P. CHANDRASEKHARAN AND ORS. A

v.

S. KANAKARAJAN AND ORS.

APRIL 27, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.] B

Code of Civil Procedure, 1908:

s.100—Second appeal—Substantial question of law—Held: Interpretation of a document which goes to the root of the title of a party to the lis would give rise to a substantial question of law—When courts below misread and misinterpreted a document of title read with other documents and the plan for identification of suit property, a substantial question of law arose for determination of High Court. C

Order 22 Rule 4—Abatement of cross-objection—Held: The question as to whether a suit or an appeal has abated or not would depend upon facts of each case—Question having not been raised before High Court—Supreme Court, in appeal, cannot enter into disputed question of fact—Constitution of India, 1950—Article 136. D

E

In a Special Leave Petition before the Supreme Court arising out the judgment of the High Court dismissing a second appeal of the plaintiffs and allowing the cross-objection of the defendants, with respect to certain properties, it was contended that the provisions of sub-section (4) of Section 100 of the Code of Civil Procedure would be attracted in relation to cross-objections. The contention was accepted and the matter was remitted to the F **High Court for framing appropriate substantial question of law. The High Court, after formulating two substantial questions of law on the propriety of the lower appellate court in ignoring and non-consideration of the documentary evidence relating to description of the properties, allowed the cross-objection, and the said judgment was challenged by the plaintiffs in the** G **present appeal.**

It was contended for the appellants that the purported questions formulated by the High Court did not constitute substantial question of law and since all the relevant documents referred to in the questions of law

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A formulated by the High Court had received elaborate description of the property in a document, the same by itself would not give rise to a substantial question of law; and that in view of the fact that during pendency of the second appeal in the earlier round of litigation, one of the cross-objectors had died; and, as such, the cross-objection having abated, and no application for impleadment of legal representatives of the estate of the cross-objectors having been filed B within the period stipulated under Order 22 Rule 4 of the Code of Civil Procedure, 1908, the impugned judgment cannot be sustained.

Dismissing the appeal, the Court

HELD: 1.1. Interpretation of a document which goes to the root of the C title of a party to the lis would indisputably give rise to a substantial question of law. What is prohibited for the High Court while exercising the jurisdiction under Section 100 of CPC is to interfere with a finding of fact. This limited jurisdiction, inter alia, would become exercisable when the findings are based on misreading of evidence or are so perverse that no reasonable person or ordinary prudence could take the said view. [Paras 13 and 14] [973-B, C, D] D

1.2. In a suit for recovery of possession of the property, Court would determine identity of the property. When the courts below misread and misinterpreted a document of title read with other documents and the plan for the identification of the suit lands whereupon the plaintiffs themselves relied upon, a substantial question of law arose for determination of the High E Court in between the parties to the suit.

[Paras 10 and 19] [972-A, B; 975-G; 976-A]

Commissioner of Customs (Preventive) v. *Vijay Dasharath Patel,* (2007) 4 SCALE 132; *Rev. Fr. M.S. Poulose* v. *Varghese & Ors.,* [1995] Supp. 2 SCC F 294 and *Hero Vinoth* v. *Seshammal,* [2006] 5 SCC 545, relied on.

2. The question as to whether a suit or an appeal has abated or not would depend upon the fact of each case. Had such a question been raised before the High Court, the respondents could have shown that their cross-objection did not abate as the estate of the deceased cross-objector was substantially G represented. The question in regard to abatement of a suit or appeal has not been raised. This Court cannot enter into the disputed question of fact at this stage as to whether there has been a substantial representation of the estate of the deceased cross-objectors. [Paras 21 and 23] [976-B, C; 977-C, D]

Mithailal Dalsangar Singh & Ors. v. *Annabai Devram Kini & Ors.,* H [2003] 10 SCC 691, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2206 of 2007. A

From the Final Judgment and Order dated 13.09.2002 of the High Court of Judicature at Madras in Cross Objection in SA No. 1674 of 1982.

