REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2022
[ARISING OUT OF S.L.P.(C) NO.8736 OF 2016]

CHANDRABHAN (DECEASED) THROUGH LRS. & ORS. ....Appellant (s)

Versus

SARASWATI & ORS. ....Respondent (s)

J U D G M E N T

Indira Banerjee, J.

Leave granted.

2. This appeal filed by the Original Plaintiff, Chandrabhan, (since deceased, represented by his legal representatives), is against a final judgment and order dated 11th January 2016 passed by the Aurangabad Bench of the High Court of Judicature at Bombay, allowing Second Appeal No. 45 of 1995 filed by the Respondents, reversing the judgment and order dated 10th November 1994 passed by the Additional District Judge, Beed, in Regular Civil Appeal No.361 of 1984 and dismissing Regular Civil

Suit No. 198 of 1979 filed by the Original Plaintiff praying for the relief of declaration of ownership and perpetual injunction in respect of the suit property.

3. Sambhaji, grandfather of the Original Plaintiff, Chandrabhan had two sons, Baliram and Rambhau. Baliram was the elder of the two sons of Sambhaji. The Original Defendant No.1 Yamunabai, was the wife of Baliram.

4. Baliram and Yamunabai (Original Defendant No.1) were childless, Rambhau, younger brother of Baliram however had two sons, Digamber and Chandrabhan (Original Plaintiff).

5. Since Baliram and Yamunabai were childless, Baliram decided to adopt his nephew, Chandrabhan (Original Plaintiff). Chandrabhan (Original Plaintiff) was Baliram's younger brother Rambhau's son, as noted above. It is stated that Baliram and Rambhau had mutually agreed that Baliram would adopt Rambhau's son, Chandrabhan (Original Plaintiff).

6. In the plaint, it was pleaded that the Original Plaintiff, Chandrabhan was adopted by his uncle Baliram, in accordance with the rites and customs of the community, in a ceremony attended by relatives, neighbours and friends. According to the Appellants, the Original Plaintiff Chandrabhan was about 14 years of age at the time of his adoption by his paternal uncle Baliram, who became his adoptive father.

7. Baliram died intestate, in 1951, about six months after he adopted the Original Plaintiff. After the death of his adoptive father Baliram, the

Original Plaintiff Chandrabhan shifted to a nearby village, from where he managed the properties left by Baliram. The Original Defendant No.2 Champabai is the first wife of the Original Plaintiff, Chandrabhan. In 1979, the Original Defendant No. 1, Yamunabai, wife of Baliram purportedly gifted the suit properties to the Original Defendant No. 2 Champabai, wife of the Original Plaintiff.

8. On 8th May 1979, the Original Plaintiff filed Regular Civil Suit No. 198 of 1979, in the Court of the Civil Judge, Senior Division, at Beed, Maharashtra against the Original Defendant No.1 being Yamunabai, the wife of Baliram and the Original Defendant No.2 being Champabai, his own first wife praying for declaration of ownership of the suit properties, perpetual injunction and other reliefs. The Original Defendants filed their written statements in the suit contending that the Original Plaintiff had not been adopted by Baliram.

9. The Respondent Nos. 1 to 4 being the Original Defendant Nos. 3 to 6 in the suit, filed their written statement in the suit supporting the stand of the Original Defendant Nos. 1 and 2.

10. The Original Plaintiff examined himself as well as five other witnesses, including Prabhu Yogiraj Swami, the priest who conducted the rituals at the time of adoption, to prove that he had been adopted by Baliram. The Original Plaintiff also examined Shahurao Tulsiram Dhas to prove that he had the possession and cultivation of the suit lands. The Respondents, on the other hand, examined Original Defendant No.2,

Champabai and several others to establish that the Original Plaintiff had not been legally and/or validly adopted by Baliram.

11. The Civil Judge, Junior Division, Beed, Maharashtra being the Trial Court dismissed the Regular Civil Suit No. 198 of 1979, by a judgment and order dated 31st July 1984.

12. On 5th November 1984, the Original Plaintiff filed an appeal being Regular Civil Appeal No.361 of 1984 in the Court of the Additional District Judge, Beed, Maharashtra being the First Appellate Court. By a judgment and order dated 10th November 1994, the First Appellate Court allowed the Regular Civil Appeal No.361 of 1984 and set aside the judgment and order dated 31st July 1984 of the Trial Court whereby Regular Civil Suit No.198 of 1979 had been dismissed.

13. The First Appellate Court, after considering the evidence on record, concluded that the Original Plaintiff had been adopted by Baliram and thus entitled to succeed the property of Baliram after his death.

14. The Respondent Nos.1 to 4, being the Original Defendant Nos. 3 to 6, in the suit, who were purchasers pendente lite of the suit property filed a Second Appeal No.45 of 1995 in the High Court of Judicature at Bombay (Aurangabad Bench). The Original Defendant No.1 and the Original Defendant No.2 did not challenge the order passed by the First Appellate Court.

15. The High Court admitted the Second Appeal, which was heard at length and allowed by a judgment and order dated 11th January 2016, which is impugned in this appeal before us.

