

Kirpa Ram (D) Tr.Lrs. . vs Surrender Deo Gaur on 16 November, 2020

Author: Hemant Gupta

Bench: Ajay Rastogi, Hemant Gupta, L. Nageswara Rao

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8971 OF 2010

KIRPA RAM (DECEASED) THROUGH LEGAL
REPRESENTATIVES & ORS.

.....APP

VERSUS

SURENDRA DEO GAUR & ORS.

.....RESPO

JUDGMENT

HEMANT GUPTA, J.

1. The present appeal has been preferred by Defendant No. 4, against the concurrent findings of three Courts arising out of a suit for permanent injunction.

2. The plaintiffs, now represented as respondent Nos. 1 and 2, filed a suit for permanent injunction on 31.7.1971 claiming that Khasra No. 238 measuring 4 Bighas 3 Biswas, situated in the revenue estate of Village Basai Darapur, Delhi is owned and possessed by them. Earlier, the plaintiffs had filed a suit for declaration challenging the vesting of the said land in Gaon Sabha in a suit filed on 20.7.1959. The said suit was decreed on 7.10.1960 holding that the plaintiffs are owners and Bhumidars of land comprising in Khasra No. 238. The Union of India had filed an application under Section 161-B of the Delhi Land Reforms Act, 1954¹ for setting aside the said decree dated 7.10.1960 but such application was dismissed by Sub-Judge, First Class, Delhi on 24.5.1968.

3. The plaintiffs alleged that defendant No. 1 claimed that Khasra No. 238 is part of the land allotted to it. The suit for permanent injunction was thus filed by the plaintiffs apprehending threat to their possession of land comprising Khasra No. 238, Village Basai Darapur, Delhi against defendant No. 1 i.e. The Refugees' Co-operative Housing Society Ltd., its President – defendant No. 2, Secretary – defendant No. 3 and defendant No. 4, Kirpa Ram, predecessor in interest of the present appellants. Two separate sets of written statements were filed before the Court, one by defendant Nos. 1 to 3 and another by defendant No. 4. The defendant Nos. 1 to 3 raised preliminary objection that the

jurisdiction of the Civil Court relating to Bhumidari land is barred under Section 85 of the Reforms Act. It was stated that defendant No. 4 threatened to encroach upon the land in the Society comprising of Khasra No. 1273 which led to proceedings under Section 145 of the Code of Criminal Procedure, 1973. Such proceedings have nothing to do with land comprising in Khasra No.

238.

4. The defendant No. 4 in written statement asserted that the plaintiffs were not in possession of the land in dispute and suit for injunction was therefore not maintainable. It was further stated 1 For short, the 'Reforms Act' that defendant Nos. 1 to 3 were not concerned with the land in question and that land did not belong either to plaintiffs or defendant Nos. 1 to 3 and they were not in possession thereof. Such land was in fact only in the possession of the defendant No.

4. It was also stated that the land in dispute does not bear Khasra No. 238 and that it is not situated in the revenue estate of Village Basai Darapur. Instead, the land in dispute bears Khasra No. 79 and is situated in revenue estate of Village Shakarpur.

5. In view of the pleadings of the parties, the following issues were framed by the trial court:

“1. Whether any notice u/s 70 of the Bombay Societies Act as extended to the Delhi was not necessary to be served on the defendants no. 1 to 3 before instituting the present suit? If so, then to what effect? (Objected to).

2. Whether this Court has no jurisdiction to try this suit as mentioned in the written statement?

3. Whether the plaintiffs are the owners in possession of the land in dispute bearing khasra no. 238 as alleged in the plaint?

4. Whether the land in dispute formed the part of khasra no. 238 of village Basai Darapur, Delhi as alleged in the plaint?

5. Whether the land in dispute formed the part of khasra no. 79 situated in village Shakar Pur as mentioned in the written statement? (objected to)

6. Whether this suit is properly valued for the purposes of court fee and jurisdiction? If not, then to what effect?

7. Whether the suit is bad on account of mis-joinder of defendants as mentioned in the written statement? If so, then to what effect?

