REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.4666 OF 2019
(Arising out of S.L.P.(C) No.13571 of 2012)

Arulmighu Nellukadai
Mariamman Tirukkoil ....Appellant(s)

VERSUS

Tamilarasi (Dead) By LRs. ....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. Leave granted.

2. This appeal is filed against the final judgment and order dated 30.09.2011 passed by the High Court of Judicature at Madras in Second Appeal No.365 of 2009 whereby the High Court allowed the said second appeal filed by the original respondent

herein and set aside the judgment and decree dated 08.12.2008 of the Subordinate Judge, Nagapattinam in A.S. No.30/2008 and dismissed the suit filed by the appellant herein.

3. A few facts need mention hereinbelow for the disposal of this appeal, which involves a short question.

4. This appeal is filed by the plaintiff, who succeeded in the Trial Court and the first Appellate Court but lost in second appeal filed by the defendant (original respondent herein) in the High Court.

5. The appellant (plaintiff) filed a civil suit against the original respondent (defendant) for her eviction from the suit property. The respondent contested the suit.

6. By Judgment and decree dated 11.10.2007, the District Munsif, Nagapattinam decreed the suit.

The defendant (original respondent) felt aggrieved and filed first appeal (AS No. 30/2008) before the Subordinate Judge. By judgment and decree dated 08.12.2008, the first Appellate Court dismissed the appeal and affirmed the judgment and decree passed by the District Munsif. The defendant felt aggrieved and filed second appeal in the High Court. By impugned judgment, the High Court allowed the appeal filed by the defendant and while setting aside the order impugned in the second appeal dismissed the suit filed by the appellant(plaintiff), which has given rise to filing of the present appeal by way of special leave in this Court.

7. So, the short question, which arises for consideration in this appeal, is whether the High Court was justified in allowing the second appeal filed by the defendant (original respondent herein).

8. During the pendency of this appeal, the sole respondent died and her legal representatives were brought on record by this Court's order dated 29.07.2016.

9. Heard Mr. V. Prabhakar, learned counsel for the appellant and Mrs. B. Sunita Rao, learned counsel for the respondents.

10. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow this appeal, set aside the impugned judgment and remand the case to the High Court for deciding the appeal afresh on merits in accordance with law.

11. The need to remand the case has occasioned because we find that the High Court failed to frame any substantial question of law arising in the case while admitting the appeal as required under Section 100 (4) of the Code of Civil Procedure, 1908

(hereinafter referred to as "CPC") and further failed to decide the appeal as provided under Section 100 (5) of the CPC.

12. It is noticed that the High Court framed two substantial questions of law (see Para 7 of the impugned judgment) for the first time in the impugned judgment itself. In other words, what was required to be done by the High Court at the time of admission of the appeal to formulate a question of law after hearing the appellant as provided under Section 100 (4) of the CPC, but the High Court did it in the impugned judgment. Similarly, the High Court could have taken recourse to the powers conferred by proviso to Section 100 (5) of the CPC for framing any additional question of law at the time of final hearing of the appeal by assigning reasons for framing additional question, if it considered that any such question was involved.

It was, however, not done. Instead, the High Court framed the questions for the first time while delivering the impugned judgment.

13. In our considered opinion, the procedure and the manner in which the High Court decided the second appeal regardless of the fact whether it was allowed or dismissed cannot be countenanced. It is not in conformity with the mandatory procedure laid down in Section 100 of the CPC.

14. Recently, this Court had an occasion to examine this very question in **Surat Singh (Dead)** vs. **Siri Bhagwan & Ors.,** [(2018) 4 SCC 562]. The law is explained in Paras 20 to 35 of this decision which read as under:

> "**20. Section 100 of the Code reads as under:**

"100. Second appeal.- (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall 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.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law formulated by it, if it is satisfied that the case involves such question."

21. Sub-section (1) of Section 100 says that the second appeal would be entertained by the High Court only if the High Court is "satisfied" that the case involves a "substantial question of law". Sub- section (3) makes it obligatory upon

the appellant to precisely state in memo of appeal the "substantial question of law" involved in the appeal. Sub-section (4) provides that where the High Court is satisfied that any substantial question of law is involved in the case, it shall formulate that question. In other words, once the High Court is satisfied after hearing the appellant or his counsel, as the case may be, that the appeal involves a substantial question of law, it has to formulate that question and then direct issuance of notice to the respondent of the memo of appeal along with the question of law framed by the High Court. Sub-section (5) provides that the appeal shall be heard only on the question formulated by the High Court under sub-section (4). In other words, the jurisdiction of the High Court to decide the second appeal is confined only to the question framed by the High Court under sub-section(4). The respondent, however, at the time of hearing of the appeal is given a right under sub-section (5) to raise an objection that the question framed by the High Court under sub-section (4) does not involve in the appeal. The reason for giving this right to the respondent for raising such objection at the time of hearing is because the High Court frames the question at the admission stage which is prior to issuance of the notice of appeal to the respondent. In other words, the question is framed behind the back of respondent and, therefore, sub-section(5) enables him to raise such objection at the time of hearing that the question framed does not arise in the appeal. The proviso to sub-section (5), however, also recognizes the power of the High Court to hear the appeal on any other substantial question of law which was not initially framed by the High

Court under sub-section (4). However, this power can be exercised by the High Court only after assigning the reasons for framing such additional question of law at the time of hearing of the appeal.