16. The High Court considered the following questions.

> *"(I) Whether the first appellate Court has committed error in not considering the circumstance that other transactions of sale made by the defendant No.1 in respect of three agricultural lands like Survey Nos.86/1, 100/3 and 109/2 which were left behind by Baliram are not challenged by the plaintiff in the suit?*
>
> *(II) Whether the first appellate Court has committed error in not considering the circumstance that after the death of Baliram name of defendant No.1 only was mutated in the revenue record as successor of Baliram and the name of the plaintiff was not entered as successor of Baliram?*
>
> *(III) Whether the first appellate Court has committed error in not considering the circumstance that the cooperative credit society could not have given loan to the plaintiff on the lands left behind by Baliram as plaintiff was not shown as owner in the revenue record and further there is the circumstance that it is defendant No.1 who had repaid the loan?*
>
> *(IV) Whether the first appellate Court has committed error in not giving due weight to the circumstance like plaintiff never used name of Baliram as his father anywhere and he continued to use the name of his natural father Rambhau?*
>
> *(V) Whether due to absence of specific pleadings with regard to particulars of adoption and due to inconsistencies in the evidence of the witnesses it can be said that there is sufficient evidence to prove the factum of adoption?"*

17. We find there were no questions of law before the High Court, not to speak of substantial questions of law.

18. Admittedly, evidence was adduced at the trial. The Original Plaintiff examined himself as witness and examined five other witnesses. The Original Plaintiff gave evidence of adoption. The second witness Trivenibai, wife of Digamber, the brother of the Original Plaintiff,

Chandrabhan stated that there was an adoption ceremony held at the residence of Rambhau. She also stated that the Original Plaintiff Chandrabhan had performed the last rites of Baliram as his adopted son. The other witnesses also deposed that they had attended the ceremony at which the Original Plaintiff Chandrabhan had been given in adoption to Baliram. The Trial Court rejected the contention of the Plaintiff on the ground of contradiction and inconsistencies in the evidence.

19. The Trial Court also found that the performance of the essential requisites of adoption, such as giving in adoption and taking in adoption had not been established.

20. The First Appellate Court re-analysed the evidence and found that some discrepancies and inconsistencies were natural since the adoption had taken place in 1950 and evidence was taken in 1984, about 34 years later. Thereby, some inconsistencies were only natural.

21. The finding of the First Appellate Court that the Original Plaintiff, Chandrabhan was the adopted son of Baliram was based on :-

(i) The evidence of Trivenibai (PW-2), wife of the Original Plaintiff, Chandrabhan's elder brother Digambar,

(ii) The evidence of the priest, Prabhu Yogiraj Swami who conducted the ceremony of adoption. (PW-6).

(iii) The admission that PW-6 was the family priest who performed rituals of the community to which the parties belonged.

(iv) Evidence that the Original Plaintiff, Chandrabhan had been residing in the house of Baliram.

(v) The Original Plaintiff Chandrabhan's name shown as Chandrabhan Baliram in registers and documents dating back 1960-61.

(vi) The fact that Champabai, the first wife of the Original Plaintiff was residing with Original Defendant No.1, Yamunabhai.

(vii) The properties of Rambhau were inherited by Digamber alone– the Original Plaintiff did not get any share in the properties.

(viii) Evidence of PW-7, Bansi Hajare who had been Secretary of the Ghargaon society for the period from 1961 to 1963, mentioned that there was a crop loan account of Chandrabhan Baliram by Sl. No.35 in his register. The register shows that Chandrabhan Baliram repaid loan of Rs.150/- by 31st July 1961.

22. The Original Plaintiff re-married one Shivganga while Champabai the first wife continued to reside with the Original Plaintiff as stated in her evidence. Champabai had stated that the Original Plaintiff, Shivganga and her were residing together. The use of the middle name, which is the father's name, as Baliram instead of Rambhau after Chandrabhan, gave rise to inference of adoption of Chandrabhan by Baliram.

23. It is well settled that a Second Appeal under Section 100 of the Civil Procedure Code, 1908 (CPC) can only be entertained on a substantial question of law. In ***H.P. Pyarejan v. Dasappa (Dead) by LRs. and Others***[1]**,** this Court held:-

> *"**16.** In our opinion, therefore, the judgment of the High Court suffers from serious infirmities. It suffers from the vice of exercise of jurisdiction which did not vest in the High Court under the law. Under Section 100 of the Code (as amended in 1976) the jurisdiction of the High Court to interfere with the judgments of the courts below is confined to hearing on substantial questions of law. Interference with finding of fact by the High Court is not warranted if it involves reappreciation of evidence (see Panchugopal Barua v. Umesh Chandra Goswami [(1997) 4 SCC 713] and Kshitish Chandra Purkait v. Santosh Kumar Purkait [(1997) 5 SCC 438]). The High Court has not even discussed any evidence. No basic finding of fact recorded by the courts below has been reversed much less any reason assigned for taking a view contrary to that taken by the courts below. The finding on the question of readiness and*

1 (2006) 2 SCC 496

willingness to perform the contract which is a mixed question of law and fact has been upset. It is statutorily provided by Section 16(1)(c) of the Act that to succeed in a suit for specific performance of a contract the plaintiff shall aver and prove that he has performed and has always been ready and willing to perform the essential terms of the contract which were to be performed by him other than the terms the performance of which has been prevented or waived by the defendant."