8. Whether the plaintiffs are entitled for a decree for permanent injunction claimed in the plaint?

9. Relief.”

6. With respect of Issue No. 2, the learned trial court held that the suit was a simpliciter suit for injunction and the Court has the jurisdiction to find out in which khasra number the land in dispute falls. It was thus held that suit land falls in Khasra No. 238 in Village Basai Darapur and is in the possession of the plaintiffs, therefore, the suit was decreed.

7. Issue Nos. 4 and 5 were taken up for decision together. The plaintiffs had produced site plan (Ex.PW-3/1) pertaining to the year 1953-54 when consolidation took place in Village Shakarpur. The plaintiffs also produced site plan (Ex.PW-3/3) of Village Basai Darapur. The learned trial court held that the consolidation had taken place in Village Shakarpur and not in Village Basai Darapur. Therefore, the area of Khasra No. 238 could not be reduced from 4 Bighas 3 Biswas to 2 Bighas 6 Biswas. It was held by the trial court as under:

“18. ...One thing remains certain that the present defendants have no concern in Khasra no. 238 village Basai Darapur. Either it belongs to the plaintiffs or it vests in the Gaon Sabha. The present defendants, who are third parties, have no right to challenge the said judgment and decree passed in favour of the present plaintiffs. Therefore, I hold that plaintiffs are the owners of khasra no. 238, village Basai Darapur.”

8. The first appeal was filed by defendant No. 4 only. The First Appellate Court after reappreciating the evidence recorded the following findings:

“14. From the above discussion it is clear that appellant/defendant No.4 has not been successful before the trial court to show that he was in possession of Khasra No.79 of village Shakarpur so he cannot say that he is entitled to possession of the same under the claim that this land forms part of Khasra No. 79 of village Shakarpur and not to Khasra No. 238 of village Basaidarapur. The claim of appellant/defendant No.4 stands falsified upon his own documents produced by him before.”

9. In the memorandum of second appeal, the defendant No. 4 alleged that the following substantial questions of law arise for consideration:

“1. Whether the appellate court could in law dispose of the appeal without deciding the Preliminary issue of jurisdiction of the civil court.

2. Whether the appellate court could in law dispose of the appeal without passing any order on the application dated 18th October, 1984 of the appellant under order 41 rule 27 of the Civil Procedure Code for permission to lead additional evidence?

3. Whether the appellate court in law was jurisdiction in not considering the provision of section 28 of the Delhi Land Revenue Act, 1974 which bars the jurisdiction of the Civil Court to entertain boundary disputes?”

10. The first substantial question of law was based on an interim order passed by the First Appellate Court on 9.5.1996 wherein the parties were directed to first address the arguments on the issue of jurisdiction. It has also come on record that the High Court had directed reconstruction of the record of the First Appellate Court on 31.7.2007, as the same was destroyed in an incident of fire during the year 1996.

11. The second substantial question of law raised was in respect of an application for additional evidence filed under Order XLI Rule 27 of the Civil Procedure Code². The defendant No. 4 sought to produce the revenue record, Khasra Girdawari for the years 1953-54, 1954- 55, 1955-56, 1956-57, 1966-67 and 1983-84, Jamabandi for the year 1944-45 and mutation No. 2151, all of which pertained to Village Basai Darapur vide the said application.

12. Mr. Mehta, learned senior counsel for the appellants vehemently argued that the jurisdiction of Civil Court is barred as it is a boundary dispute between the Village Basai Darapur and Village Shakarpur and such dispute has to be decided in terms of Section 28 of the Delhi Land Revenue Act, 1954 by the Commissioner.

13. The High Court vide judgment dated 25.8.2008 dismissed the second appeal filed by the appellants herein. Aggrieved by the findings of the High Court, defendant No. 4 is in appeal before this Court.

14. The primary argument raised by learned counsel for the appellants is that the High Court has dismissed the appeal without framing any substantial question of law which is mandatory in terms of Section 100 of the Code. It was submitted that since the High Court has dismissed the appeal without framing substantial question of law, the matter should be remitted back to the High Court. For short, the 'Code' Court for determination of such substantial question of law framed by the appellants, as reproduced above. In support of the arguments, the appellants relied upon various judgments³.

15. It has been argued that the First Appellate Court had ordered that the question of jurisdiction of Civil Court would be decided first, however the appeal was decided without dealing with the said issue. It is, thus, said to have caused serious prejudice to the rights of the appellants. Similarly, the application under Order XLI Rule 27 of the Code was not decided which was again prejudicial to their rights.

