Lehna Singh(D) By Lrs vs Gurnam Singh (D) By Lrs on 16 May, 2024

Author: Prashant Kumar Mishra

Bench: Prashant Kumar Mishra, Vikram Nath

REPORTABLE

2024 INSC 429

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

REVIEW PETITION (C) No. 1025 of 2019
IN
CIVIL APPEAL NO. 6567 OF 2014

LEHNA SINGH (D) BY LRS. …. PETITIONER

VERSUS

GURNAM SINGH (D) BY LRS. & ORS. ...RESPONDENTS

JUDGMENT

PRASHANT KUMAR MISHRA, J.

The petitioner has preferred this Review Petition seeking review of the Order dated 13.03.2019 passed in Civil Appeal No. 6567 of 2014 wherein the present petitioner was the respondent.

In the Order under review, the Civil Appeal was allowed, and the judgment and decree passed by the High Date: 2024.05.16 15:26:15 IST Reason:

> Court of Punjab and Haryana on 27.11.2007 in Civil Regular Second Appeal No. 2191 of 1985 was set aside and the judgment and decree passed by the District Judge, Sangrur, on 06.06.1985 in Civil Appeal No. 27 of 1983 has been restored.

2. In the judgment under review, this Court held that the judgment and decree passed by the Punjab and Haryana High Court is beyond the scope and ambit of Section 100 of Code of Civil Procedure, 19081 on the ground that in exercise of such power, the High Court could not have reappreciated the entire evidence on record to unsettle the finding of facts recorded by the First Appellate Court, by substituting its own opinion for that of the First Appellate Court.

3. Basing the judgment rendered in Pankajakshi (Dead) Through Legal Representatives & Ors. v. Chandrika & Ors.2, this Court directed that the review petition be listed before the open Court for hearing and subsequently on 13.08.2019 notices were issued to the opposite parties, at the same time, directing the parties to maintain status quo.

1. 'CPC'

2. (2016) 6 SCC 157

4. In substance, the main ground for review of the judgment is that the Constitution Bench of this Court in Pankajakshi (supra) have uphold the validity of Section 41 of Punjab Courts Act, 19183, overruling this Court's earlier judgment in case of Kulwant Kaur & Ors. v. Gurdial Singh Maan (Dead) By Lrs. & Ors.4 holding that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Act, therefore, Section 41 of the Punjab Act would necessarily continue as a law in force and the second appeal before the High Court has to be heard within the parameters of Section 41 of the Punjab Act, and not under Section 100 CPC.

5. Shri P.S. Patwalia, learned Senior counsel appearing for the petitioner would also refer to the subsequent judgments of this Court in Randhir Kaur v. Prithvi Pal Singh & Ors.5 and Gurbachan Sing (Dead) Through Lrs. v. Gurcharan Singh (Dead) Through Lrs. & Ors.6 wherein this Court relying upon Pankajakshi (supra) held that the scope of interference within

3. 'Punjab Act'

4. (2001) 4 SCC 262

5. (2019) 17 SCC 71

6. (2023) SCC Online SC 875 the jurisdiction of the Punjab and Haryana High Court would be the same as under Section 100 of CPC as it existed prior to the 1976 amendment. The provisions of Section 41 of the Punjab Act and of Section 100 CPC, before its amendment in 1976, are in pari materia. Therefore, the questions of law are not required to be framed in second appeal before Punjab and Haryana High Court whose jurisdiction in second appeal is circumscribed by provision of Section 41 of the Punjab Act.

