

GAHC010196902018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RSA/278/2018

ON THE DEATH OF ASH SH CHATTERJEE HIS LEGAL HEIRS
S/O LATE KALIPADA CHATTERJEE
RESIDENT OF LANKA TOWN, PS LANKA, DIST NAGAON, ASSAM

1.1: SMTI RUPA CHATTERJEE
AGE 50 YRS.
WIFE OF LT. ASHISH CHATTERJEE
RESIDENT OF LANKA TOWN
PS LANKA
DIST NAGAON
ASSAM

1.2: SHRI ARUP CHATTERJEE
AGE-19 YRS

SON OF LATE ASHISH CHATTERJEE

RESIDENT OF LANKA TOWN
PS LANKA
DIST NAGAON
ASSAM

1.3: SHRI ABHIJIT CHATTERJEE
AGE-21 YRS. SON OF LATE ASHISH CHATTERJEE

RESIDENT OF LANKA TOWN
PS LANKA
DIST NAGAON
ASSA

VERSUS

SHRI SURENDRA CHOUDHURY AND 3 ORS
S/O LATE RAM LOCHAN CHOUDHURY

RESIDENT OF LANKA TOWN, PS LANKA, DIST NAGAON, ASSAM

2:SHRI SITI KANTA CHOUDHURY
S/O SRI SURENDRA CHOUDHURY
RESIDENT OF LANKA TOWN
PS LANKA
DIST NAGAON
782446
ASSAM

3:SHRI SUBHAS CHOUDHURY
S/O SRI SURENDRA CHOUDHURY
RESIDENT OF LANKA TOWN
PS LANKA
DIST NAGAON
782446
ASSAM

4:SHRI SABIR CHOUDHURY
S/O SRI SURENDRA CHOUDHURY
RESIDENT OF LANKA TOWN
PS LANKA
DIST NAGAON
782446
ASSA

Advocate for the Petitioner : MR B K SINGH, MS. M BORA,MR. N DEKA

Advocate for the Respondent : MS G SUTRADHAR (R2, R3, R4), MS S AHOM (R-3, 4),MS G SUTRADHAR (R-3, 4),MR R KALITA (R-3, 4),MR. A BISWAS (R-3, 4),MRS. S ROY (R2, R3, R4),MS. I DAS (R2, R3, R4)

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : -28.08.2024

Heard Mr. N. Deka, learned counsel for the appellants. Also heard Mr. A. Biswas, learned counsel for the respondents.

2. In this appeal, under Section 100 of the Code of Civil Procedure, the

appellant has put to challenge the correctness or otherwise of the judgment and decree dated 17.06.2017, passed by the learned Additional District Judge, Nagaon, in Title Appeal No. 12/2013.

3. It is to be noted here that vide impugned judgment and decree dated 17.06.2017, passed by the learned Additional District Judge, Nagaon, in Title Appeal No. 12/2013, has dismissed the appeal preferred by the appellant/plaintiff and thereby upheld the judgment and decree dated 19.04.2013, passed by the learned Civil Judge, Nagaon, in Title Suit No. 36/2007, whereby the suit of the appellant/plaintiff was partly decreed.

4. Mr. Deka, the learned counsel for the appellants submits that the questions being raised in this second appeal, in page No.3 of the memo of appeal, is fairly arguable and the points so raised are not free from doubt and alternative view is equally possible and as such the same are substantial question of law and therefore, it is contended to admit the appeal on the same. Referring to a decision of Hon'ble Supreme Court in **Vidhyadhar vs. Manikrao and Another reported in (1993) 3 SCC 573**, Mr. Deka submits that the respondent No.1 herein never appeared in witness box to state his own case and as such the case set up by him cannot be held to be correct.

5. Whereas, Mr. Biswas, the learned counsel for the respondent submits that the question being raised in this second appeal are of general importance and no question of law is involved therein and as such this appeal cannot be admitted. In support of his submission Mr. Biswas has referred following decisions:-

(i) Boodireddy Chandraiah and Others vs. Arigela Laxmi and

Another reported in (2007) 8 SCC 155;

(ii) The Koushik Mutually Aided Cooperative Housing Society vs. Ameena begum & Another in Special Leave petition (C) No. 5489 of 2021.

6. Perused the memo of appeal and the grounds mentioned therein and also perused the impugned judgment and decree dated 17.06.2017, passed by the learned Additional District Judge, Nagaon, in Title Appeal No. 12/2013, and also the judgment and decree dated 19.04.2013, passed by the learned Civil Judge Nagaon, in Title Suit No. 36/2007 and gone through the decisions referred by learned Advocates of both sides.

