2025 INSC 80

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 567 OF 2025
(Arising out of SLP (C) No. 27761 of 2024)

U. SUDHEERA & OTHERS ... APPELLANTS

VERSUS

C. YASHODA & OTHERS ... RESPONDENTS

J U D G M E N T

R. MAHADEVAN, J.

Leave granted.

2. The challenge made in this appeal is to the interim order dated 20.09.2024 passed by the High Court of Andhra Pradesh at Amaravathi[1] in the Second Appeal bearing No.518/2023. For the sake of clarity and ease of reference, the order impugned herein is reproduced below:

> *"Learned counsel for the respondent No.9 is present.*
> *Notice sent to respondent No.8 was served.*
> *Therefore, service of respondent No.8 is 'held sufficient'.*
> *Learned counsel for the appellant is permitted to take out steps for filing substitute service against the respondent Nos.4, 6 and 7.*
> *It was represented by the learned Senior Counsel for the appellant, Sri S. Rajendra Prasad that the appellant is in possession and enjoyment of the scheduled property as on today and the respondents are making efforts for interfering with the possession of the appellant.*
> *Considering the representation made by the learned Senior Counsel for the appellant, both parties are directed to maintain status-quo till 25.09.2024.*

[1] Hereinafter referred to as "the High Court"

List the matter on 25.09.2024."

3. The Respondent No.1 is the plaintiff in the suit in O.S.No.48 of 2011; Appellant Nos.1 to 3 are the legal representatives of the deceased Defendant No.5; Appellant Nos.4 to 6 are Defendant Nos.1, 3, and 6; and Respondent Nos.2 and 3 are Defendant Nos.2 and 4 in the said suit.

4. The brief facts of the case, as presented by the appellants, are as follows:

The defendants are members of the Gazetted Officers Cooperative House Building Society[2], which was registered in 1966 with the purpose of purchasing and making constructions on lands in Mangalam Village, Tirupati. The Society purchased lands in Survey Nos.2, 10/1, 10/2 and 12 measuring an extent of 5.35 Ac, 0.61Ac, 4 Ac, 5.47 Ac respectively. The suit scheduled property measuring an extent of 0.61 Ac was also purchased by the Society through a sale deed dated 20.03.1986 from one M.Savithramma W/o. Mudduluru Ramakrishnamraju. The original pattadar of the suit scheduled property was one Kannavaram Lokanadham, who sold the same to M.Savithramma by sale deed dated 14.05.1981. While so, the Government issued notification under section 4 of the Land Acquisition Act, 1894, seeking to acquire the lands of the Society. Aggrieved by the same, the Society approached the High Court by filing a writ petition bearing No.2357/1987, which was allowed and the acquisition notification was set aside, by order dated 27.07.1987. Thereafter, the Tirupati

[2] For short, "the Society"

Urban Development Authority issued Order under Section 14 of the Andhra Pradesh Urban Areas (Development) Act, 1975, on 19.06.1996 granting approval of layout in respect of the lands in Sy.Nos.2, 10/1, 10/2 of Mangalam Village, Tirupati. Pursuant to the same, plots were developed and were sold to the defendants. As things stood, the Respondent No.1/plaintiff approached the Tahsildar for mutation of the revenue records in respect of the land in Sy.No.10/1 (0.61 Ac) and the same was done *ex parte* by Order dated 13.04.2010. On the basis of the same, the Respondent No.1/plaintiff filed a suit in OS.No.48 of 2011 before the 1st Additional Junior Civil Judge, Tirupati, for permanent injunction against the defendants. The trial Court decreed the suit in favour of the plaintiff, by judgment dated 05.02.2016. However, the First Appellate Court *viz*., V Additional District Judge, Tirupati, by judgment dated 11.11.2022 passed in A.S.No.17/2016, allowed the appeal suit and set aside the judgment and decree passed by the trial Court, after having found that the plaintiff could not have maintained a suit for bare injunction, without seeking declaration of title. Challenging the same, the Respondent No.1 / plaintiff filed a second appeal bearing No. 518 of 2023 before the High Court. After adjourning the matter on three occasions on the ground that the respondents therein were not served, the High Court on the fourth occasion i.e., 20.09.2024, granted interim relief in the form of *status quo*, without formulating any substantial question of law arising in the second appeal. By order dated 26.09.2024, the said interim relief was extended till 17.10.2024. Feeling aggrieved, the legal heirs of Defendant No.5

and the Defendant Nos.1,3, and 6 are before us with the present appeal.

