

TANUKU TALUK VILLAGE OFFICERS' ASSOCIATION A

v.

TANUKU MUNICIPALITY & ORS. ETC.

(Civil Appeal Nos. 2918-2921 of 2019)

MARCH 12, 2019 B

**[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI, JJ.]**

Code of Civil Procedure, 1908 – s.100 – Two civil suits filed by the appellant against the respondents in relation to the land in question – Suits decreed vide order dated 14.08.1996 – Appellant also filed suit before the Rent Controller for eviction of respondent no.1 – Rent Controller vide order dated. 20.01.1997 passed order in favour of the appellant – Challenged by respondent no.1, which was allowed – Appellant filed application in the suit before the Rent Controller for releasing of cheque of Rs.42,400/- deposited by respondent no.1 towards the rent and arrears of the suit land – Dismissed vide order dated 14.05.1997 – Challenged by appellant, which was dismissed and order dated 14.05.1997 was confirmed – Respondent no.1 filed appeals against order dated 14.08.1996, which was allowed and order dated 14.08.1996 was set aside – Appellant filed second appeals in the High Court – High Court dismissed the appeals – Revision petitions also dismissed by High Court – Held: Though the High Court framed three substantial questions but did not answer any of them on their respective merit either way – Instead it dismissed the second appeals on the question, which it had not framed – High Court failed to see that the second appeal could be decided only on the question(s) framed u/s. 100 (4), CPC, 1908 – Appeals remanded to the High Court for hearing afresh on the merits and in accordance with law.

Allowing the appeals, the Court

HELD: 1.1 The High Court though admitted the second appeals on the three substantial questions of law but instead of answering these questions, dismissed the appeals by answering the question, which was not framed. The High Court failed to see that the second appeal could be decided only on the question(s)

- A framed under Section 100 (4) of the Code of Civil Procedure, 1908 (“the Code”). However, if at the time of hearing, the High Court considers that the second appeal involves any other substantial question(s) of law, it has the jurisdiction to frame such question(s) but only by assigning the reasons. At the same time, the respondent is also entitled to argue at the time of hearing that the question(s) though framed are not the substantial question(s) of law involved in appeal (Section 100 (5) of the Code and its proviso). [Paras 17, 18] [1067-C-F]

- 1.2 *A fortiori*, the disposal of the second appeal by the High Court by answering the question(s) which was/were not framed either at the time of admission of the second appeal or framed without ensuring compliance of the mandatory procedure prescribed in proviso to Section 100 (5) of the Code is not legally sustainable. Though the High Court framed three substantial questions but did not answer any of them on their respective merit either way. Instead the High Court dismissed the second appeals on the question, which it had not framed. The question on which the High Court dismissed the appeals was in relation to the maintainability of the suit and this question was not a part of the three questions framed and nor the High Court framed such question by taking recourse to powers under Section 100(5) proviso of the Code. The impugned order is set aside. The appeals are remanded to the High Court for their hearing afresh on the merits and in accordance with law. No opinion expressed on the merits of the case having formed an opinion to remand the case to the High Court for their fresh disposal on the merits. The High Court will accordingly decide the second appeals as well as revision petitions uninfluenced by any observations made in the impugned order and this order. [Paras 19, 20, 22 and 23] [1068-F-H; 1069-A-E]

- CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2918-G 2921 of 2019.

From the Judgment and Order dated 01.05.2015 of the High Court of Judicature at Hyderabad for the State of Telangana and The State of Andhra Pradesh in Second Appeal Nos. 396 and 414 of 2004 and C.R.P. Nos. 2069 and 2073 of 2004.

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TANUKU TALUK VILLAGE OFFICERS' ASSOCIATION v. 1065
TANUKU MUNICIPALITY

K. Raghavacharyulu, Kailash Pandey, Ranjeet Singh, Ms. Arunima A
Pal, Ms. Nupur Sharma, J. K. Mishra (for Gaichangpou Gangmei), Advs.
for the Appellant.

Ms. Prerna Singh, Guntur Prabhakar, Prashant M., Advs. for the
Respondents.

The Judgment of the Court was delivered by B

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

2. These appeals are filed against the final judgment and order dated 01.05.2015 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Second Appeal Nos.396 of 2004 and 414 of 2004 and C.R.P. Nos. 2069 of 2004 and 2073 of 2004, whereby the High Court dismissed the said appeals and Revision Petitions filed by the appellant herein. C

3. A few facts need mention in brief *infra* for the disposal of these appeals. D

4. The appellant is the plaintiff and the respondents are the defendants in the civil suits filed by the appellant against the respondents in relation to the suit land out of which these appeals arise.

5. The appellant filed two civil suits against the respondents in relation to the suit land. One was for grant of permanent injunction (OS No.384 of 1986) and the other was for recovery of arrears of rent (OS No.226 of 1987). Both the civil suits were filed in the Court of 1st Additional District Munsif, Tanuku. E

6. By Judgment/decree dated 14.08.1996, the Additional District Munsif decreed both the civil suits. F

7. The plaintiff also filed a suit bearing RCC No.5/1987 before the Rent Controller(Principal District Munsif), Tanuku for eviction of defendant No.1(respondent No.1 herein). By order dated 20.01.1997, the Rent Controller passed a decree and order in favour of the plaintiff and directed defendant No.1 to handover the suit land to the plaintiff. G

8. Thereafter, the plaintiff filed an application bearing I.A. No.268 of 1997 in R.C.C. No.5 of 1987 before the Rent Controller(Principal District Munsif), Tanuku for releasing of cheque of Rs.42,400/- deposited by respondent No.1 towards the rent and arrears of the suit land. By H

- A order dated 14.05.1997, the Rent Controller dismissed the application filed by the plaintiff.

