Kondiba Dagadu Kadam vs Savitkibai Sopan Gujar An Dors on 16 April, 1999

Equivalent citations: AIR 1999 SUPREME COURT 2213, 1999 (3) SCC 722, 1999 AIR SCW 2240, 1999 UJ(SC) 2 820, (1999) 2 LANDLR 375, (1999) 2 MAD LW 614, 1999 SCFBRC 248, (1999) 2 RECCIVR 587, (1999) 3 ICC 620, (1999) 2 SCALE 633, (1999) 2 ALL WC 1608, (2000) 1 RAJ LW 89, (1999) 2 CURCC 36, (1999) 2 MAD LJ 105, 1999 ADSC 4 484, (1999) 4 ANDHLD 57, (1999) 3 ALLMR 467 (SC), (1999) 4 SUPREME 108, (1999) 36 ALL LR 218, (1999) 3 ANDHWR 152, (1999) 3 CIVLJ 134, (1999) 2 CURLJ(CCR) 470, (1999) 3 JT 163 (SC), (1999) 3 BOM CR 532

Bench: S. Saghir Ahmad, R.P Sethi

CASE NO.:
Appeal (civil) 2329 of 1999

PETITIONER:
KONDIBA DAGADU KADAM

RESPONDENT:
SAVITKIBAI SOPAN GUJAR AN DORS.

DATE OF JUDGMENT: 16/04/1999

BENCH:
S. SAGHIR AHMAD & R.P SETHI

JUDGMENT:

JUDGMENT 1999 (2) SCR 728 The Judgment of the Court was delivered by SETHI, J. Leave granted.

Despite amendment by the Amending Act No. 104 of 1976, Section 100 of the Code of Civil Procedure appears to have been liberally construed and generously applied by some Judges of various High Court with the result that the drastic changes made in the law and the object behind that appears to have been frustrated. The amending Act was introduced on the basis of various Law Commission Reports recommending for making appropriate provisions in the Code of Civil Procedure which were intended to minimise the litigation, to give the litigant fair trial in accordance with accepted principles of natural justice, to expedite the disposal of civil suits and proceedings so that justice is not delayed, to avoid complicated procedure, to ensure fair deal to the poor sections of the community and restrict the second appeals only on such question which are certified by the Courts to be substantial question of law.

After the amendment a second appeal can be filed only if a substantial question of law is involved in the case. The memorandum of appeal must precisely state the substantial question of law involved and the High Court is obliged to satisfy itself regarding the existence of such question. If satisfied, the High Court has to formulate the substantial question of law involved in the case. The appeal is required to be heard on the question so formulated. However, the respondent at the time of the hearing of the appeal has a right to argue that the case in the court did not involve any substantial question of law. The proviso to the Section acknowledges the powers of the High Court to hear the appeal on a substantial point of law, though not formulated by it with the object of ensuring that no injustice is done to the litigant where such question was not formulated at the time of admission either by mistake Or by inadvertence.

It has been noticed time and again that without insisting for the statement of such substantial question of law in the memorandum of appeal and formulating the same at the time of admission, the High Courts have been issuing notices and generally deciding the second appeals without adhering to the procedure prescribed under Section 100, Code of Civil Procedure, It has further been found in a number of cases that no efforts are made to distinguish; between a question of law and a substantial question of law. In exercise of the powers under this Section the findings of fact of the 1st appellate court are found to have been disturbed. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in the Section must be strictly fulfilled before a second appeal can be maintained and no court has the power to add to or enlarge those grounds. The second appeal : cannot be decided on merely equitable grounds. The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under this Section. The substantial question of law has to be distinguished from a substantial question of fact This Court in Sir Chunilal V. Mehta and Sons Ltd. v. Century Spinning and Manufactuing Co. Ltd, AIR (1962) SC 1314 held that :-

> "The proper test for determining whether a question of law raised in the case is substantial would, in bur opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views, If the question is settled by the highest Court or the general principles to be applied in determining the question are wellsettled and there is a mere question of applying those principles or that the plea raised is palpably absurbed the question would not be a substantial question of law."