16. We find that such substantial questions of law, in fact, do not arise for consideration. The issue of jurisdiction was not an issue of fact but of law. Therefore, it could very well be decided by the First Appellate Court while taking up the entire appeal for hearing. The trial court had also not treated issue No. 2 relating to the jurisdiction of the Civil Court as a preliminary issue. Therefore, it cannot be said that any prejudice has been caused to the appellants by not deciding the issue of jurisdiction of the Civil Court in the first instance by the First Appellate Court. It may also be noticed that the plea of bar of jurisdiction was raised by defendant Nos. 1 to 3 and not by the appellants.

3 Md. Mohammad Ali (dead) by LRs v. Jagadish Kalita & Ors., (2004) 1 SCC 271; Hubli Dharwar Municipal Corporation & Anr. v. H.S. Mohd. Khan (dead) by LRs. & Ors. , (2002) 2 SCC 109; Madhavan Nair v. Ramankutty & Anr., (2000) 2 SCC 356; N. Venkatareddy & Ors. v. Gopal & Ors., (2000) 10 SCC 309; Chandragouda & Anr. v. Shekharagouda S. Pittanagoudar (dead) by LRs. & Ors. , (2000) 10 SCC 617 and Kshitish Chandra Purkait v. Santosh Kumar Purkait & Ors., (1997) 5 SCC 438

17. Furthermore, the application under Order XLI Rule 27 of the Code was in respect of revenue documents in respect of Village Basai Darapur. Admittedly, the appellants have no claim on any part of the land of Village Basai Darapur. The appellants are asserting their possession relating to Khasra No. 79 of Village Shakarpur. The appellants have sought such revenue record in the additional evidence as the same was not in their knowledge and that no issue was also framed as to the correctness of the area of Khasra No. 238 of Village Basai Darapur. The plaintiffs have asserted their possession and title over Khasra No. 238 of Village Basai Darapur whereas defendant No. 4 averred that the land in dispute bears Khasra No. 79 situated in Village Shakarpur, Delhi. It is to be noted that Issue Nos. 3, 4 and 5 were related to ownership and possession of Khasra No. 238 and whether the land in dispute formed a part of Khasra No. 79 of Village Shakarpur. Therefore, the entire argument that no issue was framed in respect of correctness of area of Khasra No. 238 is untenable. The parties have understood the case about the area of Khasra No. 238 falling in Basai Darapur or in Khasra No. 79 of Village Shakarpur. Once the parties have understood the said controversy and had adduced evidence before the trial court, the appellant cannot be permitted to produce additional evidence in the first appeal. Thus, the additional documents cannot be permitted to be produced as they are not relevant to the plea raised by the appellant.

18. The Land Revenue Act does not expressly bar the jurisdiction of the Civil Court in respect of boundary disputes. The boundary disputes are between two revenue estates and does not include the demarcation of the land of the parties. Section 83 of the Land Revenue Act bars the jurisdiction of the Civil Court in respect of :

(a) the arrangement of area of the patwaris; (b) claims by any person to any of the offices mentioned in section 13 or 14 or to any emolument or fees appertaining to such office, or in respect of any injury caused by his exclusion therefrom, or claims by any person to nominate persons to such offices; (c) the formation of the record of rights or the preparation, signing, or attestation of any of the documents contained therein, or the preparation of the annual register. No such dispute arises for consideration in the present matter.

19. Still further, the suit is simpliciter for injunction based upon possession of the property. The said suit could be decided only by the Civil Court as there is no mechanism prescribed under the Land Revenue Act for grant of injunction in respect of disputes relating to possession. The Civil Court has plenary jurisdiction to entertain all disputes except in cases where the jurisdiction of the Civil Court is either expressly or impliedly barred in terms of Section 9 of the Code.