6. Shri Patwalia would submit that this Court has set aside the Judgment of High Court terming it as beyond the power under Section 100 CPC which is not legally correct, in view of the law laid down in Pankajakshi (supra). It is further argued that in the facts and circumstances of the case, the

petitioner was entitled to succeed to the property by way of natural succession and the finding of the High Court that the Will relied upon by the respondents has not been proved as it is surrounded by suspicious circumstances ought not to have been interfered by this Court. It is argued that a finding of fact erroneously or perversely recorded by the First Appellate Court can always be interfered by the High Court. Hence, there is no infirmity in the Judgment rendered by the High Court and the same ought not to have been interfered by this Court while deciding the Civil Appeal No. 6567 of 2014 on an erroneous ground that the High Court has travelled beyond its jurisdiction and power under Section 100 CPC as it stands of the 1976 amendment.

7. Shri Manoj Swarup, learned senior counsel appearing for the respondents would not dispute the legal position as has been settled by this Court in the matter of Pankajakshi (supra). However, he would submit that even in the case when the High Court would exercise the power under Section 41 of the Punjab Act, the finding of fact recorded by the First Appellate Court cannot be interfered on re-appreciation of evidence to substitute its own decision for that of the First Appellate Court. According to him, the finding recorded by the First Appellate Court was borne out from the record. Therefore, the High Court erred in interfering with the said finding, and this Court rightly set aside the Judgment and decree of the High Court while deciding the Civil Appeal. According to Shri Swarup, the respondents had proved the Will, which was a registered one, in accordance with law and that there were no suspicious circumstances accompanying the Will.

8. When this Court rendered the judgment under review in Civil Appeal No. 6567 of 2014, the only ground which weighed with the Court was that the High Court exercised the power under Section 100 CPC erroneously and decided the second appeal by re-appreciating the evidence without even framing a substantial question of law.

9. The second appeal in Punjab and Haryana High Court is heard under Section 41 of the Punjab Act, which is reproduced hereunder for ready reference: -

> “41. Second Appeals – (1) An appeal shall lie to the High Court from every decree passed in appeal by any court subordinate to the High Court on any of the following grounds, namely:
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> (a) the decision being contrary to law or to some custom or usage having the force of law:
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> (b) the decision having failed to determine some material issue of law or custom or usage having the force of law:
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> (c) a substantial error or defect in the procedure provided by the Code of Civil Procedure 1908 (V of 1908), or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits;

[Explanation – A question relating to the existence or validity of a custom or usage shall be deemed to be a question of law within the meaning of this section:] (2) An appeal may lie under this section from an appellate decree passed ex parte."

10. The provision contained in Section 41 of the Punjab Act, as reproduced above, does not mandate framing of a substantial question of law for entertaining the second appeal. Therefore, a second appeal under Section 41 of Punjab Act can be entertained by the Punjab and Haryana High Court even without framing a substantial question of law.

11. It would be appropriate to refer to the provision contained in Section 41 of the Punjab Act in juxtaposition to Section 100 CPC, before its amendment in 1976, to appreciate and understand the jurisdiction of Punjab and Haryana High Court in second appeal. The provisions are reproduced hereunder for ready reference: -

"Section 41 of the Punjab Act	Section 100 CPC
41. Second appeals.—(1) An appeal shall lie to the High Court from where otherwise expressly every decree passed in appeal by provided in the body of this Code any court subordinate to the High or by any other law for the time Court on any of the following being in force, an appeal shall lie grounds, namely: to the High Court from every decree passed in appeal by any court subordinate to a High Court, on any of the following grounds, namely:	100. Second appeal.—(1) Save otherwise expressly every decree passed in appeal by provided in the body of this Code any court subordinate to the High or by any other law for the time Court on any of the following being in force, an appeal shall lie grounds, namely: to the High Court from every decree passed in appeal by any court subordinate to a High Court, on any of the following grounds, namely:
(a) the decision being contrary to custom or usage law or to some usage having the having the force of law; force of law;	(a) the decision being contrary to law or to some custom or usage law or to some usage having the having the force of law; force of law;
(b) the decision having failed to determine some material issue of law or custom or usage having the force of law;	(b) the decision having failed to determine some material issue of law or usage having the force of law;
(c) a substantial error or defect in the procedure provided by the Code or by any other law for the time being in force, which may time being in force which may possibly have produced error or possibly have produced error or defect in the decision of the case defect in the decision of the case upon the merits.	(c) a substantial error or defect in the procedure provided by this of Civil Procedure, 1908 (V of Code or by any other law for the 1908), or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.
upon the merits;	
* * *	
(2) An appeal may lie under this section from an appellate decree passed ex parte.	(2) An appeal may lie under this section from an appellate decree passed ex parte."