It is not within the domain of the High Court to investigate the grounds on which findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court had given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any

other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the tower appellate court were erroneous being contrary to the mandatory provisions of law applicable of its settled position on the basis of pronouncements made by the apex Court, or was based upon in inadmissible evidence or arrived at without evidence.

If the question of law termed as substantial question stands already decided by a larger bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court, its merely wrong application on facts of the case would not be termed to be a substantial question of Jaw. Where a point of law has not been pleaded or is found to be arising between the parties in the absence of any factual format, a litigant should not be allowed to raise that question as substantial question of law in second appeal. The mere appreciation of the facts, the documentary evidence or the meaning of entrie and the contents of the document cannot be held to be raising a substantial question of law. But where it is found that the first appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as substantial question of law. Where the first appellate court is shown to have exercised its discretion in a judicial manner, it Cannot be termed to be an error either of law or procedure requiring interference in second appeal. This Court in Reserve Bank of India & Anr, v. Ramakrishan Govind Morey, AIR (1976) SC 830 held that whether trial court should not have exercised its jurisdiction differently is not a question of law justifying interference.

The instant case is one of such cases where the provisions of Section 100 of the Code of Civil Procedure have wrongly been applied and the findings of fact of the first appellate ctiurt disturbed without adhering to the principles of and the limitations imposed by Section 100 of O.P.C The appellant herein had filed a suit for specific performance against the respondent with regard to an agreement for sale dated 12.5.1972 which was dismissed by the trial court by its order dated 25.6.1985: The lower appellate court by its order dated 9.1,1987 allowed the appeal and granted the relief of specific performance in favour of the plaintiff. The appellate court found on facts deceased Sopana had executed document Ex.p-68 Which was proved by the witnesses in whose presence the deceased had put his thumb impression. Annexure R-l furnished by the respondent itself shows that PW-Babu had categorically stated "There was an agreement to reconvey the suit lands between deceased Sopan and plaintiff in the year 1966 in my presence. I signed that agreement. Signature now shown to me is mine. Agreement was executed by deceased Sopan in favour of plaintiff; Deceased used to make thumb impression. He made thumb impression in my presence. Deceased Sopan wrote in this document that he will return the suit lands to plaintiff." The findings of the first appellate court cannot to termed to be either perverse or based upon no evidence, Such findings are based upon appreciation of evidence and being the finding of the last court on facts were binding upon the parties. The learned single Judge of the High Court was, therefore, not justified to hold that there was no independent proof with regard to the thumb impression of Sopan. The fact that the learned single Judge of the High Court has only appreciated the evidence is evident from his findings, "The lower appellate court has only relied upon the evidence of two attesting witnesses-vis. Sopan Shankar Nadha and Police Patil Ranu Laxman Shinde, In this context, it is very vital to note that Ramu Laxman Shinde, the Police Patil, in his evidence, has stated that he was present at the time of execution of the said agreement of repurchase dated 12the May, 1972. However, it is very-

strange that in the plaint; there is no reference whatsoever with regard to the said Ramu Laxman Shinde, the Police Patil, being present at time of execution of the said agreement of repurchase dated 12th May, 1972, In view thereof, I am not inclined to accept `the evidence of said Ramu Laxman Shinde, the Police Patil.

The evidence of Sopan Shankar Nadhe is also not reliable in as much as it is stated that as far as an agreement of 1966 is concerned, that the thumb impression was that of Sopan and in the same breath he also states that he is not aware whether it was Sopan's thumb impression."

No question of law much less any substantial question, was involved in the second appeal requiring interference by the High Court in exercise of its jurisdiction under Section 100 of Code of Civil Procedure. The order of the learned single Judge/impugned in this appeal being against the settled norms and contrary to the mandate to Section 100 CPC, therefore, cannot be sustained.

Under the circumstances, the appeal is allowed by setting aside the impugned judgment of the High Court and restoring the judgment of the first appellate court with costs through out.