20. Since there is no implied or express bar of jurisdiction of the Civil Court in terms of Section 9 of the Code, the Civil Court has plenary jurisdiction to decide all disputes between the parties. The issue of jurisdiction of the civil court has been considered by this Court in *South Delhi Municipal Corporation & Anr. v. Today Homes and Infrastructure Pvt. Ltd. etc.*⁴ wherein this Court held as under:

“11. Any person having a grievance that he had been wronged or his right has been affected can approach a civil court on the principle of ‘ubi jus ibi remedium’ - where there is a right, there is a remedy. As no internal remedy had been provided in different statutes creating rights or liabilities, the ordinary civil courts had to examine the grievances in the light of those statutes. With the advent of a ‘Welfare State’, it was realised that enactments creating liabilities in respect of payment of taxes, obligations after vesting of estates and conferring rights on a class of citizens, should be complete codes by themselves. With that object in view, forums were created under the Acts themselves where grievances could be entertained on behalf of the persons aggrieved (*Shiv Kumar Chadha v. Municipal Corporation of Delhi*, (1993) 3 SCC 161).

12. Wherever a right or liability, not pre-existing in common law is created by a statute and that statute itself provides a machinery for enforcement of such right or liability, both the right/liability and the remedy having been created *uno flatu* and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision the jurisdiction of the civil court is impliedly barred. (*Raja Ram Kumar Bhargava (Dead) By LRs v. Union of India*, (1988) 1 SCC

681).

13. We find that a liability for payment of tax is created by the Delhi Municipal Corporation Act, 1957. Further, a remedy by way of an appeal against an order of assessment, before an appropriate forum or authority, has been provided by the same statute.”

21. In view of the above, we find that the High Court did not commit any illegality in not framing any substantial question of law while dismissing the appeal filed by the appellants.

22. The argument of Mr. Mehta is that substantial question of law is 4 2019 SCC OnLine SC 1052 required to be framed by the High Court while deciding the second appeal. We don’t find any merit in the argument. Section 100 of the Code reads as under:

“100. Second appeal.—(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

- (2) An appeal may lie under this section from an appellate decree passed ex parte.
- (3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.
- (4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.
- (5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.”

23. Sub-section (1) of Section 100 of the Code contemplates that an appeal shall lie to the High Court if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question of law on satisfaction of the conditions laid down in the proviso of Section 100 of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no such question arises, it is not necessary for the High Court to frame any substantial question of law. The formulation of substantial question of law or re-

formulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court.

24. Still further, we find that none of the judgments referred to by the learned counsel for the appellants mandate the High Court to frame substantial questions of law while upholding the findings recorded by the First Appellate Court. All the judgments referred to by the learned counsel for the appellants except in Md. Mohammad Ali are the judgments wherein the High Court has set aside the findings of the First Appellate Court without framing substantial questions of law. In Md. Mohammad Ali, this Court found that the High Court erred in dismissing the appeal without formulation of substantial question of law which arises for consideration. This Court held as under:

“33. The proposition of law relating to ouster of a co-

sharer vis-à-vis adverse possession had been overlooked by the High Court. There are also certain other aspects of the matter which could not be overlooked and probably would require closer examination by the High Court.

34. The High Court while determining the question should have formulated substantial questions of law in terms of Section 100 of the Code of Civil Procedure, 1908. In absence of formulation of such substantial questions of law, probably the High Court committed the errors as pointed out hereinbefore.”

25. In a judgment reported as Ashok Rangnath Magar v. Shrikant Govindrao Sangvikar⁵, this Court held that the second appeal can be dismissed without even formulating the substantial question of law. The Court held as under:

“18. In the light of the provision contained in Section 100 CPC and the ratio decided by this Court, we come to the following conclusion:

(i) On the day when the second appeal is listed for hearing on admission if the High Court is satisfied that no substantial question of law is involved, it shall dismiss the second appeal without even formulating the substantial question of law;

(ii) In cases where the High Court after hearing the appeal is satisfied that the substantial question of law is involved, it shall formulate that question and then the appeal shall be heard on those substantial question of law, after giving notice and opportunity of hearing to the respondent;

(iii) In no circumstances the High Court can reverse the judgment of the trial court and the first appellate court without formulating the substantial question of law and complying with the mandatory requirements of Section 100 CPC.” 5 (2015) 16 SCC 763

26. In view of the above findings, we do not find any error in the judgment and order of the High Court dismissing the Second Appeal. The present appeal is thus dismissed. Pending applications, if any, shall stand disposed of.

.....J. (L. NAGESWARA RAO)J. (HEMANT GUPTA)J. (AJAY RASTOGI) NEW DELHI;

NOVEMBER 16, 2020.