12. In Pankajakshi (supra), the Constitution Bench of this Court has held that substantial question of law may not be required to be framed in a second appeal before Punjab and Haryana High Court. However, the finding of fact recorded, cannot be interfered with even in terms of Section 41 of Punjab Act. The law laid down by this Court in Pankajakshi (supra) has been relied upon in Randhir Kaur (supra) to hold thus in paragraphs 10 to 12: -

> "10. The effect of the Constitution Bench judgment in Pankajakshi is that in second appeal, the scope of interference within the Punjab and Haryana High Court would be the same as the Code of Civil Procedure existed prior to the 1976 Amendment. The provisions of Section 41 of the Punjab Act and of Section 100 CPC are in pari materia.
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> 11. Some of the judgments of this Court dealing with the scope of the old Section 100 are required to be discussed. In a judgment in Deity Pattabhiramaswamy v. S. Hanymayya [AIR 1959 SC 57] — three Judges, while examining the scope of Section 100 CPC, held as under : (AIR p. 59, para 13) "13. The finding on the title was arrived at by the learned District Judge not on the basis of any document of title but on a consideration of relevant documentary and oral evidence adduced by the parties. The learned Judge, therefore, in our opinion, clearly exceeded his jurisdiction in setting aside the said finding. The provisions of Section 100 are clear and unambiguous. As early as in 1891, the Judicial Committee in Durga Choudhrain v. Jawahir Singh Choudhri [1890 SCC OnLine PC 10 : (1889-90) 17 IA 122] stated thus : (SCC OnLine PC) '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.' The principle laid down in this decision has been followed in innumerable cases by the Privy Council as well as by different High Courts in this country. Again the Judicial Committee in Midnapur Zamindary Co. Ltd. v. Uma Charan Mandal [1923 SCC OnLine PC 31 : (1924-25) 29 CWN 131] further elucidated the principle by pointing out : (SCC OnLine PC) '[If] the question to be decided is one of fact, it does not involve an issue of law merely because documents which were not instruments of title or contracts or statutes or otherwise the direct foundations of rights but were merely historical documents, have to be construed.' Nor does the fact that the finding of the first appellate court is based upon some documentary evidence make it any the less a finding of fact (see Wali Mohammad v. Mohd. Bakhsh [1929 SCC OnLine PC 115 : (1929-30) 57 IA 86 : ILR (1930) 11 Lah 199]). But, notwithstanding such clear and authoritative pronouncements on the scope of the provisions of Section 100 CPC, some learned Judges of the High Courts are disposing of second appeals as if they were first appeals. This introduces, apart from the fact that the High Court assumes and exercises a jurisdiction which it does not possess, a gambling element in the litigation and confusion in the mind of the litigant public.

This case affords a typical illustration of such interference by a Judge of the High Court in excess of his jurisdiction under Section 100 CPC. We have, therefore, no alternative but to set aside the decree

of the High Court on the simple ground that the learned Judge of the High Court had no jurisdiction to interfere in second appeal with the findings of fact given by the first appellate court based upon an appreciation of the relevant evidence. In the result, the decree of the High Court is set aside and the appeal is allowed with costs throughout."