S. Balakrishnan, and Subramonium Prasad for the Appellants.

B

V. Prabhakar, Ramjee Prasad, V. Subramani and Revathy Raghavan for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted. C

2. Plaintiffs in the suit are Appellants before us. They filed a suit which was marked as OS No.1132 of 1974; in all 10 reliefs were prayed for. We are concerned herein with reliefs no.8 and 9. Relief no.8 was in respect of a land admeasuring 15-1/2 ft. x 21 ft. whereas relief no.9 was in respect of a land admeasuring 40 ft. x 20 ft. The said lands were allegedly purchased by the D predecessor in interest of the appellants by a deed of sale dated 16.9.1935. In the said deed of sale the properties in question have been described as under :

> "In Tiruchirappalli District, Srirangam Sub District, Tiruchirappalli Taluk, Thimmarayasamudhram Village, Srirangam Municipal Second E Ward, Ayan Punja, in T.S. No.1960/1, out of 24 cents the 8 cents on the western side, Ayan Punja in T.S. No.1960/4 out of 6 cents, 3 cents on western side, within this a thatched house vacant site including the brick wall, door on the east to west side etc. along with common pathway rights in the above T.S. Nos. belongs to the property for 8 F cents set out about four boundaries are as follows:
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> NORTH of Velayutham Pillai land;
>
> SOUTH of Rajarethinam Pillai land;
>
> WEST of Pitchaikara Pillai land; and G
>
> EAST of Municipal lane."

3. This suit was decreed only in relation to reliefs no.6, 8 and 9. An appeal was preferred thereagainst by the appellants. A cross-objection was also preferred by the respondents. Both the appeal and the cross objection H

A were dismissed by the First Appellate Court. A Second Appeal was preferred their against by the appellants in the High Court of Madras which was marked as SA No.1674 of 1982. Some of the respondents also preferred cross objections. The High Court by reason of a judgment and decree dated 16.9.998 while dismissing the appeal preferred by the appellants herein allowed the cross-objections of the respondents in respect of the reliefs no.8 and 9. In
B a special leave petition filed by the appellants before this Court it was argued that even the provisions of sub-section (4) of Section 100 of CPC would be attracted to in relation to the cross objections. The said contention was accepted by this Court and the matter was remitted to the High Court for framing an appropriate substantial questions of law. The questions of law
C formulated by the High Court are as under :

> "(1) Whether the lower appellate Court was right in law in ignoring the documentary evidence relating to description of the suit item Nos.8 and 9 and misreading the evidence of D.W.2 to come to the conclusion that the appellants are entitled to the reliefs, the subject
D matter of Cross Objection?
>
> (2) Whether the lower appellate Court's conclusions are initiated by non-consideration of the Evidence on record more particularly the description of property in Exs.A1, A2, A3, A17, A18 and A21?"

E 4. By reason of the impugned judgment the said Cross Objection of the respondents herein was allowed.

5. Before adverting to the contentions raised by the learned counsel for the parties herein it may be noticed that in the earlier round of litigation before this Court it was pointed out that one of the respondents therein M. Marimuthu
F Ammal had expired way back on 1.12.1993 and thus the Second Appeal itself had abated; the cross objection also did not survive. However, the legal representatives of the said Shri Ammal were brought on record before this Court who are parties before us.

6. Mr. S. Balakrishnan, learned Senior counsel appearing on behalf of
G the appellants, *inter alia*, would submit that the purported questions formulated by the High Court do not constitute 'substantial question of law'. Our attention in this regard has been drawn to the judgments of the courts' below to contend that all the relevant documents and in particular, Exs.A1, A2, A3, A17, A18 and A21 received elaborate consideration by them and thus
H only because there existed a dispute in regard to the description of the

property in a document, the same by itself would not give rise to a substantial question of law. Strong reliance in this behalf has been placed on *Hero Vinoth* v. *Seshammal,* [2006] 5 SCC 545. It was also submitted that in view of the fact that during pendency of the Second Appeal one of the cross objectors died, the cross objection having abated, and no application for impleadment of legal representatives of the state of cross objectors having been filed within the period stipulated under Order 22 Rule 4 of the Code of Civil Procedure, the impugned judgment cannot be sustained.

7. Mr. V. Prabhakar, learned counsel appearing on behalf of the respondents, on the other hand, would draw our attention to the description of the property as contained in Ex.A1 and the Survey Settlement Plan – A7 whereupon reliance has been placed by the appellants themselves, and judgments of the courts below to contend that the boundaries stated in the deed do not tally with the description of properties with each other, as would appear from the brought on record, and in that view of the matter no case has been made out for interference with the impugned judgment by this Court. Mr. Prabhakar urged that the plaintiffs are not only required to prove their title in respect of the property in suit but also identification thereof so that the decree passed, if any, may be executed and in that view of the matter the questions of law have rightly been formulated by the High Court. Misinterpretation of a document, it was submitted, would give rise to a question of law. In reply to the second contention of Mr. Balakrishnan, it was submitted that apart from the fact that such questions have not been raised either before the High Court or in the Memo of Appeal, and as admittedly the cross-objectors are members of the same family and some of the heirs and legal representatives of the deceased cross objector being already party to the appeal, the estate of the deceased has substantially been represented and in that view of the matter the cross objection did not abate.

