

Nek Pal & Ors.
v.
Nagar Palika Parishad & Ors.

(Civil Appeal Nos. 8038-8039 of 2024)

26 July 2024

[Abhay S. Oka* and Augustine George Masih, JJ.]

Issue for Consideration

Whether substantial questions of law are required to be formulated at the time of admission of a second appeal under Section 100 of the Code of Civil Procedure, 1908, or at any time subsequent thereto.

Headnotes[†]

Code of Civil Procedure, 1908 – Section 100 – Substantial question of law:

Held: Unless substantial questions of law are formulated at the time of admission of the appeal, or any time subsequent thereto, a second appeal cannot be finally heard – The reason is that a second appeal can be heard only on a substantial question of law formulated earlier – The act of finally hearing a second appeal without framing any substantial question of law is itself illegal – The High Court could have framed substantial questions of law, and heard the appeal after a few days, so that the Advocates had notice that the appeal will be heard on specific substantial questions of law. [Para 3]

List of Acts

Code of Civil Procedure, 1908.

List of Keywords

Formulation of question of law under Section 100 CPC; Substantial question of law for second appeal; Second Appeal.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 8038-8039 of 2024

From the Judgment and Order dated 13.11.2017 of the High Court of Uttarakhand at Nainital in SA No. 34 and 48 of 2003

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Nek Pal & Ors. v. Nagar Palika Parishad & Ors.**Appearances for Parties**

C.A. Sundaram, Sr. Adv., Kamaljeet Singh, Sumit Bansal, Udaibir Singh Khochar, Abhishek Gupta, Ms. Tulna Rampal, Ananta Prasad Mishra, Advs. for the Appellants.

Jitendra Mohan Sharma, Sr. Adv., Raju Sonkar, Mrs. Priti Rashmi, Ms. Priya Rastogi, Dharmendra Kumar Sinha, Sunil Prakash Sharma, Kumar Deepraj, Ms. Aditi Lekhi, Vinay Garg, Ms. Neetu Rawat, Upendra Mishra, Vikas Mehta, Mrs. Shashi Kapila, Ankit Vashisht, Pavesh, Shrivandit Mishra, Suraj, Sidharth Yadav, M/s. Anuradha & Associates, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Judgment**

Abhay S. Oka, J.

1. Leave granted.
2. Our attention is invited to the impugned judgment of the High Court in a Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, "the CPC"). Following is the relevant part of the impugned judgment:

"Since no substantial question of law was formulated at the time of admission of the appeal on 30.5.2003, hence having heard the matter partially and during the course of arguments, in the presence of learned Counsels of both the parties, this Court confined itself to adjudicate the following substantial questions of law:

1. Whether the alleged transaction of the disputed property was void ab initio being the violation of Section 7 of Hindu Public Religious Institution (Prevention of Dissipation of Properties) Act, 1962.
2. Whether the property was owned by Dera Baba Dargah Singh and was of the religious charitable nature. If it is so, whether it could have been transferred by the self claimed manager Jaswinder Singh in the nature and manner it was transferred?

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3. Whether both the lower courts have rightly decreed the suit on the basis of Khasra, Khatauni and 'Kisan Bahi' which were issued by the revenue officials in favour of the lease holders."
3. The aforesaid paragraph indicates that at the time of admitting the second appeal under Section 100 of the CPC, substantial questions of law were not formulated. Unless substantial questions of law are formulated at the time of admission of the appeal or any time subsequent thereto, a second appeal cannot be finally heard. The reason is that a second appeal can be finally heard only on a substantial question of law formulated earlier. In fact, the act of finally hearing a second appeal without framing any substantial question of law is itself illegal. There is nothing on record to show that the High Court formulated the substantial questions of law and gave an opportunity to the parties to argue on the basis of those substantial questions of law. All that the High Court says is the Court has confined itself to three substantial questions of law. The High Court did not put the rival Advocates to the notice before the commencement of hearing that it was proposing to hear the appeal on specific substantial questions of law. The High Court could have framed substantial questions of law and heard the appeal after few days so that the Advocates had a notice that the appeal will be heard on specific substantial questions of law.
4. Therefore, the procedure followed by the High Court is completely illegal and contrary to Section 100 of the CPC. Only on this ground, we set aside the impugned judgment dated 13th November, 2017 and restore Second Appeal Nos.34/2003 and 48/2003 to the file of the High Court of Uttarakhand at Nainital. All contentions of the parties on merits of the Second Appeals are kept open.
5. A copy of this order shall be forwarded by the Registry to the Registrar (Judicial) of the High Court of Uttarakhand. The Registrar (Judicial) of the High Court shall list the restored Second Appeals before the roster Bench on 27th August, 2024. The parties, who are appearing today, shall be under an obligation to appear before the High Court on that date. The High Court need not issue a notice to those parties.
6. If the High Court wants to frame substantial questions of law as indicated in the impugned judgment or if the High Court desires to frame additional substantial questions of law, it is open for the

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High Court to do so. After completing the said exercise, the High Court shall fix a date for hearing of the Second Appeals taking into consideration the fact that the Second Appeals are 21 years old.

7. We also clarify that till the date of the impugned judgment if any interim relief was operative in the restored Second Appeals, the same shall continue to operate.
8. The Civil Appeals are partly allowed on the above terms.
9. Pending applications, including the application for impleadment, stand disposed of accordingly.

Result of the case: Appeals partly allowed.

[†]*Headnotes prepared by:* Vidhi Thaker, Hon. Associate Editor
(Verified by: Liz Mathew, Senior Adv.)