House No. 1090, which was really the half portion of one whole house consisting of

House Nos. 1090 and 1091. According to them, initially, whole house comprising House Nos. 1090 and 1091 belonged to Jesudas, who died in the year 1959 leaving behind him three daughters, namely, Arikomary, defendant No. 2- Francina, who was married to one J. Fransis and Bubbi alias Francina. After the death of Jesudas, the three sisters inherited the whole house. The eldest daughter, Arikomary was married to one A.M.D. Anthony. He was a Railway employee stationed at Bhusawal. The plaintiffs submitted that couple of A.M.D. Anthony and Arikomary died issueless. A.M.D. Anthony died in the year 1959 while Arikomary died on 20.5.1977. They submitted that at the time of her death, Arikomary was residing in the suit house along with the plaintiffs. They submitted that second sister, defendant No. 2, was also residing in the same building, but in a different portion. At the time of filing of the suit, according to the plaintiffs, husband of defendant No. 2 was alive. The plaintiffs submitted that Bubbi alias Francina, wife of plaintiff No. 1, was the youngest daughter and she was 9 years younger than defendant No. 2. They submitted that she died on 31.5.1981. They further submitted that after the death of Arikomary, whole house devolved upon two sisters, Francina, the defendant No. 2 and Bubbi alias Francina. They submitted that defendant No. 1, being the son-in-law of defendant No. 2, was allowed to occupy ground floor portion of the suit house since about the year 1977. They further submitted that by issuing a notice dated 20.12.1982, they revoked the licence of the defendant No. 1 and thereafter defendant No. 1 was residing on the ground floor of the suit house as a trespasser. This ground floor portion of the suit house is the suit property involved in the dispute. The plaintiffs submitted that since the defendant No. 1 refused to vacate the suit property they were constrained to file a suit for recovery of possession of the suit property from defendant No. 1 together with a claim for mesne profits under Order 20 Rule 12 of C.P.C.

3. The defendant No. 1 resisted the suit by filing his written statement. He denied that plaintiffs alone were the owners of the suit house and also denied that they were exclusively occupying the same as owners. He did not dispute the relationship between the parties as described in the plaint, but submitted that the plaintiffs had deliberately and fraudulently described the relationship in a half hearted manner. He denied that there was any marriage between the plaintiff No. 1 and sister of defendant No. 2 and submitted that if there was any marriage in between them, it was not valid in the eye of law. According to him, plaintiff No. 1 performed marriage with defendant No. 2 on 21.1.1963. He denied that the plaintiffs were entitled to succeed to the estate of the deceased sister of defendant No. 2. While defendant No. 1 admitted that plaintiff No. 2 was the son of the plaintiff No. 1, he disputed the claim that he was the son of plaintiff No. 1 begotten from Bubbi alias Francina. He also denied that defendant No. 2 was the exclusive owner of House No. 1090. He denied that the alleged deceased wife of plaintiff No. 1 had two names, namely, Bubbi and Francina. He however, admitted that she was 9 years younger than defendant No. 2. He admitted that Jesudas had three daughters and the eldest one Arikomary was married to

A.M.D. Anthony, a railway employee stationed at Bhusawal. He denied that A.M.D. Anthony died in the year 1959, but submitted that he died in the year 1961 at Nagpur. He admitted that Arikomary died on 20.5.1977. He submitted that after retirement of A.M.D. Anthony from his service in Railway at Bhusawal in the year 1957, he came to Nagpur for permanent residence and since then A.M.D. Anthony, Arikomary and defendant No. 1 occupied the suit property exclusively. He denied that Arikomary died issueless. He admitted that younger sister of defendant No. 2 was also residing in the same house in a different portion. He denied that the defendant No. 2 was married to J. Francis. He asserted that the plaintiff No. 1 was the husband of defendant No. 2. He also denied that after the death of Arikomary, whole house came to the share of wife of plaintiff No. 1 and defendant No. 2. He submitted that the whole house, comprising House Nos. 1090 and 1091 was the joint property of Jesudas and his brother J. David. He submitted that J. David and his wife Antonima died without leaving any legal heirs. He admitted that he was the son-in-law of defendant No. 2, but denied that because he was the son-in-law, he was allowed to occupy the ground floor of house No. 1090 as a licensee. He denied that there existed any licence at any point of time and that it stood revoked by notice dated 20.12.1982. He submitted that he was staying in the suit property as owner thereof. On these grounds, he urged that the suit was liable to be dismissed.