8. This Court had issued a limited notice i.e. only in respect of item no.9 of the reliefs of the property. The special leave petition, thus, in respect of item no.8 stood dismissed in terms of the order dated 8.5.2003. The said order has become final.

9. Appellants claim title by reason of the said deed of sale dated 16.9.1935.

10. They, as noticed hereinbefore, claimed a large number of reliefs. The reliefs included their easementary right in respect of any land dividing the suit properties and those claimed by the respondents herein. The plaintiff, before

A his suit is decreed, must establish the cause of action in respect of the property in question wherefor the relief for recovery of possession has been claimed. In case the suit is decreed, the Executing Court must be able to deliver possession thereof and thus there cannot be any doubt whatsoever that the property in suit must be adequately identifiable. When such a relief is claimed the plaintiff must show what he had purchased and how the court, B in the event, a dispute arises, would determine the identity of the property.

11. A bare comparison of the deed of sale on the basis whereof appellants claim their right, title and interest, namely, the deed of sale dated 16.9.1935 with the rough plan (Ext.A-17) purported to have been drawn up on the basis C of the Service Settlement Plan, therefore, must lead to proper identification of the suit property. It may be as was contended by Mr. Balakrishnan that between the period 1935 and the date of institution of the suit surrounding properties have changed many hands or the original owners might have died; but when the plaintiffs themselves relied upon a sketch to establish identity of the properties in suit vis-à-vis the existence of lanes and the constructed D platform etc., it was for them to show that the description of the property tally with the one stated in the deed of sale. What was to be in the South of the property belonging to Pitchaikara Pillai and others in the deed of sale have been shown to be the West of the said property. It is difficult to come to a conclusion one way or the other as to whether the lane which is situated on the East of item No.9 of the property and the municipal lane which is situated E at a distance on the eastern side and intervened by a piece of land belonging to Palanisamy Pillai can be taken to the identifying points. We have been taken through other documents also including Ext.A-3 wherein the description of the property has been stated thus :

F "In Tiruchirappalli District, Srirangam Sub District, Tiruchirappalli Taluk, Thimmarayasamudhram Village, Veereshwaram, East Street, Srirangam Municipal, Second Ward in T.S. No.1960/2 & 4 West of common lane 7ft. wide pathway.

NORTH of property of Sambasivam Pillai vacant side in T.S. No.1960/ G 1;

EAST of Municipal North to South Lane in above T.S. No.1960/1 and SOUTH of the vacant site of Palanisamy Pillai and Kunjammal.

WEST of Common lane of 7ft. wide pathway & in 1960/1 within this fourt boundaries North to South 4-1/4 std. ft. East to West 102 std. H

ft. The property is comprised in Srirangam Municipal limits and vacant space as third item manai is situate in T.S. No.1960/1 of 4 ft. lower level." A

12. The said deed was executed in the year 1966. The description of the property was stated to be on the East of Municipal North to South Lane, was shown in the rough sketch as existing in the South of the disputed property. B

13. There cannot be any doubt whatsoever that a substantial question of law is different from a question of law. Interpretation of a document which goes to the root of the title of a party to the lis would indisputably give rise to a question of law.

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14. In *Rev. Fr. M.S. Poulose* v. *Varghese & Ors.*, [1995] Supp. 2 SCC 294, interpretation of the recitals contained in a document was held to be involving a substantial question of law. What is prohibited for the High Court while exercising this jurisdiction under Section 100 of CPC is to interfere with a finding of fact. This limited jurisdiction, *inter alia*, would become exercisable when the findings are based on misreading of evidence or so perverse that no reasonable person of ordinary prudence could take the said view. D

15. This Court in *Hero Vinoth* (supra) opined that the following question of law set out from para 4 gives rise to a substantial question of law and would set aside the judgments of the courts below stating : E

"12.We shall first deal with the question relating to jurisdiction of the High Court to interfere with the concurrent findings of fact. Reference was made by learned counsel for the appellant to *Chandra Bhan* v. *Pamma Bai and Sakhahari Parwatrao Karahale* v. *Bhimashankar Parwatrao Karahale.* So far as the first decision is concerned, in view F of the factual findings recorded by the lower court and the first appellate court it was held that interference with the concurrent findings of fact is not justified. The question related to possession and the two courts primarily considering factual position had decided the question of possession. In that background, this Court observed that jurisdiction under Section 100 CPC should not have been exercised. So far as the G second decision is concerned, the position was almost similar and it was held that findings contrary to the concurrent findings of the lower courts and having no basis either in pleadings, issues framed or in questions actually adjudicated upon by any of the lower courts cannot be sustained. That decision also does not help the appellant H

A in any manner as the factual scenario is totally different in the present case."

