

STATE OF RAJASTHAN & ORS.

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v.

GRAM VIKAS SAMITI, SHIVDASPURA

(Civil Appeal No. 3505 of 2009)

JANUARY 07, 2019

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**[ABHAY MANOHAR SAPRE AND INDU MALHOTRA, JJ.]**

*Code of Civil Procedure, 1908 – s.100 – Substantial question of law – Suit filed by respondent-society against the State and its authorities seeking permanent injunction against appellants restraining them from interfering in the respondent’s possession over the suit land – Trial court decreed the suit – State’s appeal dismissed – High Court also dismissed State’s appeal on the ground that the appeal did not involve any substantial question of law – On appeal, held: High Court did not assign any reasons while dismissing the appeal nor discussed the case on facts or law – Even the cursory reading of the judgments of the trial court and the first appellate court showed that the second appeal did involve substantial question of law – Therefore, the second appeal should have been admitted for final hearing by framing proper substantial question of law arising in the case under s.100 for its final disposal – Matter remitted to High Court for consideration afresh.*

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**Allowing the appeal and remitting the matter to High Court, the Court**

**HELD:** The High Court did not discuss nor dealt with any issues arising in the case nor dealt with any submissions urged by the appellant with a view to show as to how and on what basis the findings impugned in the second appeal were bad in law and why the appeal did not involve any substantial question(s) of law. This Court cannot countenance such casual approach of the High Court in disposing of the second appeal, which does not decide nor deals with any issue(s) arising in the case. The dispute involved in the second appeal related to the State land and its title and possession. It should have been adjudicated in the light of legal principle applicable to the case, pleadings and evidence. [Paras 9, 10 and 12][61-E-F; 62-A-B]

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A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3505 of 2009.

From the Judgment and Order dated 20.04.2007 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in S.B. Civil Regular Second Appeal No. 186 of 2007.

B Ajay Choudhary, Adv. for the Appellants.

The Judgment of the Court was delivered by

C **ABHAY MANOHAR SAPRE, J.** 1. This appeal is directed against the final judgment and order dated 20.04.2007 passed by the High Court of Judicature for Rajasthan, Bench at Jaipur in S.B. Civil Regular Second Appeal No.186 of 2007 whereby the Single Judge of the High Court dismissed the second appeal filed by the appellants herein and affirmed the order dated 15.07.2006 passed by the first Appellate Court in Regular Civil Appeal No. 37 of 2003.

D 2. Few facts need mention *infra* for disposal of this appeal.

3. The State and its authorities are the appellants herein. They are the defendants whereas the respondent is the plaintiff in a civil suit out of which this appeal arises.

E 4. The respondent claiming to be the Society filed a civil suit against the State and its authorities in relation to the suit land. The suit was for grant of relief of permanent injunction restraining the appellants (defendants) from interfering in the respondent's (plaintiff's) possession over the suit land. It was contested by the appellants (defendants).

F 5. The Trial Court by judgment/decreed dated 26.09.2002 in Civil Suit No.38 of 2000 decreed the suit and granted permanent injunction to the respondent (plaintiff) and against the appellants (defendants) in relation to the suit land. The defendants (State) felt aggrieved and filed first appeal before the Additional District Judge, Jaipur being Regular Civil Appeal No. 37 of 2003. By Judgment dated 15.07.2006, the first Appellate Court dismissed the State's appeal and affirmed the judgment and decree of the Trial Court giving rise to filing of the Second appeal by the State before the High Court.

G 6. By impugned order, the High Court dismissed the State's appeal in *limine* holding that the appeal does not involve any substantial question of law and hence this appeal by special leave by the State in this Court against the impugned order.

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7. None appeared for the parties. We, therefore, perused the record of the case. Having perused the record, we are of the view that this appeal has to be allowed and the case deserves to be remanded to the High Court for deciding the State's second appeal afresh on merits in accordance with law. A

8. The need to remand the case to the High Court for deciding the second appeal afresh on merits has occasioned because we find that the High Court did not assign any reasons while dismissing the appeal and nor discussed the case on facts or in law. This is clear from the impugned order, which is reproduced below: B

**“I have heard learned counsel for the appellant-defendants and have also gone through the impugned judgments of the two courts below. C**

**I find that the courts below have arrived at the finding after due appreciation of the evidence led by the parties. There is no infirmity in the finding of the courts below. Therefore, D**

**Hence, this second appeal is dismissed in limine.”**

9. In our considered opinion and as would be clear from the mere perusal of the order quoted above, the High Court did not discuss nor dealt with any issues arising in the case nor dealt with any submissions urged by the appellant (State) with a view to show as to how and on what basis the findings impugned in the second appeal were bad in law and why the appeal did not involve any substantial question(s) of law. E

10. This Court cannot countenance such casual approach of the High Court in disposing of the second appeal, which does not decide nor deals with any issue(s) arising in the case. F

11. In our view, even the cursory reading of the judgments of the Trial Court and the First Appellate Court would show that the second appeal does involve substantial question(s) of law and, therefore, the second appeal should have been admitted for final hearing by framing proper substantial question(s) of law arising in the case under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”) for its final disposal. G

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A 12. As is clear from the record of the case, the dispute involved in the second appeal relates to the State land. The question relating to the title and possession over the land in question is involved. The High Court with a view to find out as to who is the owner of the land and who is in its possession, whether the plaintiff as claimed was able to prove their title over the suit land to the exclusion of the rights of the State and, if so, on what basis and whether his possession if proved, is legal or not, etc. requires elaborate discussion. It should have been adjudicated in the light of legal principle applicable to the case, pleadings and evidence.

B 13. It is for these reasons, we are of the view that the case needs to be remanded to the High Court for deciding of the Second Appeal afresh on all such questions which do arise in the case but were not decided much less in accordance with law.

C 14. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. Impugned order is set aside. The case is remanded to the High Court for deciding Second Appeal No. 186/2007 afresh on merits.

D 15. The High Court will admit the second appeal by framing proper substantial question(s) of law arising in the case as required under Section 100 of the Code and then after issuing notice of the appeal alongwith a copy of substantial question of law framed to the respondent (plaintiff) will decide the second appeal on merits by answering the questions framed in accordance with law.

E 16. We, however, make it clear that we have not applied our mind to the merits of the controversy having formed an opinion to remand the case to the High Court. The High Court will, therefore, decide the second appeal uninfluenced by any of our observations.

F 17. Since the appeal is quite old, we request the High Court to decide the appeal as expeditiously as possible.

G 18. Since no one appeared for any of the parties in this appeal, we request the High Court to issue notice to the parties for their appearance in the Second appeal so as to enable the High Court to dispose of the appeal finally as directed above.