2025 INSC 333

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
(Arising out of SLP(C)No.19182 of 2022)

RABINDRANATH PANIGRAHI …APPELLANT

Versus

SURENDRA SAHU …RESPONDENT

J U D G M E N T

SANJAY KAROL J.

Leave Granted.

2. The present appeal is directed against the judgment and order dated 20th June 2022 of the High Court of Orissa at Cuttack passed in RSA No.131 of 2011 (Second Appeal), whereby the concurrent findings returned by the Courts below *vide* judgments

dated 12th October 2007[1] by Civil Judge (Senior Division), Berhampur and dated 29th January 2011[2] by 1st Addl. District Judge, Berhampur (District Ganjam), were overturned.

3. The brief facts giving rise to the present appeal are as under:

3.1 The dispute *inter se* the parties is one between the septuagenarian landlord-appellant[3] and octogenarian tenant-respondent[4] over two shop rooms situated in the compound of bungalow known as '*Madhu Mandir*', Main Road, Berhampur, covered under Khata No.293 and Plot No.1325 (hereinafter referred to as 'the suit premises'), originally owned by one Late Smt. Ashalata Devi.

3.2 The plaintiff claims that he is the adopted son of Smt. Ashalata Devi, and, as such, after her death the plaintiff inherited all her properties, including the suit premises.

3.3 As per the plaintiff, the suit premises were leased out to the defendant in 1974. The monthly rent for the shops was fixed at Rs.1,000/- per month with further agreement that the defendant would bear the electricity and other

[1] Hereinafter referred to as "The Trial Court"
[2] Hereinafter, "First Appellate Court"
[3] Hereinafter referred to as "plaintiff"
[4] Hereinafter referred to as "defendant"

charges as per consumption and use. Since the defendant was an old acquaintance and had worked as a family servant, the plaintiff leased the suit premises without executing a formal lease deed. The defendant, however, denies the said relationship of landlord-tenant as also the status of the plaintiff being the adopted son of Smt. Ashalata Devi, thereby becoming the sole owner of the suit property.

3.4 It is contended by the plaintiff that from July 2001 onwards, the defendant stopped paying the rent, thereby becoming a defaulter. Consequently, the plaintiff issued a notice dated 27th January 2003 under Section 106 of the Transfer of Property Act, 1882, terminating the defendant's tenancy w.e.f. 28th February 2003 and directing him to vacate the suit premises by 1st March 2003.

3.5 The defendant, however, *vide* his reply dated 24th February 2003, refused to vacate the premises, claiming that he had perfected his title over the suit premises by way of adverse possession and asserted that he had acquired the suit premises from the plaintiff's adoptive mother (Smt. Ashalata Devi) by virtue of an oral gift.

3.6 Hence, the plaintiff filed a suit for eviction and recovery of arrears of rent and damages being C.S.No.276 of 2003 before the learned Civil Judge (Senior Division),

Berhampur. After appreciating the oral and documentary evidence, the Trial Court decreed the suit in favour of the plaintiff *vide* judgment dated 12th October 2007, recording the following findings :

(i) The plaintiff, being the legally adopted son of Smt. Ashalata Devi acquired absolute ownership of the suit premises upon her demise.

(ii) The defendant failed to establish any rightful claim over the suit premises as -

(a) no right, title or interest over any immovable property can be passed or acquired by way of an oral gift;

(b) the defendant's possession was permissive by nature and, therefore, could not be construed as an adverse possession; and

(c) no positive evidence of adverse possession was adduced by the defendant.

(iii) There existed a relationship of landlord and tenant between the plaintiff and defendant and the defendant occupied the suit premises as a tenant since 1974.

(iv) Even in the absence of conclusive proof of a landlord-tenant relationship, the

> defendant is liable to be evicted since he failed to prove his title over the premises, whereas the plaintiff has substantiated his title.

The Trial Court, therefore, directed the defendant to handover vacant possession of the suit premises to the plaintiff within two months and to pay arrears of rent and damages for his unauthorized use and occupation of the suit premises.

3.7 Being dissatisfied with the judgment of the Trial Court, the defendant preferred a Regular First Appeal No. 04 of 2010[5] before the learned 1st Addl. District Judge, Berhampur (District Ganjam). By judgment dated 29th January 2011, the First Appellate Court affirmed the findings of the Court below and dismissed the appeal with costs, and observed that :-

> "6. … Admittedly Ashalata Devi was the owner of the suit house. The plaintiff claiming to be the adopted son of the Ashalata Devi has filed the suit for eviction against the defendant. The learned trial court relying upon the oral and number of contemporaneous documentary evidence has held that the plaintiff is the adopted son of the said Ashalata Devi and that after the death of said Ashalata Devi the plaintiff has acquired title to the suit property. The aforesaid findings of the trial court have not been challenged by the appellant. Therefore, the sole point that needs to be considered in this appeal is

