Kanhaiyalal And Ors. vs Anupkumar And Ors. on 27 November, 2002

Equivalent citations: AIR2003SC689, 2003(3)AWC2098(SC), 2003(1)BLJR432, (SCSUPPL)2003(2)CHN120, 95(2003)CLT226(SC), [2003(1)JCR237(SC)], JT2002(10)SC98, (2003)1SCC430, 2003(1)UJ345(SC), 2003(2)WLN711, AIR 2003 SUPREME COURT 689, 2003 (1) SCC 430, 2002 AIR SCW 5368, 2002 (7) SLT 170, 2002 (9) SCALE 119, 2003 (1) ALL CJ 635, 2003 ALL CJ 1 635, 2003 (1) BLJR 432, 2003 (2) SRJ 248, (2003) 1 CGLJ 123, (2003) 1 JCR 237 (SC), (2003) 2 ALLINDCAS 602 (SC), 2003 (1) UJ (SC) 345, (2003) 1 DMC 383, (2003) 1 UC 317, (2002) 6 ANDH LT 318, (2003) 94 REVDEC 283, (2002) 8 SUPREME 620, (2002) 9 SCALE 119, (2003) 2 JAB LJ 1, (2003) 1 LANDLR 538, (2003) 1 RECCIVR 293, (2003) 1 ICC 798, (2003) 1 WLC(SC)CVL 217, (2003) 50 ALL LR 277, (2003) 3 ALL WC 2098, (2003) 2 CAL HN 120, (2003) 1 CIVLJ 804, (2003) 1 CURCC 1, (2003) 95 CUT LT 226, (2003) 2 HINDULR 167, (2003) 2 RECCIVR 380

Bench: Shivaraj V.Patil, Arijit Pasayat

ORDER

1. Heard the learned counsel for the parties.

2. The impugned judgments were passed by the High Court of Madhya Pradesh at Jabalpur in second appeals reversing the concurrent findings of fact recorded by the trial court as well as the first appellate court. Though the High Court elaborately considered the contentions and the evidence placed on record, the impugned judgments do not reflect or indicate as to what was the substantial question of law that arose for consideration between the parties, as required under Section 100 of the Code of Civil Procedure.

3. The learned senior counsel for the respondents, in support of the impugned judgment, contended that though substantial question of law was not specifically stated in the impugned judgment, it can be made out from the very judgment that the findings recorded by the trial court and the first appellate court were perverse and perversity itself was a substantial question of law for disturbing the findings of fact recorded by the courts below. He also added that in the High Court of Madhya Pradesh, there is a practice that substantial question of law is separately framed at the time of admission in the order sheet. We may notice one more fact that the arguments were heard by the High Court and the appeals were reserved for judgment on 21st November, 1990. The High Court pronounced the impugned judgments as late as on 7th May, 1993 allowing the appeals, interfering with the findings of fact recorded by the courts below.

4. In a second appeal filed under Section 100 of the Code of Civil Procedure, the Memorandum of Appeal shall precisely state the substantial question of law involved in the appeal as required under Sub-section (3). Where the High Court is satisfied that in any case a substantial question of law is involved, it shall formulate that question under Sub-section (4). The second appeal shall be heard on the question so formulated as stated in Sub-section (5).

5. The impugned judgments do not indicate any substantial question of law formulated and that the second appeals were heard on any substantial question of law.

6. This Court has taken the view in cases more than one that in second appeals, substantial question or questions of law must arise for consideration and the appeals are to be heard on the substantial questions of law so formulated.

7. In Ishwar Dass Jain v. Sohan Lal , this Court, in para 10, has stated thus:

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

8. Yet again, in Roop Singh v. Ram Singh , this Court 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 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 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 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 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). Hence, the High Court ought not to have interfered with the findings of fact recorded by both the courts below."

(Emphasis supplied)

9. In the light of what is stated above, in our view, the impugned judgments cannot be sustained. Further, as stated above, the arguments were heard in November, 1990 and the High Court pronounced the judgments on 7th May, 1993. This Court in Bhagwandas Fatechand Daswani and Ors. v. HPA International and Ors. , dealing with the contention that the long delay in delivery of judgment is sufficient to set aside the judgment under appeal without going into this broad question, set aside the judgment under appeal on the ground of delay in delivery of judgment without expressing any opinion on the merits of the case and remitted the case to the High Court for deciding the appeal afresh on merits. While doing so this Court observed, "However, it is correct to this extent that a long delay in delivery of judgment gives rise to unnecessary speculations in the minds of parties to a case. Moreover, the appellants whose appeals have been dismissed by the High Court may have the apprehension that the arguments raised at the Bar have not been reflected or appreciated while dictating the judgment - nearly after five years..... We, therefore, on this short question, set aside the judgment under appeal." In this view also the judgment of the High Court under challenge cannot be sustained.

10. In the circumstances, the impugned judgments are set aside. The appeals are allowed. We remit these matters to the High Court for disposal in accordance with law, keeping in view the observations made above.

11. Taking note of the fact that the suits are of the year 1972, we request the High Court to dispose of the second appeals within a period of six months from the date of receipt of the copy of this order.