4. Deceased defendant No. 2 also submitted written statement by which she admitted the entire claim of the plaintiff.

5. Trial Court framed the issues and recorded the evidence. After considering the evidence available on record and arguments of both sides, the trial Court found that there was no clear proof about exclusive ownership of the plaintiffs and then found that the plaintiffs were the joint owners of the suit property together with defendant Nos. 1 and 2 and that defendant No. 1 was not the licensee of plaintiffs. It also noted that defendant No. 1 was entitled to compensatory costs as plaintiffs had not come clean with all the necessary facts. Accordingly, the trial Court by its judgment and decree rendered on 11.7.1986 dismissed the suit with costs and a direction to plaintiffs to pay to defendant No. 1 compensatory costs of Rs. 500.

6. In the appeal preferred before the Additional District Judge, Nagpur aforestated findings given by the trial Court came to be confirmed. However, the learned Additional District Judge did not agree with the finding recorded by the trial Court that since the plaintiffs had suppressed some material facts defendant No. 1 was entitled to compensatory costs of Rs. 500/-, and therefore reversed the same. Accordingly, the first appeal was partly allowed by the learned Additional District Judge, by his Judgment and decree passed on 26.9.1994. Not satisfied with it, the appellants are now before this Court in present second appeal.

7. Second appeal was admitted by this Court on 15th September, 1995 on the following substantial question of law:

Whether the defendant, in absence of a plea that the defendant No. 1 has derived his title being a son of Arikomary could resist the title of the plaintiffs on the basis of the finding that he is the son of Arikomary?

8. This Court, while hearing the appeal at the final stage, had considered some aspects arising from the findings recorded by both the Courts below. It was found by this Court that on the material propositions of facts, no issue or point was formulated by the Courts below. It was observed by this Court that the question as to whether the plaintiff No. 1 was the owner could not have been decided without deciding the question of relationship of plaintiff No. 1 with deceased Bubbi, as his marriage with Bubbi was disputed by defendant No. 1. It was also found that while plaintiffs submitted that the deceased Arikomary died issueless, the Courts below recorded a finding that defendant No. 1 too was having right, title and interest in the suit property together with plaintiffs and defendant No. 2. It was considered by this Court that right of defendant No. 1 to the suit property would depend upon the answer to the question as to whether or not he was the son of deceased Arikomary and answer to this question was not found to be given by the Courts below and, therefore, two issues were framed by this Court for recording of findings thereon by the first appellate Court and they are as follows:

(1) Do plaintiffs prove that plaintiff No. 1 was legally married to Bubbi daughter of Jesudas?

2(a) Whether Arikomary died issueless?

2(b) If yes, what is the effect on the suit?

9. While the appeal remained pending, matter was sent to the first appellate Court for recording of its findings on these two issues. Parties were given liberty to lead evidence and the first appellate Court was directed to remit its finding on these two issues within a period of three months.

10. Accordingly, the first appellate Court allowed the parties to lead the evidence and considering the same, it recorded its findings on these issues and remitted the same to this Court by its order dated 2.4.2011. The order shows that first appellate Court answered issue No. 1 and issue No. 2(a) as in the affirmative and answered issue No. 2(b) in terms that the defendant No. 1 could not claim joint ownership over the suit property with plaintiffs and legal heirs of deceased defendant No. 2.

11. After the aforesaid findings were returned to this Court, respondent No. 1 (defendant No. 1) filed his cross-objection under Order 41 of Rule 22 of C.P.C. challenging these findings as being against principles of natural justice, fairness, transparency and provisions of law and also being perverse and contrary to evidence on record.

12. After remitting of these findings, final hearing of the appeal together with cross-objections was resumed. During the course of argument, it was revealed

that this case also involved additional substantial questions of law and, therefore, by passing a separate order on 21st September, 2013, this Court formulated two additional substantial questions of law. They are as follows:

- 1) Whether the finding recorded by the learned Appellate Court after remand of the case to it regarding question of deceased Arikomary having died issueless, in the light of the entire evidence available on record, is perverse?
- 2) In view of the positive finding recorded by the First Appellate Court after remand on the question whether the deceased Arikomary died issueless, what relief could be given to the appellants, who are the original plaintiffs?

13. I have heard Mr. R.L. Khapre, learned counsel for the plaintiffs Mr. P.S. Sadawarte, learned counsel for the defendant No. 1 (respondent No. 1) and Shri Anthony, learned counsel for defendant No. 2 (respondent No. 2) and with their assistance, I have carefully gone through the memo of appeal, cross-objections impugned judgments and decrees and the record of the trial Court.