5. The learned counsel for the appellants submitted that without framing substantial question of law, an interim order cannot be passed in a second appeal filed under Section 100 of the Code of Civil Procedure, 1908[3]. In this connection, reliance was placed on the judgment of this Court in *Ram Phal v. Banarasi*[4], wherein, it was found that the High Court granted interim order and thereafter, fixed the matter for framing of question of law on a subsequent date, and ultimately, it was held that 'since the High Court dealt with the matter contrary to the mandate enshrined under Section 100 CPC, the impugned order deserves to be set aside'. The said judgment has been consistently followed by this Court in the subsequent decisions in *Raghavendra Swamy Mutt v. Uttaradi Mutt*[5] and *Bhagyashree Anant Gaonkar v. Narendra @ Nagesh Bharma Holkar*[6].

5.1. The learned counsel further submitted that when the fact remains that all the respondents have not been served and the plaintiff has not even sought for declaration of title, the High Court erred in granting the interim relief, on a mere representation.

5.2. Referring to the judgment of this Court in *Anathula Sudhakar v. P Buchi Reddy*[7], it is submitted that the suit instituted for bare injunction without seeking declaration of title, is not maintainable.

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[3] For short, "CPC"
[4] (2003) 11 SCC 762
[5] (2016) 11 SCC 235
[6] (2023) SCC Online 1236
[7] (2008) 4 SCC 594

5.3. The learned counsel further submitted that the trial Court decreed the suit on the presumption that the Respondent No.1/plaintiff is the owner of the property on the basis of revenue records. However, it is settled law that revenue records cannot be the basis for determination of ownership. In this regard, reference was made to the judgment of this Court in *Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co.*[8], wherein, it was held that 'mutation of a land in the revenue records does not create or extinguish the title over such land nor has it any presumptive value on the title. It only enables the person in whose favour mutation is ordered, to pay the land revenue in question'.

5.4. It is finally submitted that the First Appellate Court, on facts, decided the appeal in favour of the appellants and as such, the High Court ought not to have granted an interim order merely on the basis of representation of the counsel.

5.5. By submitting so, the learned counsel prayed to allow this appeal by setting aside the interim order passed by the High Court.

6. On the contrary, the learned counsel for the contesting respondent / plaintiff submitted that the jurisdiction of the Court is inherent to issue any ad interim / temporary order for limited period, in case of exigencies or the circumstances not covered in the scheme of Code to protect the ends of justice

[8] (2019) 3 SCC 191

and to safeguard the subject matter of the proceedings. To substantiate the same, reference was made to the judgment of this Court in *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal*[9], which was referred to in *Vareed Jacob v. Sosamma Geeverghese and Ors*.[10]

6.1. Adding further, it is submitted that since the Code does not provide for any provision for protection of the subject matter of proceedings, when an Appeal under Order 41 Rule 5 CPC is preferred, and the substantive question of law remains to be framed yet, the inherent power of the Court under Section 151 CPC can be invoked in the interregnum to protect the subject matter.

6.2. It is also submitted that the impugned order is only in the nature of an *exparte* ad interim arrangement for a limited period i.e., till the next date of hearing. It is neither creating any right nor divesting the parties of their right. That apart, it does not stay the operation of the decree, but is only in aid of preserving the subject matter of the suit and maintaining the *status quo* as it stood on the date of passing of the order. Therefore, the said ad interim *ex parte* arrangement cannot be construed as interim order. In support of his contention, reference was made to the judgment of Bombay High Court in *Vrajesh Anandrao Kerkar v. Durgesh Tulsidas Kerkar and Others*[11].

6.3. The learned counsel further pointed out that in *Ram phal* (supra), the execution of the decree itself was stayed, whereas in the present case, the decree

[9] AIR 1962 SC 527
[10] (2004) 6 SCC 378
[11] 2024 SCC OnLine Bom 472

has not been stayed and mere ad interim arrangement to maintain *status quo* is under challenge. Similarly, the judgment of this Court in *Bhagyashree Anant Gaonkar* (supra) is factually distinguishable as the High Court had passed the final judgment without even framing any question of law. Therefore, the decisions relied on by the learned counsel for the petitioners are not applicable to the facts of the present case.

6.4. Ultimately, it is submitted by the learned counsel that as per the averments made in the plaint, the plaintiff has right and share in the suit scheduled property. Hence, the second appeal could be decided only upon perusal of the entire papers properly and the impugned order has been passed only as an interim measure to protect the interest of the parties.

6.5. Thus, according to the learned counsel, there is no infirmity or illegality in the order so passed by the High Court and the same need not be interfered with by this court.

7. We have considered the rival submissions and perused the documents produced before us.

8. Now, the short question arising for our consideration is, whether the High Court can pass any ad interim order for a limited period, before framing substantial question(s) of law, while dealing with a second appeal filed under Order XLI r/w Section 100 CPC.