12. Later, in a judgment, in Kshitish Chandra Bose v. Commr. [(1981) 2 SCC 103] — three Judges, of this Court held that the High Court has no jurisdiction to entertain second appeal on findings of fact even if it was erroneous. The Court held as follows :

> (SCC p. 108, para 11) "11. On a perusal of the first judgment of the High Court we are satisfied that the High Court clearly exceeded its jurisdiction under Section 100 in reversing pure concurrent findings of fact given by the trial court and the then appellate court both on the question of title and that of adverse possession. In Kharbuja Kuer v. Jangbahadur Rai [AIR 1963 SC 1203 : (1963) 1 SCR 456] this Court held that the High Court had no jurisdiction to entertain second appeal on findings of fact even if it was erroneous. In this connection, this Court observed as follows : (AIR pp. 1205-06, paras 5 & 7) '5. It is settled law that the High Court has no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact. ... ***
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> 7. ... As the two courts approached the evidence from a correct perspective and gave a concurrent finding of fact, the High Court had no jurisdiction to interfere with the said finding.' To the same effect is another decision of this Court in V. Ramachandra Ayyar v. Ramalingam Chettiar [AIR 1963 SC 302 : (1963) 3 SCR 604] where the Court observed as follows :
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> (AIR p. 306, para 12) '12. ... But the High Court cannot interfere with the conclusions of fact recorded by the lower appellate court, however erroneous the said conclusions may appear to be to the High Court, because, as the Privy Council has observed, however gross or inexcusable the error may seem to be, there is no jurisdiction under Section 100 to correct that error.' "

13. In a recent decision in the matter of Gurbachan Singh (supra), this court has reiterated the legal position vis-à-vis Section 41 of Punjab Act and the unamended Section 100 CPC holding thus in paragraphs 9 to 11: -

> "9. The Constitution bench in Pankajakshi (Dead) through LRs v. Chandrika had held Kulwant Kaur v. Gurdial Singh Mann which held section 41 of the Punjab Courts Act, 1918 to be repugnant to section 100, CPC to be bad in law, thereby implying that section 41 of the Punjab Court Act holds as good law. It was held as under: — "25. We are afraid that this judgment in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] does not state the law correctly on both propositions. First and foremost, when Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 speaks of any amendment made or any provision inserted in the principal Act by virtue of a State Legislature or a High Court, the said section refers only to

amendments made and/or provisions inserted in the Code of Civil Procedure itself and not elsewhere. This is clear from the expression "principal Act" occurring in Section 97(1). What Section 97(1) really does is to state that where a State Legislature makes an amendment in the Code of Civil Procedure, which amendment will apply only within the four corners of the State, being made under Schedule VII List III Entry 13 to the Constitution of India, such amendment shall stand repealed if it is inconsistent with the provisions of the principal Act as amended by the Parliamentary enactment contained in the 1976 Amendment to the Code of Civil Procedure. This is further made clear by the reference in Section 97(1) to a High Court. The expression "any provision inserted in the principal Act" by a High Court has reference to Section 122 of the Code of Civil Procedure by which High Courts may make rules regulating their own procedure, and the procedure of civil courts subject to their superintendence, and may by such rules annul, alter, or add to any of the rules contained in the First Schedule to the Code of Civil Procedure."

10. Recently, a Bench of three learned Judges in Satyender v. Saroj while dealing with a property dispute arising out of the State of Haryana, held as under:— "16. We may also add here that we are presently concerned with the laws in the State of Haryana. All the same, the laws as applicable in Punjab in the year 1918, were also applicable to the present territory of Haryana since it was then a part of the State of Punjab. Later on, the creation of the new State of Haryana, under the provision given in Section 88 of the Punjab Re-organization Act, 1966, the laws applicable in the erstwhile State of Punjab continued to be applicable in the new State of Haryana. Furthermore, State of Haryana formally adopted the laws of the erstwhile State of Punjab, under Section 89 of the Punjab Re-Organisation Act, 1966. Therefore, in the State of Haryana a court in second appeal is not required to formulate a substantial question of law, as what is applicable in Haryana is Section 41 of the Punjab Courts Act, 1918 and not Section 100 of CPC. Consequently, it was not necessary for the High Court to formulate a substantial question of law."

