MAHANT RAM KHILAWAN DAS A
v.
STATE OF M.P.
(Civil Appeal No. 5194 of 2001)

MARCH 10, 2008 B

[TARUN CHATTERJEE & HARJIT SINGH BEDI, JJ.]

Code of Civil Procedure, 1908 – s. 100 – Second Appeal – High Court setting aside the order of first appellate court without formulating the substantial question of law properly – Justification of – Held: Not justified – Question so framed was not substantial question of law but was only a question of fact – It was based on alleged admissions of appellant ignoring other documents and evidence already on record on basis of which first appellate court decreed the appellant's suit – Hence, matter remitted to High Court for framing proper substantial question of law. C D

MR owned a temple and agricultural lands as a Manager of the same. He bequeathed the lands to the appellant to succeed the same as Manger. In 1987-88, the Collector started auctioning the lands. The appellant filed a suit for declaration of title with regard to the suit lands and also a decree for permanent injunction restraining the respondent-State from interfering with the enjoyment and possession of the same. Trial Court dismissed the suit. However, the appellate court allowed the same. In second appeal the High Court framed the substantial question of law that whether in the light of the admission of the appellant-plaintiff that his name did not find place in the revenue records and that he was forcibly dispossessed by the Collector in 1987, the courts below erred in granting a decree for declaration and injunction. The High Court allowed the appeal. Hence the present appeal. E F G

A Allowing the appeal and remitting the matter, the Court

HELD: 1. In second appeal, the High Court should not substitute the findings of the courts below with its own findings unless there is total absence of the B consideration of material evidence. (Para 6) [606-D, E]

Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar **1999 (3) SCC 722 – relied on.**

2.1 In the instant case, the High Court did not frame C the substantial question of law properly in the second appeal so as to interfere with the judgment of the first appellate court. The question of law as framed by the High Court was totally based on the alleged admission of the appellant that his name did not find mention in the revenue D records and that he was forcibly dispossessed by the Collector of the District. At the same time, even assuming that there was an admission on the part of the appellant, before reversing the judgment of the first appellate court, the High Court ought to have considered the other material E evidence on record on which the first appellate court had based its findings. (Para 5) [605-F, G, H; 606-A]

2.2 The entries in the record of rights only raise a presumption that the person whose name is entered in the record of rights is in possession of the suit lands but F the same can be rebutted by adduction of evidence-documentary or oral on record. Therefore, even if there was alleged admission of the appellant that his name did not find place in the revenue records, it would not conclusively prove that the appellant had failed to prove G his title to the suit lands when there was ample evidence on record to prove such title. So far as the question whether the appellant was forcibly dispossessed in 1987, the same was a question of fact, which could not at all be taken to be a substantial question of law. Therefore, the H substantial question of law so framed by the High Court

was not a substantial question of law on the basis of which the decision of the first appellate court could be reversed. (Para 5) [606-A, B, C, D] A

2.3 From the findings of fact arrived at by the first appellate court, it is clear that the other material evidence on record would clearly show that the presumption of the entries in the record of rights relating to the suit lands was amply rebutted and the finding that the appellant had title to the suit lands was amply proved. The first appellate court had drawn an adverse inference against the respondent by coming to a finding that the respondent had not adduced any evidence to the effect that for doing an amendment in the Khasra or other government records, the appellant or his Guru Baba Ram Dass were given any notice under section 115 of the M.P. Land Revenue Act and accordingly, it was held by the first appellate court that the appellant was not bound by those entries. (Para 6) [607-A, B, C, D] B C D

2.4 The substantial question of law was not properly framed and in that view of the matter the judgment of the High Court is set aside and the second appeal is remitted to the High Court for framing a proper substantial question of law and thereafter decide the appeal on merits on the evidence already on record. (Para 6) [607-G, H; 608-A] E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5194 of 2001 F

From the Judgment and Order dated 17.10.2000 of the High Court of Madhya Pradesh at Jabalpur in S.A. No. 443/1994

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K.G. Bhagat, Vineet Bhagat, Monohar Singh Bakshi, Manju Malhotra Ehraz Zafar and Debasis Misra for the Appellant.

B.S. Banthia (NP) for the Respondents.

The Judgment of the Court was delivered by H

A **TARUN CHATTERJEE, J. 1.** This is an appeal by special leave against the judgment and decree dated 17th of October, 2000 of the High Court of Madhya Pradesh at Jabalpur in Second Appeal No. 443 of 1994 whereby the High Court had set aside the judgment and decree of the Additional District B Judge, Panna who in his turn had allowed the appellant's appeal against the decree of the trial court dismissing the suit for declaration and permanent injunction filed by the appellant.

2. The case of the appellant is that a temple in the name of "Shala Janki Raman Mandir' in village Gadhi Padrariya and the C agricultural lands (in short "the suit lands") as fully described in paragraph 1 of the plaint were owned by Mahant Ramdas, who was the guru of the appellant, as Manager of the same. The temple and the suit lands were bequeathed to the appellant by Mahant Ramdas to succeed to the same as Manager. In the D year 1987-88, the Collector Panna started auctioning the suit lands and therefore, the appellant filed a suit for declaration of title with regard to the suit lands and also a decree for permanent injunction restraining the respondent from interfering with the enjoyment and possession of the same. The suit filed by the E appellant was contested by the respondent on the ground that the temple and the suit lands were the property of the state and that Mahant Ramdas was appointed as a priest and after his death, the appellant was appointed in his place as the priest. It was further alleged that when the appellant sent a resignation F letter to the Collector, the same was accepted and another person was appointed in place of the appellant as the priest. Neither Mahant Ramdas nor the appellant owned the temple or the suit lands, which were the property of the state and the Will in question was a fabricated document, which was prepared to G grab the temple and the suit lands. The trial court dismissed the suit of the appellant. Feeling aggrieved, the appellant preferred an appeal before the Additional District Judge, Panna and the same was allowed. Against this decision of the first appellate court, the respondent filed a second appeal, which, as noted herein earlier, was allowed. It is this judgment of the High Court

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which is impugned in this appeal. A

3. While allowing the second appeal, the High Court had framed the following substantial question of law: -

"Whether in the light of the admissions of the plaintiff that his name does not find place in the revenue records and B that he was forcibly dispossessed by the Collector in 1987, the courts below have committed an error in granting a decree for declaration and injunction?