[5] Previously numbered as R.F.A. No. 76 of 2007

whether the defendant has acquired title to the suit shop house by adverse possession. It appears that right from the beginning the defendant pleaded that he occupied the suit premises with permission of Ashalata Devi in the year 1974. It is settled position of law that permissive possession cannot be construed as adverse possession and possession being with permission cannot become adverse unless hostile animus was expressed at any particular time to the knowledge of the owner. In support of such proposition of law, the learned trial court had referred several judgments of the Hon'ble Apex Court and of our own High Court. In the written statement there is no plea as to when the defendant exhibited hostile animus in possessing the suit property. Admittedly Ashalata Devi, has not transferred the suit premises in favour of the defendant by way of any registered gift deed. In absence of such registered gift deed the possession of the defendant over the suit premises is held to be permissive. It is the settled position of law that mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession. Mere payment of electricity dues in the name of the real owner for over statutory period cannot prove adverse possession of the defendant over the suit premises. It appears that the learned trial court has gone in the evidence adduced by the defendant in detail and after considering the evidence on record, found it as a fact that the possession of the defendant over the suit premises was not adverse for the statutory period. In my view that the learned Civil Judge (SD), Berhampur has come to the right conclusion that the defendant has failed to prove his title over the suit premises by way of adverse possession. Sinec the defendant has been in illegal possession of the suit premises without payment of rent rightly the learned trial court has held that the defendant is liable to pay the arrear rent and damages. Hence, there is no reason for this Court to interfere with the impugned judgment and decree."

3.8 Aggrieved by the dismissal of the First Appeal, the defendant preferred a Second Appeal under Section 100 of the Civil Procedure Code, 1908[6], being RSA No.131 of 2011 before the High Court of Orissa at Cuttack, which was allowed *vide* the impugned judgment. The High Court framed the following substantial questions of law for its consideration :

> "1) Whether the learned Trial Court has committed gross illegality in coming to the conclusion that the Appellant-Defendant was the tenant under the Plaintiff by raising a presumption from surrounding circumstance and surmising that under such circumstances even a rustic man can say that the Defendant must have occupied the shop room in question as a tenant, in absence of any material to that effect?
>
> 2) Whether the learned Lower Appellate Court has not discharged its duty as required under law being the final Court of fact, by dealing with all issues raised in the suit and not addressing itself to the same?"

The High Court, while reversing the concurrent findings of the lower Courts, held that the relationship of landlord and tenant cannot be sustained. Given that such a conclusion had been arrived at upon appreciation of not direct evidence but surrounding circumstances, it was further concluded in Para 15 as under :

[6] For short, "CPC"

> "15. Adverting to the case at hand, here the Plaintiff had filed the suit for eviction. It was filed before the forum which did not lack inherent jurisdiction to pass a decree for delivery of possession. It showed the intention of the Plaintiff to act and to take back the possession. The settled position of law is that once a suit for recovery of possession against the Defendant who claims to be in adverse possession is filed, the period of limitation for perfecting title by adverse possession comes to a grinding halt. This being the statement of law, the filing of the present suit for eviction would certainly arrest the running of the period of adverse possession by the Defendant. Be it ingeminated that if by the date of present suit, the Defendant had already perfected title by adverse possession that would stand on a different footing. The substantial questions of law are thus answered against the reliefs sought for by the Plaintiff as against the Defendant within the ambit and purview of the present suit in the form it has been laid. The Plaintiff thus in the present suit is not entitled to a decree for eviction as well as arrear rent and damage as allowed by the Courts below.
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> In our view of the aforesaid analysis, the Courts below should have dismissed the suit for eviction, arrear of rent and damage leaving the Plaintiff to come up in another suit claiming title and recovery of possession, is so advised. In our view of the matter, while setting aside the judgments and decrees passed by the Courts below in decreeing his suit. On the anvil of the settled law as discussed; the Plaintiff is, however, permitted to institute a suit as entitled under law for title and recovery of possession and such other reliefs as the law permit within a period of three months from today."

4. We have heard Mr. Yasobant Das, learned Senior Counsel appearing for the plaintiff-appellant and Mr. S Debabrata Reddy, learned counsel appearing for the defendant-respondent. We have also perused the material on record.

5. The only question that arises for our consideration is whether, in the facts and circumstances of the case, the High Court was justified in overturning concurrent findings of the Trial Court as well as the First Appellate Court in Second Appeal.

6. The principles governing the scope of Second Appeal under Section 100 CPC are well-settled. To state that, under Section 100 CPC a High Court is not to disturb findings of fact, would be now like stating the obvious. [See: ***Santosh Hazari v. Purushottam Tiwari***[7]; ***Gurdev Kaur v. Kaki***[8]; ***State Bank of India v. S.N. Goyal***[9]; and ***Suresh Lataruji Ramteke v. Sau. Sumanbai Pandurang Petkar***[10]] Yet recently, this Court lamented that despite numerous judgments spelling out the scope of this power, the High Court repeatedly falls in error. [See: ***Jaichand v. Sahnulal***[11]] The present is another such case.