22. Adverting to the facts of this case at hand, we are at a loss to understand as to how the High Court while passing a final judgment in its concluding para could frame the substantial question of law for the first time and simultaneously answered the said question in appellant's favour. Obviously, the learned Judge must have done it by taking recourse to sub-section (4) of Section 100 of the Code.

23. Here is the case where the High Court was under a legal obligation to frame the substantial question at the time of admission of the appeal after hearing the appellant or/and his counsel under sub-section (4) of Section 100 of the Code, but the High Court did it while passing the final judgment in its concluding para.

24. Such novel procedure adopted by the High Court, in our considered opinion, is wholly contrary to the scheme of Section 100 of the Code and renders the impugned judgment legally unsustainable.

25. In our considered opinion, the High Court had no jurisdiction to frame the substantial question at the time of writing of its final judgment in the appeal except to the extent permitted under sub-section (5). The procedure adopted by the High Court, apart from it being against the scheme of Section 100

of the Code, also resulted in causing prejudice to the respondents because the respondents could not object to the framing of substantial question of law. Indeed, the respondents could not come to know on which question of law, the appeal was admitted for final hearing.

26. In other words, since the High Court failed to frame any substantial question of law under sub-section(4) of Section 100 at the time of admission of the appeal, the respondents could not come to know on which question of law, the appeal was admitted for hearing.

27. It cannot be disputed that sub-section (5) gives the respondents a right to know on which substantial question of law, the appeal was admitted for final hearing. Sub-section (5) enables the respondents to raise an objection at the time of final hearing that the question of law framed at the instance of the appellant does not really arise in the case.

28. Yet, the other reason is that the respondents are only required to reply while opposing the second appeal to the question formulated by the High Court under sub-section (4) and not beyond that. If the question of law is not framed under sub-section (4) at the time of admission or before the final hearing of the appeal, there remains nothing for the respondent to oppose the second appeal at the time of hearing. In this situation, the High Court will have no jurisdiction to decide such second appeal finally for want of any substantial question(s) of law.

29. The scheme of Section 100 is that once the High Court is satisfied that the appeal involves a substantial question of law, such question shall have to be framed under sub-section(4) of Section 100. It is the framing of the question which empowers the High Court to finally decide the appeal in accordance with the procedure prescribed under sub-section (5). Both the requirements prescribed in sub-sections (4) and (5) are, therefore, mandatory and have to be followed in the manner prescribed therein. Indeed, as mentioned *supra,* the jurisdiction to decide the second appeal finally arises only after the substantial question of law is framed under sub-section (4). There may be a case and indeed there are cases where even after framing a substantial question of law, the same can be answered against the appellant. It is, however, done only after hearing the respondents under sub-section (5).

30. If, however, the High Court is satisfied after hearing the appellant at the time of admission that the appeal does not involve any substantial question of law, then such appeal is liable to be dismissed *in limine* without any notice to the respondents after recording a finding in the dismissal order that the appeal does not involve any substantial question of law within the meaning of sub-section (4). It is needless to say that for passing such order in *limine*, the High Court is required to assign the reasons in support of its conclusion.

31. It is, however, of no significance, whether the respondent has appeared at the time of final hearing of the appeal or not. The High Court, in any case, has to proceed in

accordance with the procedure prescribed under Section 100 while disposing of the appeal, whether in *limine* or at the final hearing stage.

32. It is a settled principle of rule of interpretation that whenever a statute requires a particular act to be done in a particular manner then such act has to be done in that manner only and in no other manner. (See- Interpretation of Statutes by G.P. Singh, IXth Edition page 347 and Baru Ram vs. Parsanni (Smt.), AIR 1959 SC 93).

33. The aforesaid principle applies to the case at hand because, as discussed above, the High Court failed to follow the procedure prescribed under Section 100 of the Code while allowing the second appeal and thus committed a jurisdictional error calling for interference by this Court in the impugned judgment.

34. While construing Section 100, this Court in the case of Santosh Hazari vs. Purushottam Tiwari (Deceased) by L.Rs., (2001) 3 SCC 179 succinctly explained the scope, the jurisdiction and what constitutes a substantial questions of law under Section 100 of the Code.

35. It is, therefore, the duty of the High Court to always keep in mind the law laid down in Santosh Hazari (supra) while formulating the question and deciding the second appeal."

15. In the light of the foregoing discussion, we cannot sustain the impugned judgment which, in our view, is not in conformity with the mandatory

requirements of Section 100 of the CPC and hence calls for interference in this appeal.

16. The appeal thus deserves to be allowed and it is accordingly allowed. The impugned judgment is set aside. The case is remanded to the High Court for deciding the second appeal afresh in accordance with law. The High Court will frame proper substantial question(s) of law after hearing the appellant and if it finds that any substantial question(s) of law arises in the case, it will first formulate such question(s) and then accordingly decide the appeal finally on the question(s) framed in accordance with law.

17. We, however, make it clear that we have not expressed any opinion on the merits of the controversy involved in this appeal, but only formed an opinion to remand the case due to the infirmity noticed in the manner in which the second appeal

was decided. The High Court will, therefore, decide the second appeal uninfluenced by any of our observations made in this order.

18. Since the matter is quite old, we request the High Court to decide the second appeal expeditiously, preferably within six months from the date of receipt of this judgment.

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[DINESH MAHESHWARI]

New Delhi;
May 07, 2019