Sheel Chand vs Prakash Chand on 1 September, 1998

Equivalent citations: AIR 1998 SUPREME COURT 3063, 1998 (6) SCC 683, 1998 AIR SCW 2923, 1999 (121) PUN LR 409, (1999) 1 PUN LR 409, 1998 (2) ALL CJ 1595, 1999 (1) SRJ 226, 1998 (5) SCALE 142, 1998 (7) ADSC 33, 1998 SCFBRC 374, 1998 ( ) HRR 657, 1998 ADSC 7 33, 1998 (2) UJ (SC) 702, (1998) 6 JT 192 (SC), 1998 (6) JT 192, (1999) 1 LANDLR 227, (1999) 1 MAD LW 95, (1998) REVDEC 623, (1998) 7 SUPREME 166, (1999) 2 RECCIVR 446, (1998) 5 SCALE 142, (1998) 3 ALL WC 2347, (1999) 1 CIVLJ 41, (1999) 1 CURLJ(CCR) 602, (1998) 3 CIVLJ 99, (1999) 3 ICC 436, (1998) 1 GAU LR 15, (1998) 2 MARRILJ 484, (1998) 3 CURCC 230, (1998) 2 RENCR 410

Author: B.N.Kirpal

Bench: B.N.Kirpal

PETITIONER:
SHEEL CHAND

Vs.

RESPONDENT:
PRAKASH CHAND

DATE OF JUDGMENT: 01/09/1998

BENCH:
A.S.ANAND, B.N.KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

O R D E R This appeal by special leave is directed against the judgment of the High Court dated 13th September, 1996. Appellant is the tenant. Respondent is the landlord. The premises had been let out by the predecessor-in-interest of the present respondent-landlord in 1968. The suit for eviction was filed against the tenant by the respondent-landlord on various grounds including the ground that he

required the suit premises for his bona fide personal need for starting his business. It was the case of the respondent - landlord that though he was an advocate, he wanted the suit shop for starting his business of a 'General Store' as he did not intend to practice law. The suit was resisted. The trial court after framing issues and recording evidence came to the conclusion that the need of the landlord was not genuine or bonafide. The suit was dismissed. Landlord's appeal before the appellate authority failed and the finding recorded by the trial court of the effect that the need of the landlord was not bona fide or genuine was confirmed. The landlord thereupon filed a second appeal in the High Court. By the impugned order the concurrent findings of fact were set aside by the learned Single of the High Court in second appeal. We have heard learned counsel for the parties. The learned Single Judge while admitting the second appeal under Section 100 CPC framed the following question of law:-

> 'Whether the finding relating to bonafide requirement of the appellant of the Courts below is vitiated due to irrelevant consideration and under law?' In Panchugopal Barua vs. Umesh Chandra Goswami :
>
> (1997) 4 SCC 713 to which one of us (Anand, J.) was a party explaining the scope of Section 100 CPC, it was observed :-
>
> "7. A bare look at Section 100 CPC shows that the jurisdiction of the High Court to entertain a second appeal after the 1976 Amendment is confined only to such appeals as involve a substantial question of law, specifically set out in the memorandum of appeal and formulated by the High Court. Of course, the proviso the section shows that nothing 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 the court is satisfied that the case involves such a question. The proviso presupposes that the court shall indicate in its order the substantial question of law which it proposes to decide even if such substantial question of law was not earlier formulated by it. The existence of a 'substantial question of law' is thus, the sine qua non for the exercise of the jurisdiction under the amended provisions of Section 100 CPC."

The above judgment was approved by a three Judge Bench of this Court in Kahitish Chandra Purakait vs. Santosh Kumar Purkaji and others : (1997) 5 SCC 438 wherein it was held :-

> "10 We would only add that (a) it is the duty cast upon the High Court to formulate the substantial question of law involved in the case even at the initial stage; and (b) that in (exceptional) cases, at a later point of time, when the Court exercises its jurisdiction under the proviso to sub-section(5) of Section 100 CPC in formulating the substantial question of law, the opposite party should be put on notice thereon and should be given a fair or proper opportunity to meet the point. Proceeding to hear the appeal without formulating the substantial question of law involved in the appeal is illegal and is an abnegation or abdication of the duty cast on court; and even after the formulation of the substantial question of law, if a fair or proper opportunity

> is not afforded to the opposite side, it will amount to denial of natural justice. The above parameters within which the High Court has to exercise its jurisdiction under Section 100 CPC should always be borne in mind. We are sorry to state that the above aspects are seldom borne in mind in many cases and second appeals are entertained and/or disposed of, without conforming to the above discipline."

The question of law formulated by the learned Single Judge, noticed above, strictly speaking is not even a question of law, let alone a substantial question of law. The existence of a substantial question of law. The existence of a 'substantial question of law', is the sine qua non for the exercise of jurisdiction by the High Court under the amended provisions of Section 100 CPC. It appears that the learned Single Judge over looked the change brought about to Section 100 CPC by the Amendment made in 1976. The High Court unjustifiably interfered with pure questions of fact while exercising jurisdiction under Section 100 CPC. It was not proper for the learned Single Judge to have reversed the concurrent findings of fact while exercising jurisdiction under Section 100 CPC. That apart, we find that the learned Single Judge did not even notice, let alone answer the question of law which had been formulated by it at the time of admission of the second appeal. There is no reference to the question of law in the impugned order and it appears that the High Court thought that it was dealing with a first appeal and not a second appeal under Section 100 CPC. The findings of fact recorded by the two courts below were based on proper appreciation of evidence and the material on the record. There was no perversity, illegality or irregularity in those findings. None has been brought to our notice by the learned counsel for the respondent either. The findings, therefore, did not require to be upset in a second appeal under Section 100 CPC. The judgment of the learned Single Judge, under the circumstances, cannot be sustained. This appeal consequently succeeds and is allowed. The judgment and order of the High Court dated 13th Sept. 1996 is set aside. As a result, the eviction suit filed by the landlord shall stand dismissed. No costs. .....J (A. S. ANAND) New Delhi (B. N. KIRPAL)