11. In view of the above discussion, it is clear to this court that the judgment of the learned single Judge sitting in second appellate jurisdiction cannot be faulted for not having framed substantial questions of law under section 100, CPC".

14. Regard being had to the settled legal position in Pankajakshi (supra) reiterated in Randhir Kaur (supra) and Gurbachan Singh (supra), we are of the view that the Judgment of this Court under review in Civil Appeal No. 6567 of 2014 has been wrongly decided holding that the Punjab and Haryana High Court has travelled beyond the jurisdiction under Section 100 CPC by interfering with the finding of fact recorded by the First Appellate Court without framing a substantial question of law.

15. Since there is an error apparent on the face of the record, in view of the law laid down in Pankajakshi (supra), we review our judgment in Civil Appeal No. 6567 of 2014 and recall the same for deciding the Civil Appeal on merits. The Review Petition is allowed. The Civil Appeal is restored

to its original number and taken on board with the consent of the parties, and we proceed to decide the Civil Appeal afresh on merits.

16. This Civil Appeal is preferred by the defendants in the suit against whom the plaintiff brought a suit for perpetual injunction on the pleadings, inter alia, that he and his brother Bhagwan Singh alias Nikka Singh were owners in possession of the suit land. Bhagwan Singh was issueless being unmarried. Since the defendant No. 1 was trying to dispossess the plaintiff forcibly, the suit for perpetual injunction was filed. The defendants did not deny that plaintiff and Bhagwan Singh were real brothers. However, he claimed to be the half-brother of Bhagwan Singh as they were given birth by same lady namely Mrs. Har Kaur who was earlier married to Sunder Singh but after his death, she was married to Mehar Singh and the defendant no. 1 was born out of the wedlock of Har Kaur with Mehar Singh. The defendant's case rested on a Will allegedly executed by Bhagwan Singh on 17.01.1980. Prior to this, Bhagwan Singh had executed an unregistered Will on 17.08.1979. However, the defendant admitted that during the lifetime of Bhagwan Singh, the suit land was cultivated jointly by the plaintiff and Bhagwan Singh. In the alternative, the defendant pleaded that if plaintiff's possession over the suit land is proved, the defendant nos. 2 to 6, the beneficiary of the Will, are entitled to joint possession of half share of the suit land.

17. On the strength of evidence adduced by the parties in course of trial, it was held by the trial court that the defendants have failed to prove the genuineness of the Will, therefore, the plaintiff is entitled to succeed by way of natural succession. It was found that the Will relied by the defendants is surrounded by suspicious circumstances, therefore, it is not a validly executed Will. The trial court held that the defendants' case that they served the deceased Bhagwan Singh during the lifetime and out of love and affection for the services rendered, he executed the Will in their favour as they were also related to the deceased, has not been believed by the trial court. There is evidence that it was plaintiff who admitted Nikka Singh in hospital on 02.08.1979 when he was ill and his address was also shown as care of Lehna Singh (the 'plaintiff').

18. Upon careful marshalling of evidence, the trial court recorded a finding about active participation of Jagjit Singh (DW-3) in execution of the Will and the absence of mention in the Will as to why he disinherited his real brother, the plaintiff, from succeeding the property and more so when he was living with him and was attended to during his ill health. Since the defendant admit joint possession and cultivation of the land by Nikka Singh and plaintiff, a fact contrary to this mentioned in the Will was also highlighted by the trial court. Despite there being an earlier Will there was no mention that the said Will is cancelled and the name of father of Gurnam Singh was also wrongly mentioned. The trial court also found that Nikka Singh was suffering from cancer and was also a patient of T.B.

19. The trial court also found that the plaintiff is in possession of the suit land as the said fact has been admitted by one of the defendant's witnesses namely Gurnam Singh.