7. The principles relating Section 100 CPC is succinctly dealt with by Hon'ble Supreme Court in the case of **Hero Vinoth v. Seshammal**, reported in (2006) 5 SCC 545 as under:-

“20. The question of law raised will not be considered as a substantial question of law, if it stands already decided by a larger Bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court. Where the facts required for a point of law have not been pleaded, a litigant should not be allowed to raise that question as a substantial question of law in second appeal. The mere appreciation of facts, the documentary evidence or the meaning of entries and the contents of the documents cannot be held to be raising a substantial question of law. But where it is found that the first appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as a substantial question of law. Where the first appellate court is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or of procedure requiring interference in second appeal. This Court in *Reserve Bank of India v. Ramkrishna Govind Morey* [(1976) 1 SCC 803] held that whether the trial court

should not have exercised its jurisdiction differently is not a question of law justifying interference. (See *Kondiba Dagadu Kadam v. Savitribai Sopan Gujar* [(1999) 3 SCC 722].)

21. The phrase “substantial question of law”, as occurring in the amended Section 100 CPC is not defined in the Code. The word substantial, as qualifying “question of law”, means –of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with–technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of “substantial question of law” by suffixing the words “of general importance” as has been done in many other provisions such as Section 109 of the Code or Article 133(1) (a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In *Guran Ditta v. Ram Ditta* reported in AIR 1928 PC 172] the phrase “substantial question of law” as it was employed in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. In *Sir Chunilal case* [1962 Supp (3) SCR 549: AIR 1962 SC 1314] the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in *Rimmalapudi Subba Rao v. Noony Veeraju* [AIR 1951 Mad 969: (*Sir Chunilal case* [1962 Supp (3) SCR 549 : AIR 1962 SC 1314],)

“[W]hen a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular

fact of the case it would not be a substantial question of law.”

This Court laid down the following test as proper test, for determining whether a question of law raised in the case is substantial : (*Sir Chunilal case* [1962 Supp (3) SCR 549 : AIR 1962 SC 1314],

“The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.”

22. In *Dy. Commr. v. Rama Krishna Narain* [(1953) 2 SCC 319 : 1954 SCR 506 : AIR 1953 SC 521] also it was held that a question of law of importance to the parties was a substantial question of law entitling the appellant to a certificate under (the then) Section 100 CPC.

This extract is taken from *Hero Vinoth v. Seshammal*, (2006) 5 SCC 545: 2006 SCC OnLine SC 555 at page 555

23. To be “substantial” a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law “involving in the case” there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is

not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case or not, the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis. (See *Santosh Hazari v. Purushottam Tiwari* [(2001) 3 SCC 179].)

24. The principles relating to Section 100 CPC relevant for this case may be summarized thus:

This extract is taken from *Hero Vinoth v. Seshammal*, (2006) 5 SCC 545: 2006 SCC OnLine SC 555 at page 555

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that High Court will not interfere

with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognized exceptions are where-

- (i) the courts below have ignored material evidence or acted on no evidence;
- (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or
- (iii) the courts have wrongly cast the burden of proof. When we refer to “decision based on no evidence”, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.

8. Bearing the above principles in mind and also considering the submissions of learned Advocates of both the parties and further considering the facts and circumstances on the record, this court left unimpressed by the submission of Mr. Biswas, the learned counsel for the respondents that no substantial question of law is involved in this second appeal. Accordingly, this appeal is admitted on the following substantial questions of law:

- (i) Whether the learned Courts below were justified in accepting the written statement of the defendants/respondents without there being an affidavit in support of such written statement?
- (ii) Whether the learned courts below were justified in accepting the evidence on affidavit of the defendants/respondent No.2 as DW-1 without the defendant/respondent No.1 who was the most vital witness coming to depose before the court?
- (iii) Whether during the lifetime of the defendant/respondent No. 1 the defendant/ respondent No.2, 3,

and 4 being the sons of the defendants/respondents No.1 acquired any right over the Schedule -B property and could have deposed in the suit without any authorization from the defendant/respondents No.1 ?

(iv) Whether the finding of the learned Courts below that the part cancellation of the Annual Patta (Exhibit-1) was permissible, and valid in the eye of law ?

(v) Whether any right would flow upon the defendant/respondent No.1 on the basis of Exhibit-Ka i.e. purported Sale Deed dated 26.11.1956, as the subject matter of sale being an Annual Patta Land ?

9. Let notice be issued to the respondents' returnable in four weeks.
10. Steps be taken upon the respondents by way of registered post with A/D, as well as by usual process within a week from today.
11. Registry shall call for the record from the learned Courts below.
12. List the matter after four weeks.

JUDGE

Comparing Assistant