16. This Court even went through the depositions of the witnesses examined in the case for the purpose of upholding the judgment of the High Court.

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17. The question recently came up for a consideration before this Court; albeit in a case under Section 130(A) of the Customs Act, in *Commissioner of Customs (Preventive)* v. *Vijay Dasharath Patel,* [2007] 4 SCALE 132, wherein it was held :

C "22. We are not oblivious of the fact that the High Court's jurisdiction in this behalf is limited. What would be substantial question of law, however, would vary from case to case.

23. Moreover, although, a finding of fact can be interfered with when it is perverse, but, it is also trite that where the courts below have D ignored the weight of preponderating circumstances and allowed the judgment to be influenced by inconsequential matters, the High Court would be justified in considering the matter and in coming to its own independent conclusion. {See *Madan Lal* v. *Mst. Gopi and Anr.,* AIR (1980) SC 1754.}

E 24. The High Court shall also be entitled to opine that a substantial question of law arises for its consideration when material and relevant facts have been ignored and legal principles have not been applied in appreciating the evidence. Arriving at a decision, upon taking into consideration irrelevant factors, would also give rise to a substantial F question of law. It may, however, be different that only on the same set of facts the higher court takes a different view. {See *Collector of Customs, Bombay* v. *Swastic Woollens (P) Ltd. and Ors.,* [1988] Supp. SCC 796; and *Metroark Ltd.* v. *Commissioner of Central Excise, Calcutta,* [2004] 12 SCC 505}.

G 25. Even in a case where evidence is misread, the High Court would have power to interfere. {See *West Bengal Electricity Regulatory Commission* v. *CESC Ltd,* [2002] 8 SCC 715; and also *Commissioner of Customs, Mumbai* v. *Bureau Veritas and Ors.,* [2005] 3 SCC 265.

18. This Court in *Hero Vinoth* (supra) held :-

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"24. The principles relating to Section 100 CPC relevant for this case may be summarised thus: A

(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 application of a principle of law in construing a document, it gives rise to a question of law. B

(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. C D E

(iii) The general rule is that High Court will not interfere with the concurrent findings of 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." F G

19. When thus the courts below misread and misinterpreted a document of title read with other documents and the plan for the identification of the suit lands whereupon the plaintiffs themselves relied upon, a substantial question of law arose for determination of the High Court in between the H

A parties to the suit.

20. We, therefore, do not find any merit in the said contention of Mr. Balakrishnan.

21. Indisputably, an appeal would abate automatically unless the heirs B and legal representatives of a deceased plaintiffs or defendants are brought on record within the period specified in the Code of Civil Procedure. Abatement of the appeal, however, can be set aside if an appropriate application is filed therefor. The question, however, as to whether a suit or an appeal has abated or not would depend upon the fact of each case. Had such a question been C raised, the respondents could have shown that their cross-objection did not abate as the estate of the deceased cross objector was substantially represented.

22. In *Mithailal Dalsangar Singh & Ors.* v. *Annabai Devram Kini & Ors.*, [2003] 10 SCC 691 whereupon Mr. Balakrishnan himself relied, this Court D held :

"8. Inasmuch as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be E considered liberally. A simple prayer for bringing the legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside the abatement. So also a prayer for setting aside abatement as regards one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety. Abatement of suit for F failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is automatic and a specific order dismissing the suit as abated is not called for. Once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet G the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words is in H effect being actually asked for and is necessarily implied. Too technical

or pedantic an approach in such cases is not called for. A

9. The courts have to adopt a justice-oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the B court. The opinion of the trial Judge allowing a prayer for setting aside abatement and his finding on the question of availability of sufficient cause within the meaning of sub-rule (2) of Rule 9 of Order 22 and of Section 5 of the Limitation Act, 1963 deserves to be given weight, and once arrived at would not normally be interfered with by C superior jurisdiction."

23. The ratio of the said decision does not militate against the observations made by us hereinbefore. The question in regard to abatement of a suit or appeal has not been raised. We cannot enter into the disputed question of fact at this stage as to whether there has been a substantial D representation of the estate of the deceased cross objectors.

24. For the reasons aforementioned, we do not find any merit in this appeal. It is dismissed accordingly with costs. Counsel's fee is assessed at Rs.10,000/- .

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R.P. Appeal dismissed.