14. While admitting this appeal for the first time on 15th September, 1995, this Court had passed an order mentioning that the appeal stood admitted on the "question of law". The "question of law" is already stated in the earlier part of this judgment. Mr. Sadawarte, learned counsel for the defendant No. 1, has raised a preliminary objection in this regard. He submits that this appeal is liable to be dismissed in limine, as it has been admitted not on a "substantial question of law", but on a "question of law". He argues that this Court has no jurisdiction u/s 100 of the Code of Civil Procedure, 1908 to finally hear the appeal as no substantial question of law has been noted and recorded by this Court as involved in the appeal. According to him, the scope of Section 100 is well defined and it allows the High Court to hear a second appeal only when there is involved in the case a substantial question of law. He argues that to be a "substantial question of law", it must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. He further submits that substantial question of law must be seen to be arising from the pleadings and evidence before the Court and it should be necessary in the facts and circumstances of the case that the question of law is decided for a proper decision of the case. He also argues that any 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. In support, he places reliance upon the following cases:

- 1) Govindaraju Vs. Mariamman, .
- 2) Shankar Shridharrao Deshmukh Vs. Vyankatesh Shankarrao Deshmukh and Others, .
- 3) Boodireddy Chandraiah and Others Vs. Arigela Laxmi and Another, .
- 4) Ram Khilona and Others Vs. Sardar and Others, .

- 5) Commissioner Hindu Religious and Charitable Endowment Vs. P. Shanmugama and Others, .
- 6) Roop Singh (Dead) Through LRs Vs. Ram Singh (Dead) Through LRs., .
- 7) Nune Prasad and Others Vs. Nune Ramakrisna, .
- 8) Hari Singh Vs. Kanhaiya Lal, .
- 9) Dharam Singh Vs. Karnail Singh and Others, .
- 10) Muthu Gounder Vs. Ammayee Ammal, .
- 11) Bant Singh and Another Vs. Niranjana Singh (D) by Lrs. and Another, .

15. Mr. Khapre, learned counsel for the plaintiffs submits that there cannot be any dispute about the propositions of law that at the time of admitting the appeal u/s 100 of C.P.C. High Court must formulate a substantial question of law and in its absence, the appeal is not maintainable. But, he submits that in this case, when the appeal came to be admitted by an order passed by this Court on 15th September, 1995, this aspect was indeed considered and finding that the case did involve a substantial question of law, the appeal was admitted. While recording the order, he submits the High Court may not have prefixed the word "substantial" to the words "question of law", but that does not mean that High Court did not intend and mean that no substantial question of law was involved. He also submits that if one goes through the pleadings of the parties and the evidence adduced by them, it would be clear that the question as framed by the High Court is in fact a substantial question of law as it raises a debatable and unsettled issue, the decision on which, in the facts and circumstances of the case, is necessary and if it is left unanswered, it would materially affect the rights of the parties in the case. He places his reliance upon the case of Govindaraju (*supra*), which is one of the cases relied upon also by learned counsel for defendant No. 1.

16. There is no dispute about the principle, as stated in the cases relied upon by learned counsel for defendant No. 1 and cited earlier that this Court has no jurisdiction to finally hear an appeal u/s 100 C.P.C. unless it involves a substantial question of law and it is so formulated.

17. But, on going through the pleadings and the evidence adduced by both parties, I find that the learned counsel for the plaintiffs is right when he submits that the question of law as framed by this Court as per the order dated 15th September, 1995 is indeed a substantial question of law. It raises a debatable issue which has not been settled earlier and it materially and substantially affects the rights of the parties, which is in accordance with principles enunciated in the cases relied upon by both sides and cited in earlier paragraphs. Once it is found that the question of law as framed by the High Court is really a substantial question of law, how the question is described by the High Court would not and should not alter the nature of question framed. An omission may occur in

describing a question framed, but that is inconsequential so far as substance of the question is concerned. One has to appreciate that nomenclature of a question is one thing and contents or substance of the question are altogether different aspects. It is the contents which decide whether a question is or is not substantial. A question may be titled as a "substantial question". But, that would not make it one. One has to look into the substance and contents of the question framed and surrounding circumstances to decide what it really connotes, whether substantial or ordinary question of law. This is for the reason that title does not control the contents of a proposition. It is only suggestive of what the proposition is likely to be and the proposition, by virtue of it's pith and substance, is really determinative of what it is about. When a document is construed, same principle is applied.

