

A CHAND KAUR (D) THR. LRS.
v.
MEHAR KAUR (D) THR. LRS.
(Civil Appeal Nos. 3276-3281 of 2019)
B MARCH 28, 2019
**[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI, JJ.]**

- Code of Civil Procedure, 1908 – s.100 – Second appeals were disposed of by the High Court without framing any substantial question(s) of law – Held: Framing of substantial questions of law in instant appeals was mandatory because the High Court allowed the second appeals and interfered in the judgment of the First Appellate Court, which was impugned in the second appeals – The sine qua non for allowing the second appeal is to first frame the substantial question(s) of law arising in the case and then decide the second appeal by answering the question(s) framed – Thus, case remanded to High Court to first frame substantial question(s), which, according to the appellants of the second appeals, arise in their respective second appeals.*

E **Allowing the appeals, the Court**

- HELD:** 1. This Court has consistently held that the High Court has no jurisdiction to allow the second appeal without framing a substantial question of law as provided under Section 100 of the Code. In other words, the *sine qua non* for allowing the second appeal is to first frame the substantial question(s) of law arising in the case and then decide the second appeal by answering the question(s) framed. [Para 6][888-G-H; 889-A]

2. Since in this case, the High Court failed to frame any substantial question either at the time of admitting the appeal or before final hearing and yet proceeded to allow some of the second appeals in the bunch by modifying the judgment impugned therein, the High Court committed jurisdictional error requiring this Court to interfere. Thus, cases remanded to the High Court, which will accordingly decide the appeals on merits strictly in accordance with law. [Para 7][889-C-E]

CHAND KAUR (D) THR. LRS. v. MEHAR KAUR (D) 887
THR. LRS.

Surat Singh(Dead) v. Siri Bhagwan & Ors. (2018) 4 SCC 562 : [2018] 1 SCR 1063; Vijay Arjun Bhagat & Ors. v. Nana Laxman Tapkire & Ors. (2018) 6 SCC 727 : [2018] 4 SCR 452 – referred to. A

<u>Case Law Reference</u>		
[2018] 1 SCR 1063	referred to	Para 6 B
[2018] 4 SCR 452	referred to	Para 6

CIVIL APPELLATE JURISDICTION:Civil Appeal Nos. 3276-3281 of 2019 C

From the Judgment and Order dated 23.03.2011 of the High Court of Punjab and Haryana at Chandigarh in R.S.A. Nos. 2066, 2067, 2068, 2292, 2293 & 2294 of 1987

P. P. Nayak, Ms. Vandana Hooda, Ms. Bhupinder, Ajay Pal,, D Advs. for the Appellants.

Ms. Shruti Bisht, Ms. S. Janani, Advs. for the Respondents.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted. E

2. These appeals are directed against the final judgment and order dated 23.03.2011 passed by the High Court of Punjab & Haryana at Chandigarh in RSA Nos. 2066, 2067, 2068, 2292 and 2294 of 1987.

3. It is not necessary to set out the facts in detail for the disposal of these appeals for the reason that having heard the learned counsel for the parties and on perusal of the record of the case, we have formed an opinion to remand the case to the High Court for deciding the second appeals, out of which these appeals arise, for their fresh disposal on merits in accordance with law. F

4. The need to remand these cases to the High Court is called for because we find that the High Court though disposed of bunch of second appeals (RSA Nos.2066 to 2068 of 1987 and RSA 2292 to 2294 of 1987) but it did so without framing any substantial question(s) of law as is required to be framed under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”). G

H

A 5. In our opinion, framing of substantial question(s) of law in the present appeals was mandatory because the High Court allowed the second appeals and interfered in the judgment of the First Appellate Court, which was impugned in the second appeals. It is clear from the last paragraph of the impugned order quoted hereinbelow:

B **“However, I am unable to convince myself with the latter part of the judgment of the ld. lower appellate court wherein Chand Kaur was held to be entitled to ½ share of the property of Jaimal, by placing reliance on the judgment delivered in the previous litigation between Mehar Singh and Chand Kaur. Once the ld. lower Appellate Court arrived at a specific finding of fact that Chand Kaur was neither the daughter of Santo nor Santo is daughter of Cheta, thus, there was no basis for it to hold that Chand Kaur was entitled to hold half of the property of late Jaimal. By placing reliance on the previous judgment, the ld. Lower Appellate Court went against its own judgment and impliedly admitted that Santo was the daughter of Cheta. It is obvious that such a status of things cannot co-exist. By necessary implication, as a result of the finding arrived at by the ld. Lower Appellate Court regarding Santo not being the daughter of Cheta, the entitlement of the property of late Jaimal falls on Mehar Singh and Mehar Kaur in equal shares.**

F **In view of above, RSA Nos.2066, 2067 and 2068 of 1987 filed by Mehar Kaur succeed and RSA Nos.2292, 2293 and 2294 of 1987 filed by Chand Kaur are dismissed. The findings of the ld. lower Appellate Court are modified to the extent that Mehar Singh and legal heirs of Mehar Kaur are held entitled to succeed to the entire property of late Jaimal Singh in equal shares and the legal heirs of Chand Kaur shall have no right to such property at all.”**

G 6. This Court has consistently held that the High Court has no jurisdiction to allow the second appeal without framing a substantial question of law as provided under Section 100 of the Code. In other words, the *sine qua non* for allowing the second appeal is to first frame the substantial question(s) of law arising in the case and then decide the

H

second appeal by answering the question(s) framed.(See **Surat Singh(Dead) vs. Siri Bhagwan & Ors.**, (2018) 4 SCC 562 and **Vijay Arjun Bhagat & Ors. vs. Nana Laxman Tapkire & Ors.**, (2018) 6 SCC 727). A

7. Since in this case, we find that the High Court failed to frame any substantial question either at the time of admitting the appeal or before final hearing and yet proceeded to allow some of the second appeals in the bunch by modifying the judgment impugned therein, the High Court committed jurisdictional error requiring this Court to interfere. B

8. In view of the foregoing discussion, the appeals succeed and are accordingly allowed. The impugned order is set aside. All the second appeals, out of which these appeals arise, are restored to their original numbers before the High Court. C

9. The High Court will now first frame substantial question(s) which, according to the appellants of the second appeals, arise in their respective second appeals. D

10. Since we have formed an opinion to remand the case in the light of what is held above, we have not expressed any opinion on the merits of the controversy.

11. The High Court will accordingly decide the appeals on merits strictly in accordance with law uninfluenced by any observations made in the impugned order and also in this order. E