20. The First Appellate Court set aside the finding of the trial court holding that the trial court was wrongly persuaded by insignificant circumstances to hold that the Will in favour of the defendant nos. 2 to 6 is not genuine and that it is surrounded by suspicious circumstances. The First Appellate

Court eventually passed a decree for joint possession in favour of defendant which was assailed by plaintiff Lehna Singh before the High Court by preferring an appeal under Section 41 of the Punjab Act. The High Court, under the impugned Judgment, allowed the appeal, set aside the appellate decree passed by the District Judge, Sangrur, restoring the Judgment and decree passed by the trial court.

21. The High Court has discussed the evidence threadbare and framed the following substantial questions of law: -

> (i) Whether the Appellate Court can reverse the findings recorded by the learned trial court without adverting to the specific finding of the trial court?
>
> (ii) Whether the judgment passed by the learned lower Appellate Court is perverse and outcome of misreading of evidence?

22. The High Court answered both the questions of law in favour of the plaintiff/respondent herein (in Civil Appeal) on the reasoning that when the person entitled to the property of the deceased by way of natural succession, is disinherited from the property without giving any reason and the covenants in the Will are also found to be factually incorrect, mere registration of the Will and proof of the same by attesting witnesses could not be treated to be sufficient to over-come the suspicious circumstances as has been done by the First Appellate Court. The High Court also observed that the propounders of the Will were earlier tried for murder of the deceased-testator and there being no evidence on record to show that the deceased had special love and affection with the defendants and when it is proved that the plaintiff is in possession of the land and the defendant and their witnesses actively participated in the execution of the Will, there is glaring suspicious circumstances to hold that the Will is not genuine. It was also observed that the testator was residing with the plaintiff, and it was he who got him admitted in the hospital, it was proved that the plaintiff was taking care of the deceased at the time of his need. Merely because the attesting witnesses had no enmity towards the plaintiff, it cannot dispel the suspicious circumstances surrounded around the Will.

23. It is settled law that the First Appellate Court, while setting aside the Judgment and decree of the trial court, is required to meet the reasoning given by the trial court in rejecting the Will, which in the present case has not been done by the First Appellate Court.

24. The requirement of exercise of jurisdiction by the First Appellate Court under Section 96 of CPC has been dealt with by this Court in Chintamani Ammal vs. Nandagopal Gounder and Anr.7, wherein after noticing the previous judgments of this Court, the following has been held in paragraphs 18, 19 and 20 thus: -

> 7.

(2007) 4 SCC 163 “18. Furthermore, when the learned trial Judge arrived at a finding on the basis of appreciation of oral evidence, the first appellate court could have reversed the same only on assigning sufficient reasons therefor. Save and except the said statement of DW 2, the learned Judge

did not consider any other materials brought on record by the parties.

19. In Madholal Sindhu v. Official Assignee of Bombay, it was observed: (AIR p. 30, para 21) “It is true that a judge of first instance can never be treated as infallible in determining on which side the truth lies and like other tribunals he may go wrong on questions of fact, but on such matters if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at, the appeal court should not lightly interfere with the judgment.” (See also Madhusudan Das v. Narayanibai)