18. In the case of B.K. Muniraju Vs. State of Karnataka and Others, , Hon''ble Supreme Court has held that in order to know the real nature of document, one has to look into the recitals of the document and not the title of the document. In para 18 it observed as under:

...In order to know the real nature of the document, one has to look into the recitals of the document, and not the title of the document. The intention is to be gathered from the recitals in the deed, the conduct of the parties and the evidence on record. It is settled law that the question of construction of a document is to be decided by finding out the intention of executant, firstly, from a comprehensive reading of the terms of the document itself, and then, by looking into---to the extent permissible---the prevailing circumstances which persuaded the author of the document to execute it. With a view to ascertain the nature of a transaction, the document has to be read as a whole. A sentence or term used may not be determinative of the real nature of transaction....

In the case of State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another, , the Hon''ble Apex Court in para 120 observed as under:-

It is true that the nomenclature and description given to a contract is not determinative of the real nature of the document or of the transaction thereunder. These, however, have to be determined from all the terms and clauses of the document and all the rights and results flowing therefrom and not by picking and choosing certain clauses and the ultimate effect or result as the Court did in the State of Madhya Pradesh and Others Vs. Orient Paper Mills Ltd., .

19. The Principles which apply to construe a document can, by drawing analogy between a document and formally worded question, be also applied to understand the true import of the question formulated. This is because just as a document contains statements by which the intentions, aims, objects, terms and so on are expressed, a question made in specific words also contains a statement expressing a concept or proposition which the maker intends to put to test for correctness or eliciting it's true answer. Therefore, if some omission has occurred in describing a question formulated by Court, as it appears to have crept up in

instant matter, it cannot be said that the error is fatal to exercise of jurisdiction by this Court u/s 100 of C.P.C.

20. Even otherwise under sub-section (5) of Section 100 C.P.C. liberty is given to respondent to satisfy the Court, at the hearing of the appeal, that the case does not involve any substantial question of law. This provision reflects the intention of the legislature to not foreclose the issue upon admission of the appeal and allow the argument to be made about non-involvement of substantial question of law even after admission of the appeal upon such a question. Existence of this provision on the statute-book only shows that right of respondent to convince the Court on absence of substantial question of law at a later stage is not taken away. It would then follow that no matter how the question is described at admission stage, this Court can proceed to hear the appeal if the question, by its contents, indicates itself to be a substantial question of law and thereby no prejudice to the rights of respondent would be caused.

21. Thus examined from all angles, no substance in the argument of learned counsel for the defendant No. 1 that this case has not been admitted upon a substantial question of law in as much as it has caused no prejudice to the rights of defendant No. 1.

22. Now, let us go to the first substantial question of law. Mr. Khapre, learned counsel for the plaintiffs has submitted that this question of law would have to be answered as in the negative as after the case was remanded to the first appellate Court, that Court, after consideration of the evidence on record and arguments of both sides, has found that the plaintiff No. 1 was legally married to Bubbi alias Francina daughter of Jesudas and that Arikomary died issueless. After these findings of facts, according to the learned counsel for the appellant, nothing has remained in this appeal and only course open to the Court is to answer the substantial question of law in favour of the appellant. Learned counsel for the defendant No. 1 disagrees. According to him, there was no reason for this Court to have remanded this matter to the first appellate Court and if at all remand was to be directed, it should have been to the trial Court so that defendant No. 1 would have got an opportunity to challenge the same before the first appellate Court. He also submits that there has been a finding recorded earlier by both the Courts below that the plaintiffs and both the defendants jointly owned the suit property and the appellate Court, before remand, has also found that the defendant No. 1 is the son of the deceased Arikomary and, therefore, a co-owner of the suit property. He submits that in such a situation, this Court, while remanding the case, if it was necessary, ought to have quashed the decrees passed by both the Courts below and directed the trial Court to decide the issues afresh. But, that has not been done, and now, the findings given by the first appellate Court after remand stand in conflict with the findings recorded earlier and in particular by the first appellate Court before remand. He further submits that in such a situation, question of perversity of findings recorded by first appellate Court before as well as after remand would have to be carefully

examined and it would have to be decided as to which of these findings are in accordance with evidence on record and which are not.

23. Mr. Khapre, learned counsel for the plaintiffs, submits that order of remand of the case passed by this Court had attained finality and had been acted upon by both sides and therefore, now defendant No. 1 cannot say what should have been done by this court and what should not have been. He, however, concedes that as a proposition of law, this Court can always examine the aspect of perversity of findings.

