

08.04.2025

DL-54

Ct. No. 33

Srimanta

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

SAT 110 of 2014

Ajit Kumar Biswas

-Vs.-

Mohit Shrivastava & Ors.

Mr. Anirban Saha Roy

...for the appellant.

Mr. Kushal Chatterjee,

Mr. Oishik Chatterjee

...for the respondents.

The learned Advocates representing both the parties are present.

During the course of hearing the learned Advocate representing the respondents raised the issue that an additional substantive question of law should have been formulated concerning the issue as to whether non-joinder of a tenant in common would affect the merit of the instant suit with regard to the tenanted property in dispute. The Hon'ble Supreme Court in **(2011) 9 SCC 684** had, inter alia, observed as follows:-

"In our view, the very jurisdiction of the High Court in hearing a second appeal is founded on the formulation of a substantial question of law. The judgment of the High Court is rendered patently illegal, if a second appeal is heard and

judgment and decree appealed against is reversed without formulating a substantial question of law. The second appellate jurisdiction of the High Court under Section 100 is not akin to the appellate jurisdiction under Section 96 of the Code; it is restricted to such substantial question or questions of law that may arise from the judgment and decree appealed against. As a matter of law, a second appeal is entertainable by the High Court only upon its satisfaction that a substantial question of law is involved in the matter and its formulation thereof. Section 100 of the Code provides that the second appeal shall be heard on the question so formulated. It is, however, open to the High Court to reframe substantial question of law or frame substantial question of law afresh or hold that no substantial question of law is involved at the time of hearing the second appeal but reversal of the judgment and decree passed in appeal by a Court subordinate to it in exercise of jurisdiction under Section 100 of the Code is impermissible without formulating substantial question of law and a decision on such question".

Moreover, in **(2009) 2 SCC 177** it was further observed by the Hon'ble Apex Court as follows:-

"The High Court, in this case, however, formulated a substantial question of law while dictating the judgment in open Court. Before such a substantial question of law could be formulated, the parties should have been put to notice. They should have been given an opportunity to meet the same. Although the Court has the requisite jurisdiction to formulate a substantial question of law at a subsequent stage which was not formulated at the time of admission of the second appeal but the requirements laid down in the proviso appended to Section 100 of the Code of Civil Procedure were required to be met."

Considering the views of the Hon'ble Supreme Court as mentioned above this Court is of the opinion that an additional substantive question of law should be framed for proper adjudication of the instant lis in question. Notice be issued by the learned Advocate representing the respondents upon the learned Advocate representing the petitioner for further hearing on the instant substantive question of law so framed.

Next date be fixed on 7th July, 2025.

(Ananya Bandyopadhyay, J.)