20. In Rajbir Kaur v. S. Chokesiri and Co., this Court observed:

> (SCC pp. 39-41, paras 48-52) “48. Reference on the point could also usefully be made to A.L. Goodhart's article in which, the learned author points out:
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> ‘A judge sitting without a jury must perform dual function. The first function consists in the establishment of the particular facts. This may be described as the perceptive function. It is what you actually perceive by the five senses. It is a datum of experience as distinct from a conclusion.
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> It is obvious that, in almost all cases tried by a judge without a jury, an appellate court, which has not had an opportunity of seeing the witnesses, must accept his conclusions of fact because it cannot tell on what grounds he reached them and what impression the various witnesses made on him.’
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> 49. The following is the statement of the same principle in ‘The Supreme Court Practice’:
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> ‘Great weight is due to the decision of a judge of first instance whenever, in a conflict of testimony, the demeanour and manner of witnesses who have been seen and heard by him are material elements in the consideration of the truthfulness of these statements. But the parties to the cause are nevertheless entitled as well on questions of fact as on questions of law to demand the decision of the court of appeal, and that court cannot excuse itself from the task of weighing conflicting evidence, and drawing its own conclusions, though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. (pp. 854-55) ...Not to have seen witnesses puts Appellate Judges in a permanent position of disadvantage against the trial Judge, and unless it can be shown that he has failed to use or has palpably misused his advantage—for example has failed to observe inconsistencies or indisputable fact or material probabilities (ibid.
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> and Yuill v. Yuill; Watt v. Thomas —the higher court ought not take the responsibility of reversing conclusions so arrived at merely as the result of their own comparisons and criticisms of the witnesses, and of their view of the probabilities of the case. ... (p. 855) ...But while the court of appeal is always reluctant to reject a finding by a judge of the specific or primary facts deposed to by the witnesses, especially when the

> finding is based on the credibility or bearing of a witness, it is willing to form an independent opinion upon the proper inference to be drawn from it. ... (p. 855)
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> 50. A consideration of this aspect would be incomplete without a reference to the observations of B.K. Mukherjea, J., in Sarju Pershad Ramdeo Sahu v. Jwaleshwari Pratap Narain Singh [1950 SCC 714 : AIR 1951 SC 120 : 1950 SCR 781] which as a succinct statement of the rule, cannot indeed be bettered:
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> 'The question for our consideration is undoubtedly one of fact, the decision of which depends upon the appreciation of the oral evidence adduced in the case. In such cases, the appellate court has got to bear in mind that it has not the advantage which the trial Judge had in having the witnesses before him and of observing the manner in which they deposed in court. This certainly does not mean that when an appeal lies on facts, the appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. The rule is— and it is nothing more than a rule of practice—that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of the witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate court should not interfere with the finding of the trial Judge on a question of fact.
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> 51. The area in which the question lies in the present case is the area of the perceptive functions of the trial Judge where the possibility of errors of inference does not play a significant role.

The question whether the statement of the witnesses in regard to what was amenable to perception by sensual experience as to what they saw and heard is acceptable or not is the area in which the well-known limitation on the powers of the appellate court to reappreciate the evidence falls. The appellate court, if it seeks to reverse those findings of fact, must give cogent reasons to demonstrate how the trial court fell into an obvious error.

52. With respect to the High Court, we think, that, what the High Court did was what perhaps even an appellate court, with full- fledged appellate jurisdiction would, in the circumstances of the present case, have felt compelled to abstain from and reluctant to do. Contention (c) would also require to be upheld." (emphasis in original)

25. In Jagannath v. Arulappa & Anr.8 and H.K.N. Swami v. Irshad Basith (Dead) By Lrs.9, this Court has opined that it would be wholly improper to allow first appeal without adverting to the specific findings of the trial court and that the First Appellate Court is required to address all the issues and determine the appeal upon assignment of cogent reasons.

26. Having considered the evidence on record and the findings of the trial court, the First Appellate Court and the High Court, we are satisfied that the First Appellate Court wrongly set aside the

Judgment, decree, and findings of the trial court without meeting the findings of the trial court which could not have

8. (2005) 12 SCC 303

9. (2005) 10 SCC 243 been done in exercise of power under Section 96 CPC. Therefore, the High Court has rightly set aside the Judgment and decree of the First Appellate Court to restore the Judgment and decree of the trial court. On independent examination also, we have found that the findings recorded by trial court are borne out from the evidence on record and are neither perverse nor illegal.

27. Therefore, we find no substance in this appeal which deserves to be and is hereby dismissed.

28. The parties shall bear their own costs.

..... J.

(VIKRAM NATH) ..... J.

(PRASHANT KUMAR MISHRA) NEW DELHI;

May 16, 2024.