4. The learned counsel for the appellant contended, inter alia, that the High Court had committed an error in as much as C the question framed by it was not a substantial question of law but in fact only a question of fact and therefore, the substantial question of law as framed by the High Court could not be treated as a substantial question of law so as to interfere with the well reasoned judgment of the first appellate court. It was also D contended that the High Court had based its judgment on the alleged admission of the appellant ignoring the other documents and evidence already on record on the basis of which the first appellate court had decreed the suit of the appellant. This submission of the learned counsel for the appellant was seriously E contested by the learned counsel for the respondent who contended that the High Court was fully justified in reversing the judgment of the first appellate court and in restoring the judgment of the trial court.

5. Having heard the learned counsel for the parties and F after examining the judgment of the High Court as well as of the courts below and other materials on record, we are of the view that the High Court had not framed the substantial question of law properly in the second appeal so as to interfere with the judgment of the first appellate court. We are of the opinion that G the question of law as framed by the High Court was totally based on the alleged admission of the appellant that his name did not find mention in the revenue records and that he was forcibly dispossessed by the Collector of the District. At the same time, even assuming that there was an admission on the part of H

A the appellant, before reversing the judgment of the first appellate court, the High Court ought to have considered the other material evidence on record on which the first appellate court had based its findings. It is well settled law that the entries in the record of rights raise a presumption of possession and when the parties B adduce evidence, it is open to the court to come to a conclusion that the entries in the record of rights in respect of the suit land were erroneous. Therefore, even if there was alleged admission of the appellant that his name did not find place in the revenue records, it would not conclusively prove that the appellant had C failed to prove his title to the suit lands when there was ample evidence on record to prove such title. So far as the question whether the appellant was forcibly dispossessed in 1987, the same was a question of fact, which could not at all be taken to be a substantial question of law. Therefore, in our view, the D substantial question of law so framed by the High Court was not a substantial question of law on the basis of which the decision of the first appellate court could be reversed.

6. It is well settled that in second appeal, the High Court should not substitute the findings of the courts below with its E own findings unless there is total absence of the consideration of material evidence. [See ***Kondiba Dagadu Kadam*** Vs. ***Savitribai Sopan Gujar*** [(1999) 3 SCC 722]. That apart, a perusal of the impugned judgment of the High Court would show that practically, the High Court had reversed the findings of the F first appellate court only on the alleged admission of the appellant to the extent that his name did not find mention in the relevant record of rights in respect of the suit lands. In our view, as noted herein earlier, even if such an admission was made by the appellant, then also no inference could be drawn that the G appellant had no title to the suit lands when, admittedly, the appellant had substantiated his plaint case by production of enough material-documentary and oral on record before the courts. It is also well settled that the entries in the record of rights only raise a presumption that the person whose name is entered in the record of rights is in possession of the suit lands but the

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same can be rebutted by adduction of evidence-documentary or oral on record. In the present case, as we have already noted that the High Court, relying only on the alleged admission of the appellant, had reversed the findings of the first appellate court on the question of fact. However, from the findings of fact arrived at by the first appellate court, it is clear that the other material evidence on record would clearly show that the presumption of the entries in the record of rights relating to the suit lands was amply rebutted and the finding that the appellant had title to the suit lands was amply proved. The first appellate court had drawn an adverse inference against the respondent by coming to a finding that the respondent had not adduced any evidence to the effect that for doing an amendment in the Khasra or other government records, the appellant or his Guru Baba Ram Dass were given any notice under section 115 of the M.P. Land Revenue Act and accordingly, it was held by the first appellate court that the appellant before us was not bound those entries. So far as the question of possession of the suit lands is concerned, the first appellate court, which was the final court of fact, had made the following findings: -

> *"In addition to PWs of appellants, Angad Prasad Panda (RW-3) and K.L. Paikray (RW-4) have accepted on their cross-examination that appellant was priest of the temple and till this day, he had been cultivating the lands till the last 2 years back. Appellant has stated in para No.3 of his statement that he has been cultivating 30 acres of land and remaining is left for cows and calves. The respondent has not examined auction purchaser Asha Ram Pujari. In the absence of his deposition, the defence become baseless and contrary to it, the presumption is that appellant is still doing puja of the temple Shala Janaki Raman and upon his lands, it is his possession."*

Be that as it may, without coming to a positive conclusion on the above aspect, we are of the view that the substantial question of law was not properly framed and in that view of the matter, the appeal needs to be allowed and the judgment of the

A High Court set aside and the second appeal is remitted to the High Court for framing a proper substantial question of law and after framing such question, proceed to decide the appeal on merits on the evidence already on record. Whatever observations have been arrived at by us in this judgment shall B be taken to be tentative and the High Court would be free to decide the second appeal after framing a proper substantial question of law.

7. For the reasons aforesaid, the appeal is allowed to the extent indicated above. We request the High Court to dispose C of the second appeal within a period of 6 months from the date of supply of a copy of this order. There will be no order as to costs.

N.J. Appeal allowed.