7. In the present case, the questions as framed by the High Court, in our view, do not meet the criteria to be substantial questions of law. For a question to be substantial, reference can be made to the discussion made in, amongst a host of other

[7] (2001) 3 SCC 179
[8] (2007) 1 SCC 546
[9] (2008) 8 SCC 9215
[10] 2023 SCC OnLine SC 1210
[11] 2024 SCC OnLine SC 3864

judgments, ***Hero Vinoth v. Seshammal***[12], wherein it was held as under :

> "21. …"[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."
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> This Court laid down the following test as proper test, for determining whether a question of law raised in the case is substantial : (*Sir Chunilal case* [1962 Supp (3) SCR 549 : AIR 1962 SC 1314] , SCR pp. 557-58)
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> > "The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, 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 or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. 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 that the plea raised is palpably absurd the question would not be a substantial question of law." "

[12] (2006) 5 SCC 545

In ***Nazir Mohamed v. J. Kamala***[13], it was observed that :-

> "28. To be "substantial", a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way."

[See: ***P. Kishore Kumar v. Vittal K. Patkar***[14]; and ***Ramachandra Reddy v. Ramulu Ammal***[15]]

8. Applying the above discussion to the questions framed in the impugned judgment, the first one questions the conclusion arrived at by the Trial Court on the basis of appreciation of facts and does not involve any interpretation of law whatsoever. It pertains to the said relationship between the parties being proved on the basis of surrounding circumstances.

9. Insofar as the second question is concerned, i.e., the requirement of the First Appellate Court to associate itself with all the questions framed by the Trial Court, we find this question to have been decided by this Court in ***Murthy v. C. Saradambal***[16], wherein it was held :

> "60. Before parting with this case, we would like to reiterate that in this case, the High Court has dealt with

[13] (2020) 19 SCC 57
[14] 2023 SCC OnLine SC 1483
[15] 2024 SCC OnLine SC 3301
[16] (2022) 3 SCC 209

> the judgment of the learned trial Judge in a shortcut method, bereft of all reasoning while reversing the judgment of the trial court both on facts as well as law. It is trite that the appellate Court has jurisdiction to reverse, affirm or modify the findings and the judgment of the trial court. However, while reversing or modifying the judgment of a trial court, it is the duty of the appellate Court to reflect in its judgment, conscious application of mind on the findings recorded supported by reasons, on all issues dealt with, as well as the contentions put forth, and pressed by the parties for decision of the appellate Court. No doubt, when the appellate Court affirms the judgment of a trial court, the reasoning need not to be elaborate although reappreciation of the evidence and reconsideration of the judgment of the trial court are necessary concomitants. But while reversing a judgment of a trial court, the appellate Court must be more conscious of its duty in assigning the reasons for doing so."

In confirming the judgment of the Trial Court, we find the First Appellate Court to have, although, in short, considered the evidence on record, its application to the questions framed by the Court below and returned its findings accordingly.

10. Additionally, we find that both the Courts below held the relationship of landlord and tenant to be proved between the parties. This, in our view, is a finding of fact which could not be disturbed by the Court in the Second Appeal, as it was not open for the Court to examine the evidence assuming First Appeal jurisdiction, unless the findings returned were perverse. In the present facts, the findings of perversity, in our view, are in themselves perverse. This we say so for two reasons : One, that

the defendant has been unable to prove his ownership of the subject matter property by way of adverse possession, establishing open, continuous and hostile possession; and two, that the plaintiff's ownership that he claims to have devolved upon him by virtue of being the adopted son of Smt. Ashalata Devi (original owner) has nowhere been challenged and, as such, has attained finality.

11. Hence, it can be concluded that the first substantial question of law is unjustified as it is entirely a question of fact and, therefore, not open to adjudication. On the second aspect too, interference by the High Court in the circumstances was unwarranted.

12. Consequently, the judgment of the High Court is set aside. The tenant is hereby directed to handover vacant and peaceful possession of the subject premises within a period of three months from the date of this judgment. The tenant is further directed to clear all arrears, be it rent, utilities or otherwise, within the same timeframe. It is to be ensured that as on the date of handing over of possession, all dues, statutory and/or contractual, arising out of the tenancy, shall be duly cleared. The Registry is directed to communicate a copy of this order to the Registrar General, High Court of Orissa, who shall further communicate the same to the concerned parties.

13. The appeal is allowed as aforesaid. Pending application(s), if any, shall stand disposed of.

……J.
(SANJAY KAROL)

……J.
(PRASHANT KUMAR MISHRA)

New Delhi;
March 6, 2025.