24. Mr. Anthony, learned counsel for the defendant No. 2 supports the argument of learned counsel for the plaintiffs.

25. What this Court should have done while remanding the case to the first appellate Court earlier is something which is beyond the reach of powers of this Court in deciding a second appeal. It has already been done and acted upon by the parties and so on a chapter enacted and concluded, no one can be allowed to lift the curtains and reagitate the issue. Therefore, defendant No. 1 now cannot be heard to say that the case should have been, if it was must, sent to trial Court for decision afresh. What can be and what needs to be examined by this Court is as to how the findings recorded by the first appellate Court after remand would have their impact on the first substantial question of law formulated by this Court and this has already been impliedly conveyed by this Court when it formulated additional substantial question of law by the order dated 21st September, 2013. These additional substantial questions of law have been formulated only with a view to examining the effect of the first appellate Court's findings recorded on the issues referred to it while remanding the case on the respective cases of the parties. Outcome of such an examination would only determine the fate of this appeal.

26. Before considering the impact of findings of the first appellate Court after remand on the respective cases of rival parties, it would be necessary to deal with the objection raised on behalf of the plaintiffs at the time of admission of this appeal which is reflected in the first substantial question of law and also before first appellate Court before remand. The objection was that no evidence could have been recorded on the contention of defendant No. 1 that he was son of deceased Arikomary without their being any plea taken by him in his written statement. While it was true that defendant No. 1 did not plead specifically in his written statement that he was son of Arikomary, it is seen, it did not affect the case of plaintiffs in any prejudicial manner as it turned out that as the evidence of parties began, each of the parties started adducing evidence according to pleadings some times and even beyond pleadings at times. The parties, however, understood well each others case and knew what case of other side they had to meet. First appellate Court has dealt with this objection elaborately in its judgment and order dated 26th September, 1994 passed before remand. The first appellate Court then considered the law laid down by the Hon"ble Apex Court in its various cases, which cases have been particularly referred to in

paragraph 12 of its judgment and following the same, it found that even though there was no proper pleading or issue framed for determination, the parties went to trial knowing fully well what they were required to prove. It was noted that the parties had adduced evidence which was in relation to respective claims and it was not the case that it was only the defendant No. 1 who was guilty of wrong of improper by pleading or failure to plead a particular fact. The plaintiffs were also found to be blamed equally. For these reasons, the first appellate Court came to a conclusion that the rival parties had very well understood the case they had to meet and no prejudice would be caused to either of them, if entire evidence was considered. Accordingly, the first appellate Court took into account and appreciated the whole evidence. This conclusion reached by the first appellate Court is consistent with the law laid down by the Hon''ble Apex Court in Catena of its judgments. Kali Prasad Agarwall and Others Vs. Bharat Coking Coal Limited and Others, is one of the cases relied upon by the first appellate Court. It has been held therein that when the parties went to trial knowing very well what they were required to prove and had adduced evidence of their choice, in support of their respective claims, it would be too late for them to raise the contention that the evidence led should not be looked into. In the case of Ganesh Trading Co. Vs. Moji Ram, , the Hon''ble Apex Court has held that the procedural law is intended to facilitate and not obstruct the course of substantive justice. It is further held that provisions relating to pleadings are meant to give to each side intimation of the case of the other so that it may be met to enable Court to determine what is really at issue between the parties.

27. Mr. Sadavarte, learned counsel for the defendant No. 1, has referred to me the judgment of learned Single Judge of this Court delivered in the case of Shikshan Prasarak Mandal Navin Nanded and another vs. State of Maharashtra and another, reported in 2010 (3) Mh.L.J. 895, in support of his submission that consideration of the entire evidence by the Courts below before remand is proper and that there is no substance in the submission that it could not have been looked into without there being any proper pleadings. Mr. Khapre, learned counsel for the plaintiff submits that this case does not support the contention of the defendant No. 1. He is right. There have been observations in paragraph 13 of the judgment that the findings recorded by the Tribunal therein in absence of any pleadings by either parties amounted to going beyond jurisdiction of the Tribunal. This is the general principal of law and it has been laid down by the Hon''ble Apex Court in various cases as discussed earlier that in cases where parties go to trial knowing well each other''s case, question of proper pleadings will loose it''s significance. Relying on the principles of law expounded by the Hon''ble Apex Court in this regard, this Court in another case of Preetam Kaur vs. Prakash Ramdeo Jaiswal, reported in 2011 (6) Mh.L.J. 84 has held that when parties know the case inspite of deficiencies in the pleadings and proceed to trial on those issues by producing evidence, it would not be open to a party to raise the question of absence of pleadings in the appeal.

