

S. No. 27

Regular Cause List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CSA No. 32/2018
IA No. 01/2018, CM Nos. 4048, 4049 and 612/2020

Reserved on: 15.04.2022
Pronounced on: 06.05.2022

Sikh Gurduwara ...Petitioner(s)

Through: Mr A. M. Dar, Advocate

Vs.

Surinder Singh and others ...Respondent(s)

Through: Mr M. Younis Bhat, Advocate.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

1. The instant civil 2nd Appeal is directed against the judgement and decree dated 01.09.2018 passed in file No. 9/Civil 1st Appeal by the court of 1st Additional District Judge, Srinagar, in case titled as "Sikh Gurduwara Chatti Padshahi Vs. Surinder Singh and others" along with judgement and decree dated 29.04.2016 passed in file No. 73 in Suit titled as "Sikh Gurudwara Chatti Padshahi vs. Surinder Singh" by the court of Sub Judge/Chief Judicial Magistrate Srinagar.
2. It is being stated in the memo of appeal that a suit for declaration and prohibitory injunction came to be filed by the appellant herein before the trial court being a Gurudwara Committee constituted under Section 10 of J&K Sikh Gurudwara Religious Endowment Act 1973.

3. It is being stated that in the suit the plaintiff/appellant herein claimed to be the owner in possession of land measuring 5 kanals 14 marlas covered under khasra No. 1048 situated at Moza Nowhatta Srinagar, donated as SANKALP to the plaintiff/appellant herein by its original owners. The recognized Granthees are stated to have been recorded as occupants/tenants of the said land having been continuously used and possessed of by the plaintiff/appellant herein without any title of the respondent No. 1 herein thereof notwithstanding of a void, illegal and inoperative sale deed alleged to have been executed by one Dr. Makhan Singh without any title over the said land.
4. The suit is stated to have been wrongly dismissed by the Trial court with costs in terms of judgement and decree dated 29.04.2016 holding that plaintiff/appellant herein failed to prove to be the owners and possessors of land in question.
5. The Appellate court as well is stated to have dismissed the appeal filed by the appellant herein against the judgement and decree of the trial court in terms of the judgement and decree dated 01.09.2018 erroneously being based on surmises and conjunctures.
6. Both the Trial as well as the Appellate court are contended to have transgressed their jurisdiction having travelled beyond pleadings and issues regarding possession of the land in question inasmuch as having relied upon flood damaged, mutilated, unreadable and ill-legible statements of the witnesses without seeking reconstruction of the damaged records. The courts below are also stated to have ignored the statements of one Shafi Ahmad record keeper inasmuch as

the written statement filed by the defendants 2 to 4/respondents herein being the legal heirs of the original Granthees who had been in possession of land in question as trustees.

7. Response has been filed by the respondent No. 1 herein wherein *inter-alia* amongst other contentions raised and grounds urged, the maintainability of the appeal is questioned on the ground that the appeal in question is directed against concurrent findings of facts of the courts below and that there are no substantial question of law involved in the appeal.

Heard learned counsel for the parties and perused the record.

8. Section 100 of the CPC provides that a Second Appeal would 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”. The terms “involves” in sub section (1) of the Section 100 suggests that such a question must arise in the case and it is necessary to decide it. The expression “substantial question of law” has not been defined in the code, as such, the expression cannot be confined to a strait jacket and no rule of universal application can be laid. It can be said that the question must be debatable and not free from doubt. Formulation of substantial question of law is *sine-qua-non* and condition precedent for exercise of power by the High court under Section 100 CPC.

9. **Admit.** Issue post admission notice. Notice waived by Mr. Mohammad Younis Bhat, appearing counsel for the respondents.

10. Having regard to the aforesaid legal position and the facts and circumstances of the case, following substantial questions of law emerge for consideration and adjudication and are accordingly framed: -

- a) Whether the courts below overlooked the mandate of Section 2 and 5 of the J&K Alienation of Land Act, 1995, while dealing with the validity or otherwise of the sale deed impugned in the suit.
- b) Whether both the courts below recorded findings in respect of the ownership and possession of the land in question on the basis of illegible evidence and in the process caused miscarriage of justice.
- c) Whether the courts below in the process of adjudication of the suit and the 1st appeal recorded perverse, inconsistent and contrary findings upon non-consideration of the relevant and admissible evidence, while placing reliance upon illegible evidence.

11. List the appeal for final hearing on 31.05.2022.

IA No. 01/2018

Heard learned counsel for the parties.

Interim direction dated 22.09.2020 shall remain in operation till final disposal of the appeal.

Application disposed of.

**(JAVED IQBAL WANI)
JUDGE**

SRINAGAR

06.05.2022

“Ishaq”