

A

CHADAT SINGH  
v.  
BAHADUR RAMA AND ORS.

AUGUST 3, 2004

B

[ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

C

*Code of Civil Procedure, 1908—Section 100—Second appeal—Disposal of by High Court without formulating substantial question of law—Justification of—Held : It is for the High Court to formulate a substantial question of law and hear the appeal on the question formulated—In absence of the same, such judgment cannot be maintained and matter is remitted back to High Court for fresh decision.*

D

In these appeals, the issue involved was as to whether the High Court was justified in disposing of the second appeal without formulating the substantial question of law, as mandated by Section 199 CPC.

Disposing of the appeals, the Court

E

HELD : 1.1. In view of Section 100 CPC, 1908, the memorandum of appeal shall precisely state substantial question or questions of law involved in the appeal as required under sub-section (3) of Section 100. Where High Court is satisfied that in any case any substantial question of law is involved it shall formulate that question under sub-section (4) and the second appeal has to be heard on the question so formulated as stated in sub-section (5) of Section 100. [300-A-B]

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G

1.2. In the instant case, a perusal of the impugned judgment passed by High Court does not show that any substantial question of law has been formulated or that the second appeal was heard on the question, if any, so formulated and as such the judgment cannot be maintained. The matters are remitted back to High Court for disposal in accordance with law. [300-H; 301-A; 302-B]

H

*Ishwar Dass Jain v. Sohan Lal*, [2000] 1 SCC 434; *Roop Singh v. Ram Singh*, [2000] 3 SCC 708 and *Kanahaiyalal and Ors. v. Anupkumar and Ors.*, JT (2002) 10 SC 98, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4903- A  
4905 of 2004.

From the Judgment and Order dated 29.4.2002 of the Punjab and Haryana High Court in C.M. No. 29-C/2002, C.M. No. 2070-C of 2002 and order 10.8.2001 passed in RSA No. 594 of 1995.

Mahabir Singh, Rakesh Dahiya, Ms. Madhusmita Bora and Nikhil Jain, for the Appellant.

The Judgment of the Court was delivered by

**ARIJIT PASAYAT, J.** : Leave granted.

As the only point on which notice was issued related to the desirability of disposing of the Second Appeal in terms of Section 100 of the Code of Civil Procedure, 1908 (in short the 'Code') without formulating the substantial question of law by the High Court, it is not necessary to deal with the factual aspects in detail. The second appeal and two miscellaneous petitions were disposed of by a common judgment which form matrix of the present appeals.

Respondent-Bahadur Ram filed a suit for specific performance against 9 defendants. The suit was decreed by the trial Court. However, the same was upset by learned Additional District Judge, Kurukshetra Bahadur Ram filed Second Appeal No. 594/1995 against the judgment of learned Additional District Judge. By the impugned judgment the trial Court's judgment and decree have been restored and that of the first Appellate Court was reversed.

Thought various points were urged by learned counsel for the appellant it is not necessary to go into those aspects in view of the limited scope of the present appeals in view of the notice issued. There is no appearance on behalf of the respondents.

Mr. Mahabir Singh, learned counsel for the appellant submitted that the High Court was not justified in disposing of the Second Appeal without formulating the substantial question or questions of law as mandated by Section 100 of the Code.

- A** In view of Section 100 of the Code the memorandum of appeal shall precisely state substantial question or questions of law involved in the appeal as required under sub-section (3) of Section 100. Where the High Court is satisfied that in any case any substantial question of law is involved it shall formulate that question under sub-section (4) and the second appeal
- B** has to be heard on the question so formulated as stated in sub-section (5) of Section 100.

Section 100 of the Code deals with “Second Appeal”. The provision reads as follows :

- C** “Section 100—(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.
- D**
- (2) An appeal may lie under this section from an appellate decree passed *ex parte*.
- (3) In an appeal under this Section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.
- E**
- (4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.
- (5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :
- F**

- G** Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.”

- H** A perusal of the impugned judgment passed by the High Court does not show that any substantial question of law has been formulated or that

the second appeal was heard on the question, if any, so formulated. That A  
being so, the judgment cannot be maintained.

In *Ishwar Dass Jain v. Sohan Lal*, [2000] 1 SCC 434 this Court in  
para 10, has stated thus :

“10. Now under Section 100 CPC, after the 1976 Amendment, it B  
is essential for the High Court to formulate a substantial question  
of law and it is not permissible to reverse the judgment of the first  
appellate Court without doing so.”

Yet again in *Roop Singh v. Ram Singh*, [2000] 3 SCC 708 this Court C  
has expressed that the jurisdiction of a High Court is confined to appeals  
involving substantial question of law. Para 7 of the said judgment reads:

“7. It is to be reiterated that under section 100 CPC jurisdiction D  
of the High Court to entertain a second appeal is confined only  
to such appeals which involve a substantial question of law and  
it does not confer any jurisdiction on the High Court to interfere  
with pure questions of fact while exercising its jurisdiction under  
section 100 CPC. That apart, at the time of disposing of the matter  
the High Court did not even notice the question of law formulated E  
by it at the time of admission of the second appeal as there is no  
reference of it in the impugned judgment. Further, the fact  
findings courts after appreciating the evidence held that the  
defendant entered into the possession of the premises as a batai,  
that is to say, as a tenant and his possession was permissive and F  
there was no pleading or proof as to when it became adverse and  
hostile. These findings recorded by the two courts below were  
based on proper appreciation of evidence and the material on  
record and there was no perversity, illegality or irregularity in  
those findings. If the defendant got the possession of suit land as  
a lessee or under a batai agreement then from the permissive G  
possession it is for him to establish by cogent and convincing  
evidence to show hostile animus and possession adverse to the  
knowledge of the real owner. Mere possession for a long time  
does not result in converting permissive possession into adverse  
possession (*Thakur Kishan Singh v. Arvind Kumar*, [1994] 6 SCC H

A 591). Hence the High Court ought not to have interfered with the findings of fact recorded by both the courts below.”

The position has been reiterated in *Kanahaiyalal and Ors. v. Anupkumar and Ors.*, JT (2002) 10 SC 98.

B In the circumstances, the impugned judgment is set aside. We remit these matters to the High Court for disposal in accordance with law. The appeals are disposed of in the aforesaid terms with no order as to costs.

N.J.

Appeals disposed of.