28. Thus, it is clear that consideration of the entire evidence available on record

by both the Courts below before remand was in accordance with the settled principles of law and now the plaintiffs cannot reverse their stand and say that the evidence should not be looked into. With this finding, it should ordinarily follow that first substantial question of law formulated by this Court is answered in the affirmative in favour of defendant No. 1. But before coming to a definitive answer to this question, it must be considered that there have been subsequent developments in the matter and it would be necessary to examine their impact on the issue raised by this question. The impact of the findings recorded after remand would have to be seen properly and it cannot be properly seen, unless the question of perversity of these findings, as raised in the cross-objections of defendant No. 1 and formulated as one of the additional substantial questions of law by this Court, is also examined. This Court while remanding the case to the first appellate Court by its order passed on 25th March, 2008 has held that the first appellate Court had not formulated any point for determination in respect of ownership of the plaintiffs and controversy about Arikomary having died issueless. It was also noted that on the material propositions of facts, such as, plaintiff No. 1, being the husband of deceased Bubbi alias Francina, had inherited her share in the suit property and defendant No. 1, being the son of deceased Arikomary, was also the co-owner of the suit property, both the Courts below did not formulate any issue or point and, therefore, issues were framed by this Court and the case was remanded to the first appellate Court for recording of findings thereon and remitting the same to this Court. While doing so, this Court did not quash the findings recorded by both the Courts below as they stood before remand. Therefore, these findings stand as they are. It may be noted here that some of these findings touch upon the same aspects on which first appellate Court has recorded its specific decision after remand. So, now we have additional findings in respect of the same aspects dealt with earlier. Therefore, we will have to consider together all these findings given before and after remand and examine them from the view point of their suffering from any perversity or otherwise. Such an approach will only enable this Court to answer appropriately the substantial question of law and the additional substantial questions of law formulated by this Court.

29. The trial Court in its judgment and decree dated 11.7.1986 did not give any finding as regards relationship between the parties stating that no issue on that aspect of the case was framed. It observed that the material issues were whether the plaintiffs were owners of the property and whether the defendant No. 1 was inducted into the suit premises as a licensee and whether the licence had been revoked legally or not. In the light of such rival claims that the trial Court considered the evidence adduced by the parties. It found that since the case was filed by the landlords against the licensee, the burden was upon the landlords/plaintiffs to prove their title over the suit property in a clear manner, but instead of giving precise account of their title over the suit property, the trial Court noted, the plaintiffs came up with pleadings in twisted forms and did not adduce clear cut evidence to establish title. However, picking up from whatever

oral and documentary evidence that was produced on record by the parties, the trial Court recorded a finding that the defendant No. 1 was brought up from his very childhood by deceased Arikomary, that he was residing in the suit house since 1957, and that there was no substance in the claim of the plaintiffs that defendant No. 1 was inducted in the suit house as a licensee about 15 years before. It also found that defendant No. 1, apart from being not a licensee, was residing in the suit property as son of Arikomary. As regards status of plaintiffs, it was found by the trial Court that the plaintiffs failed to show their exclusive ownership over the suit property. But, it further found that overall evidence disclosed that plaintiff Nos. 1 and 2 were also related to the suit property. Ultimately, the trial Court held that the plaintiffs failed to establish their clear title over the suit property and concluded that the plaintiffs together with defendant Nos. 1 and 2 were the joint owners of the property. While recording these findings, the trial Court had considered in details oral evidence particularly the evidence of plaintiff No. 1, defendant Nos. 1 and 2, plaintiff's witness No. 2, Wasudeo Yashwant Salve (Exhibit-81), witness No. 2 of defendant No. 2, Father Jerom Pinto (Exhibit-93) and the documentary evidence adduced by the parties. These findings being based on the evidence before the Court and not the result of the consideration of any extraneous or inadmissible evidence, cannot be said to be perverse.

