CASE NO.:
Appeal (civil) 5817 of 2006

PETITIONER:
G. Susheela (D) Thr. L.Rs. ..... Appellants

RESPONDENT:
M. Rajyalakshmi & Anr. ..... Respondents

DATE OF JUDGMENT: 14/12/2006

BENCH:
G. P. Mathur & Lokeshwar Singh Panta

JUDGMENT:
JUDGMENT

O R D E R
[Arising out of S. L. P. (C) No.1715 of 2006]

Special leave granted.

As the only point on which the notice was issued related to the desirability of disposing of the Second Appeal in terms of Section 100 of the Code of Civil Procedure, 1908 [in short 'the Code'] without formulating the substantial question of law by the High Court of Judicature, Andhra Pradesh at Hyderabad, it is not necessary to deal with the factual aspects in detail.

The respondents instituted a suit O.S. No.572 of 1989 in the Court of VI Assistant Judge, City Civil Court, Hyderabad, against the appellants for perpetual injunction restraining the appellants from interfering with the peaceful possession of suit land admeasuring Ac.1.25 guntas (i.e. 65 guntas) in Survey No.29 in village Theegalguda, Mandal Charminar, Hyderabad Distt., Andhra Pradesh.

The suit was decreed by the trial court. The appellants carried the matter in appeal being A.S. No.249 of 1996 to the Court of the Additional Chief Judge, City Civil Court, Hyderabad. The learned Additional Chief Judge allowed the appeal and set aside the judgment and decree of the trial court. Being aggrieved against the judgment of the First Appellate Court, the respondents filed Second Appeal No.523 of 2001 in the High Court of Judicature, Andhra Pradesh at Hyderabad. By the impugned judgment, the Second Appeal was allowed and the judgment of the First Appellate Court was reversed.

Hence, this appeal by special leave.

Though various points were urged by learned counsel for the appellant, it is not necessary to go into those aspects in view of the limited notice issued in the present appeal.

Mr. C. S. Rajan, learned senior counsel for the appellants, submitted that the High Court was not justified in disposing of the Second Appeal without formulating the substantial question or questions of law as mandated by Section 100 of the Code.

Mr. C. Mukund, learned counsel for the respondents, submitted that though the High Court has not formulated the questions of law, as required, yet on analyzing the evidence, it concluded that the view expressed by the courts below were not tenable in law.

Section 100 of the Code deals with 'Second Appeal'. A

perusal of the impugned judgment passed by the High Court does not show that any substantial question of law has been formulated or that the Second Appeal was heard on a question of law, if any, so formulated. That being so, the judgment cannot be sustained.

In Ishwar Dass Jain v. Sohan Lal [(2000) 1 SCC 434], this Court in para 10 has stated thus: (SCC p.441)

"10. Now under Section 100 CPC, after the 1976 Amendment, it is essential for the High Court to formulate a substantial question of law and it is not permissible to reverse the judgment of the first appellate court without doing so."

Yet again in Roop Singh v. Ram Singh [(2000) 3 SCC 708], this Court has expressed that the jurisdiction of a High Court is confined to appeals involving substantial question of law. Para 7 of the said judgment reads: (SCC p.713)

"7. It is to be reiterated that under Section 100 CPC jurisdiction of the High Court to entertain a second appeal is confined only to such appeals which involve a substantial question of law and it does not confer any jurisdiction on the High Court to interfere with pure questions of fact while exercising its jurisdiction under Section 100 CPC. That apart, at the time of disposing of the matter the High Court did not even notice the question of law formulated by it at the time of admission of the second appeal as there is no reference of it in the impugned Judgment. Further, the fact-finding courts after appreciating the evidence held that the defendant entered into the possession of the premises as a batai, that is to say, as a tenant and his possession was permissive and there was no pleading or proof as to when it became adverse and hostile. These findings recorded by the two courts were based on proper appreciation of evidence and the material on record and there was no perversity, illegality or irregularity in those findings. If the defendant got the possession of suit land as a lessee or under a batai agreement then from the permissive possession it is for him to establish by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of the real owner. Mere possession for a long time does not result in converting permissive possession into adverse possession (Thakur Kishan Singh v. Arvind Kumar \026 (1994) 6 SCC 591). Hence the High Court ought not to have interfered with the findings of fact recorded by both the courts below."

The position has been reiterated in Kanhaiyalal v. Anupkumar [(2003) 1 SCC 430], Chadat Singh v. Bahadur Ram & Ors. [(2004) 6 SCC 359]; Sasikumar & Ors. v. Kunnath Chellappan Nair & Ors. [(2005) 12 SCC 588].

Under the circumstances, the impugned judgment dated 25.08.2005 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad in Second Appeal, is set aside. We

remit the matter to the High Court for disposal of Second Appeal No.523 of 2001 in accordance with law. The appeal is disposed of on the above-said terms with no order as to costs.

Since the matter is pending for long, we request the High Court to dispose of the appeal as early as possible.