9. The plaintiff felt aggrieved by the said order and filed C.M.A. No.13 of 1997 before the Court of Senior Civil Judge at Tanuku. Being aggrieved by the order dated 20.01.1997 of the Rent Controller(Principal District Munsif), defendant No.1 filed C.M.A. No.8 of 1997 before the Court of Senior Civil Judge at Tanuku.

10. The Senior Civil Judge, Tanuku took up both the matters together. Vide order dated 21.01.2004, the Senior Civil Judge allowed the application filed by defendant No.1 and set aside the order dated 20.01.1997 passed by the Rent Controller(Principal District Munsif) and dismissed the application filed by the plaintiff by confirming the order dated 14.05.1997.
- C 20.01.1997 passed by the Rent Controller(Principal District Munsif) and dismissed the application filed by the plaintiff by confirming the order dated 14.05.1997.

11. Being aggrieved by the order dated 14.08.1996 of the Additional District Munsif, defendant No.1 filed appeals being A.S. Nos.69 & 70/1996 before the Senior Civil Judge, Tanuku. Vide order dated 21.01.2004, the Senior Civil Judge allowed the appeals and set aside the order dated 14.08.1996 passed by the Additional District Munsif.

12. The appellant (plaintiff) felt aggrieved by both the orders of the First Appellate Court dated 21.01.2014 and filed two Second Appeals being S.A. Nos.396 & 414 of 2004 and C.R.P.Nos.2069 and 2073 of 2004 in the High Court of Andhra Pradesh.

13. The High Court admitted the Second Appeals on the following three substantial questions of law.

- F “a) Whether the lower appellate court is right in holding that plaintiff society became defunct without there being any evidence to that effect ?
- G b) Whether the immovable property purchased by a registered society under registered sale deeds shall automatically vests with its admitted tenant without there being any deed of conveyance ?
- H c) Whether a tenant while admitting that it was only a tenant inducted into possession for a rent can claim ownership over the very same property contrary to the provisions of Section 116 of the Indian Evidence Act ?”

14. By impugned order, the High Court dismissed the appeals as well as revision petitions, which has given rise to filing of these appeals by way of special leave in this Court by the plaintiff. A

15. So, the short question, which arises for consideration in these appeals is whether the High Court was justified in dismissing the plaintiff's Second Appeals. B

16. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeals and while setting aside the impugned order, remand the case to the High Court for the disposal of the second appeals and revision petitions afresh on merits as indicated below. C

17. The need to remand the case to the High Court has arisen because we find, on perusal of the impugned order, that the High Court though admitted the second appeals on the aforementioned three substantial questions of law but instead of answering these questions, dismissed the appeals by answering the question, which was not framed. D

18. In our view, the High Court failed to see that the second appeal could be decided only on the question(s) framed under Section 100 (4) of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code"). However, if at the time of hearing, the High Court considers that the second appeal involves any other substantial question(s) of law, it has the jurisdiction to frame such question(s) but only by assigning the reasons. At the same time, the respondent is also entitled to argue at the time of hearing that the question(s) though framed are not the substantial question(s) of law involved in appeal (See Section 100 (5) of the Code and its proviso). E

19. *A fortiori*, the disposal of the second appeal by the High Court by answering the question(s) which was/were not framed either at the time of admission of the second appeal or framed without ensuring compliance of the mandatory procedure prescribed in proviso to Section 100 (5) of the Code is not legally sustainable. F

20. As mentioned above, though the High Court framed three substantial questions but did not answer any of them on their respective merit either way. Instead the High Court dismissed the second appeals on the question, which it had not framed. The question on which the High Court dismissed the appeals was in relation to the maintainability G

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- A of the suit and this question was not a part of the three questions framed and nor the High Court framed such question by taking recourse to powers under Section 100(5) proviso of the Code.

- B 21. Learned counsel for the respondents made sincere attempt in her submission that the findings recorded by the High Court on its merit is just and proper and hence should not be disturbed. We cannot accept her submission in the light of what is held above. The respondents, therefore, will be at liberty to raise such pleas before the High Court in accordance with law consequent upon the matter now being remanded to the High Court.

- C 22. In view of the foregoing discussion, the appeals succeed and are accordingly allowed. The impugned order is set aside. The appeals are remanded to the High Court for their hearing afresh on the merits and in accordance with law. Needless to say, the High Court will dispose of the appeals as well as the revision petitions because all the four matters were heard together and disposed of by a common order keeping in view the requirements of Section 100 of the Code, as mentioned above, insofar as they relate to second appeals.

- D 23. We have not expressed any opinion on the merits of the case having formed an opinion to remand the case to the High Court for their fresh disposal on the merits as indicated above. The High Court will accordingly decide the second appeals as well as revision petitions uninfluenced by any observations made in the impugned order and this order.

Divya Pandey

Appeals allowed.