30. These very findings of the trial Court have been again considered at length by the first appellate Court before remand of the case. This is evident from its judgment and decree delivered on 26.9.1994. The first appellate Court went one step further and recorded clear findings on facts, in respect of which the trial Court did not record any finding. The trial Court, did not make any conclusion about the relationship between the parties, but the first appellate Court, upon consideration of evidence, held that the marriage of plaintiff No. 1 and deceased Bubbi was performed on 21.1.1963, while plaintiff No. 2 was born to the couple before marriage i.e. on 21.1.1959. The first appellate Court then held that subsequent marriage was giving all the legitimate status to plaintiff No. 1 and, therefore, legitimacy of plaintiff No. 2, as son of the plaintiff No. 1, cannot be disputed. The first appellate Court also found that evidence disclosed that plaintiff No. 1 was married to Bubbi in a Church and it had clothed plaintiff No. 1 with the status of a Christian convert. The trial Court then held that the plaintiffs, being the heirs of deceased Bubbi, were entitled to inherit the properties of deceased Bubbi. It is worthwhile to mention here that there were some material admissions appearing on record such as, admissions given by PW 2 Wasudeo (Exhibit-81) that Arikomary came to reside at Nagpur with one boy aged about 15 to 16 years and this boy was residing in the suit house from 1956, the admissions given by the defendant No. 2 in her cross-examination that during her visit to Bhusawal in the year 1954, defendant No. 1 was seen as residing at Bhusawal and he was then aged about 10 to 12 years and that his educational expenses were borne by A.M.D. Anthony, husband of Arikomary and that Arikomary came to reside in the suit property along with defendant No. 1 in the

year 1957. These admissions also found their some support from the documentary evidence. Therefore, considering them together, the first appellate Court further held that it cannot be disputed that the defendant No. 1 was the son of Arikomary. The first appellate Court also held that there was no evidence available on record showing that there was a partition by mutual agreement between the parties and, therefore, the suit house was found to have been held by plaintiffs and both the defendants jointly, with all of them having their respective undivided shares therein. Speaking about defendant No. 1, the first appellate Court particularly observed in paragraph 33 of it's judgment, that he was a joint owner of the suit house along with plaintiff Nos. 1 and 2 and defendant No. 1, being son of Arikomary.

31. All these findings recorded by the first appellate Court are clear. They go to show that plaintiff No. 1 was the husband of deceased Bubbi, who had assumed the status of a Christian convert and that plaintiff No. 2 was the legitimate son of plaintiff No. 1 with deceased Bubbi. They also indicate that defendant No. 1 was proved by evidence on record to be son of deceased Arikomary, the eldest sister of defendant No. 2 and deceased Bubbi. Such relationship in between the parties having been established by evidence on record, the first appellate Court went on to confirm the findings recorded by the trial Court except one finding relating to imposition of compensatory costs on the plaintiff. These findings, I must say, are not perverse. They are not the result of consideration of any inadmissible evidence or non-consideration of material evidence on record. They are not based upon any conjectures of surmises. It may be that the evidence on record may give rise to another view. But simply because another view is possible, it would not be open for this Court to interfere with these findings, without there being any perversity seen. It is a settled law that High Court, in it's jurisdiction u/s 100 C.P.C. cannot interfere with a finding of fact arrived at after considering admissible evidence on record, though upon reconsideration of same evidence, it is possible to record a different finding. In other words, in second appeal, High Court cannot reappreciate evidence so as to correct an erroneous finding, however, gross the error might be, as long as the finding is based upon evidence on record and is not the product of non-consideration of material evidence or consideration of extraneous or inadmissible material or evidence. In this regard, reference may be had to the law laid down by Hon'ble Apex Court in the cases of Navaneethammal Vs. Arjuna Chetty, and Pakeerappa Rai Vs. Seethamma (Dead) by LRs and Others, , wherein the principle formulated is that High Court in exercise of power u/s 100 C.P.C. cannot interfere with erroneous finding of fact based on appreciation of evidence, howsoever gross the error might be, unless it is a perverse finding, as explained earlier.

32. As regards these findings, there were no issues or points formulated by the Courts below. But, as already stated, these findings were based upon evidence led by parties on the points or aspects of the case well understood by them. Besides, these findings were necessary to determine the main controversy involved in the case-whether or not plaintiffs were the owners of the suit-house

and whether or not defendant No. 1 occupied the suit-house as a licensee of plaintiffs. Therefore, recording of said findings without formulation of points or issues cannot be said to be illegal, nor could they be seen to have caused any prejudice to either of parties, as they were borne out by the evidence adduced consciously by the parties themselves.