24. In ***Ram Prasad Rajak v. Nand Kumar & Bros. and Another***[2], this Court held that, "Once the proceeding in the High Court is treated as a Second Appeal under Section 100 CPC, the restrictions prescribed in the said Section would come into play. The High Court could and ought to have dealt with the matter as a Second Appeal and found out whether a substantial question of law arose for consideration. Unless there was a substantial question of law, the High Court had no jurisdiction to entertain the Second Appeal and consider the merits."

25. In ***Kshitish Chandra Purkait v. Santosh Kumar Purkait and Others*** [3], this Court held that existence of substantial question of law was the *sine qua non* for the exercise of jurisdiction under Section 100 of the CPC.

26. In ***Kshitish Chandra Purkait*** (supra), this Court held:-

*"**10.** We would only add that (a) it is the duty cast upon the High Court to formulate the substantial question of law involved in the case even at the initial stage; and (b) that in (exceptional) cases, at a later point of time, when the Court exercises its jurisdiction under the proviso to sub-section (5) of Section 100 CPC in formulating the substantial question of law, the opposite party should be put on notice thereon and should be given a fair or proper opportunity to meet the point. Proceeding to hear the appeal without formulating the substantial question of law involved in the appeal is illegal and is*

2 (1998) 6 SCC 748
3 (1997) 5 SCC 438

an abnegation or abdication of the duty cast on court; and even after the formulation of the substantial question of law, if a fair or proper opportunity is not afforded to the opposite side, it will amount to denial of natural justice. The above parameters within which the High Court has to exercise its jurisdiction under Section 100 CPC should always be borne in mind. We are sorry to state that the above aspects are seldom borne in mind in many cases and second appeals are entertained and/or disposed of, without conforming to the above discipline."

27. The guidelines to determine what is a substantial question of law within the meaning of Section 100 CPC has been laid down by this Court in ***Sir Chunnilal V. Lal Mehta & Sons v. Century Spinning and Manufacturing Co. Ltd.***[4]

28. In ***Sir Chunilal V. Mehta and Sons*** (supra), this Court agreed with and approved a Full Bench judgment of the Madras High Court in ***Rimmalapudi Subba Rao v. Noony Veeraju and Ors.***[5] which laid down the principles for deciding when a question of law becomes a substantial question of law.

29. In ***Hero Vinoth v. Seshammal***[6]***,*** this Court followed ***Sir Chunilal v. Mehta & Sons*** (supra) and other judgments and summarized the tests to find out whether a given set of questions of law were mere questions of law or substantial questions of law.

30. The relevant paragraphs of the judgment of this Court in ***Hero Vinoth*** (supra) are set out herein below:

*"**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*

4 AIR 1962 SC 1314
5 AIR 1951 Mad 969
6 (2006) 5 SCC 545

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 55IA 235 : 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 : (1951) 2 MLJ 222 (FB)] : (*Sir Chunilal case* [1962 Supp (3) SCR 549 : AIR 1962 SC 1314] , SCR p. 557)

> *"[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."*

31. The proper test for determining whether a question of law raised in the case is substantial would 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. 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 the question raised is palpably absurd, the question would not be a substantial question of law.

32. 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***[7]).

33. The principles relating to Section 100 of the CPC relevant for this case may be summarised thus:

(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

7 (2001) 3 SCC 179

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 the High Court will not interfere with findings of facts arrived at by the courts below. But it is not an absolute rule. Some of the well-recognised 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.

34. In this case, it cannot be said that the First Appellate Court acted on no evidence. The Respondents in their Second Appeal before the High Court did not advert to any material evidence that had been ignored by the First Appellate Court. The Respondents also could not show that any wrong inference had been drawn by the First Appellate Court from proved facts by applying the law erroneously.

35. In this case, as observed above, evidence had been adduced on behalf of the Original Plaintiff as well as the Defendants. The First Appellate Court analysed the evidence carefully and in effect found that the Trial Court had erred in its analysis of evidence and given undue importance to discrepancies and inconsistencies, which were not really material, overlooking the time gap of 34 years that had elapsed since the date of the adoption. There was no such infirmity in the reasoning of the First Appellate Court which called for interference.

36. Right of appeal is not automatic. Right of appeal is conferred by statute. When statute confers a limited right of appeal restricted only to cases which involve substantial questions of law, it is not open to this Court to sit in appeal over the factual findings arrived at by the First Appellate Court.

37. The questions raised in High Court, did not meet the tests laid down by this Court for holding that the questions are substantial questions of

law. We are constrained to hold that there was no question of law, let alone any substantial question of law, involved in the Second Appeal.

38. The appeal is, for the reasons, as discussed above, allowed. The impugned judgment and order is set aside and the judgment and order/decree of the First Appellate Court in Regular Civil Appeal No.361 of 1984 is restored.

.....J.
[INDIRA BANERJEE]

.....J.
[J.K. MAHESHWARI]

NEW DELHI
SEPTEMBER 22, 2022