33. As against these findings, there are available on record findings recorded by the first appellate Court after remand, one of which stands in contrast to the finding previously recorded by it and discussed earlier. So far as the finding relating to legality of marriage of plaintiff No. 1 with deceased Bubbi, daughter of Jesudas, is concerned, one can very well see that it is based upon consideration of the evidence available on record, and as such no perversity in this finding can be seen. It is also in line with what the first appellate Court had already held and in which no perversity has been noticed by this Court. Therefore, this finding recorded after remand of the case to the first appellate Court, needs to be upheld. However, such does not seem to be the position about the finding on the issue as to whether or not Arikomary died issueless. The first appellate Court in its judgment and order dated 2nd April, 2011 has dealt with this issue in just two paragraphs and in a very cursory manner. It has held that no positive and cogent evidence has been placed on record to show that the defendant No. 1 is a son of Arikomary. While holding that Arikomary died issueless and defendant No. 1 was not her son, the first appellate Court put forward these reasons" (i) marriage of Arikomary with A.M.D. Anthony was performed on 30.10.1943, and whereas, school leaving certificate produced by defendant No. 1 showed that his date of birth was 21.10.1943 indicating that he was born before marriage between Anthony and Arikomary, which created doubt about they being his parents. (ii) School certificate placed on record by defendant No. 1 did not disclose name of his father A.M.D. Anthony. (iii) Marriage certificate of defendant No. 1 did not show names of his parents as Arikomary and A.M.D. Anthony. (iv) Defendant No. 1 performed marriage daughter of defendant No. 2, the sister of Arikomary and no one would perform marriage with maternal sister. The first appellate Court held that these circumstances created a doubt about the status of defendant No. 1 being son of Arikomary and accordingly it concluded that deceased Arikomary died issueless.

34. It needs to be noted here that the first appellate Court after remand has not at all considered other evidence already available on record. There were admissions given by the witnesses and there was also some documentary evidence, all of which has been discussed at length by the trial Court and particularly the first appellate Court before remand and which had persuaded these Courts to form an opinion that the defendant No. 1 was the son of deceased Arikomary. At the cost of repetition, it must be said that there were material admissions given in earlier part of evidence on record by some of the witnesses. Witness No. 2 of plaintiffs, Wasudeo (Exhibit-81), had admitted that when Arikomary came to reside at Nagpur, she was having one boy aged about 14-15 years, and said boy was residing in suit-house since 1956 till date. Even

defendant No. 2, Chaurima (Exhibit-89), had admitted that in 1954 she had been to Bhusawal and stayed there for two days and at that time defendant No. 1 was there at Bhusawal. She had further admitted that at that time age of defendant No. 1 was about 10-12 years and his educational expenses at Bhusawal and Nagpur were borne by A.M.D. Anthony. Father Jerom Pinto (Exhibit-93) was witness No. 2 of defendant No. 2. He too had admitted that when he had gone to house of Arikomary sometime after 1972, defendant No. 1 was seen by him as residing with Arikomary. He also admitted that he could say that defendant No. 1 was the son of Arikomary. The first appellate Court should have considered this material evidence as it was there on record and that entire proceedings had not been quashed by this Court. But as it has not, the finding recorded by it on the issue of Arikomary having died issueless after remand suffers from the vice of perversity. This finding of the first appellate Court recorded after remand, therefore, cannot be sustained in law and it must go. On its basis no relief could be given the appellants/original plaintiffs. Both the additional substantial questions of law are, therefore, answered accordingly.

35. Once it is found that the finding recorded by the first appellate Court after remand on the point of Arikomary having died issueless cannot be sustained in law, and no perversity has been found or shown in the findings recorded on this very issue by the Courts below before remand of the case, it has to be held that the findings as they were originally recorded by both the Courts below before remand would take their place due to them in law. These findings, need to be upheld and accordingly I confirm them.

36. With confirmation of the findings recorded by both the Courts below before remand of the case, the answer to the first substantial question of law would go in favour of the defendant No. 1 and accordingly I find that defendant No. 1, in absence of a plea that the defendant No. 1 has derived his title being a son of Arikomary could resist the title of the plaintiff on the basis of the finding that he is the son of Arikomary. The substantial question of law as originally framed, is answered accordingly in the affirmative.

37. Learned counsel for the defendant No. 1 has also advanced his argument on several other aspects of the case relating to validity of the marriage, religion of plaintiff No. 1, the suit property being originally joint property of Yesudas and his brother J. David and so on. He has also cited some case law in support his argument on this point. Learned counsel for the plaintiffs and defendant No. 2 have advanced their argument in reply. But, no substantial questions of law have been formulated on these aspects, nor could I see any having been involved in this case. Therefore, it is not necessary to deal with these arguments in as much as they are out of the scope of substantial questions of law involved in the matter.

38. For these reasons, I find no merit in this appeal and it cannot succeed. In the circumstances, the appeal fails. It stands dismissed and the judgment and decree of the first appellate Court rendered on 26.9.1994 in Regular Civil Appeal No. 630 of 1986 confirming the decree of dismissal of the suit and setting aside

the decree for compensatory costs of Rs. 500/-, is hereby confirmed. Cross-objections are disposed of in these terms. Costs to follow the result.