9. The facts that remain undisputed are that the suit in OS.No.48 of 2011 filed by the Respondent No.1/ plaintiff was one for permanent injunction and the same was decreed in her favour by judgment dated 05.02.2016. However, the First Appellate Court set aside the same and allowed the appeal suit filed by the appellants / defendants by judgment dated 11.11.2022. Therefore, the Respondent No.1 / plaintiff preferred SA.No.518 of 2023, in which, without formulating the substantial questions of law, the High Court granted the interim relief in the form of *status quo* to be maintained by the parties, and the same is called in question before us. Considering the limited nature of the issue involved herein, we need not go further into the factual aspects of the matter.

10. Let us first examine the relevant legal provisions and case laws connected to the issue involved in this appeal.

10.1. The right of filing a second appeal is provided under section 100 CPC, which confers jurisdiction on the High Court only when it is satisfied that the case involves a substantial question of law. For better appreciation, the said provision reads as under:

> *"[12][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.*

[12] Substituted by Act 104 of 1976, sec.37, for section 100 (w.e.f. 1-2-1977)

(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, not formulated by it, if it is satisfied that the case involves such question.]"

10.2. This Court has categorically held that the High Court acquires jurisdiction to deal with the second appeal on merits only when it frames a substantial question of law as required to be framed under Section 100 CPC; and it cannot grant an interim order, without framing substantial question of law. In this regard, a few decisions and the relevant paragraphs are usefully quoted below:

(i) Ram Phal (supra)

"2. ... Aggrieved, the respondents herein filed second appeal before the High Court against the judgment and decree of the first appellate court. When the second appeal came up for admission on 20-12-1999 the High Court directed to list the appeal for framing of question of law on 28-3-2000. However, the High Court granted interim order by staying the execution of the decree. It is against the said order granting interim relief the respondent in the second appeal has preferred this appeal. This Court, on a number of occasions, has repeatedly held that the High Court acquires jurisdiction to decide the second appeal or deal with the second appeal on merits only when it frames a substantial question of law as required to be framed under Section 100 of the Civil Procedure Code. In the present case, what we find is that the High Court granted interim order and thereafter fixed the matter for framing of question of law on a subsequent date. This was not the way to deal with the matter as contemplated under Section 100 CPC. The High Court is required to frame the question of law first and thereafter deal with the matter. Since the High Court dealt with the matter contrary to the mandate enshrined under Section 100 CPC, the impugned order deserves to be

set aside."

(ii) Raghavendra Swamy Mutt (supra)

"23. The submission of the learned Senior Counsel for the appellant is that Order 41 Rule 5 confers jurisdiction on the High Court while dealing with an appeal under Section 100 CPC to pass an ex parte order and such an order can be passed deferring formulation of question of law in grave situations. Be it stated, for passing an ex parte order the Court has to keep in mind the postulates provided under sub-rule (3) of Rule 5 of Order 41. It has to be made clear that the Court for the purpose of passing an ex parte order is obligated to keep in view the language employed under Section 100 CPC. It is because formulation of substantial question of law enables the High Court to entertain an appeal and thereafter proceed to pass an order and at that juncture, needless to say, the Court has the jurisdiction to pass an interim order subject to the language employed in Order 41 Rule 5(3).

24. It is clear as day that the High Court cannot admit a second appeal without examining whether it raises any substantial question of law for admission and thereafter, it is obliged to formulate the substantial question of law. Solely because the Court has the jurisdiction to pass an ex parte order, it does not empower it not to formulate the substantial question of law for the purpose of admission, defer the date of admission and pass an order of stay or grant an interim relief. That is not the scheme of CPC after its amendment in 1976 and that is not the tenor of precedents of this Court and it has been clearly so stated in Ram Phal v. Banarasi, [(2003) 11 SCC 762] . Therefore, the High Court has rectified its mistake by vacating the order passed in IA No. 1 of 2015 and it is the correct approach adopted by the High Court. Thus, the impugned order is absolutely impregnable."

(iii) Santosh Hazari v. Purushottam Tiwari[13]

"9. The High Court cannot proceed to hear a second appeal without formulating the substantial question of law involved in the appeal and if it does so it acts illegally and in abnegation or abdication of the duty cast on Court. The existence of substantial question of law is the sine qua non for the exercise of the jurisdiction under the amended Section 100 of the Code. (See: Kshitish Chandra Purkait v. Santosh Kumar Purkait [(1997) 5 SCC 438], Panchugopal Barua v. Umesh Chandra Goswami [(1997) 4 SCC 713] and Kondiba Dagadu Kadam v. Savitribai Sopan Gujar [(1999) 3 SCC 722].)"

[13] (2001) 3 SCC 179

(iv) Roop Singh v. Ram Singh[14]

"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.

(v) State Bank of India v. S.N. Goyal[15]

"15. It is a matter of concern that the scope of second appeals and as also the procedural aspects of second appeals are often ignored by the High Courts. Some of the oft-repeated errors are:

(a) Admitting a second appeal when it does not give rise to a substantial question of law.

(b) Admitting second appeals without formulating substantial question of law.

(c) Admitting second appeals by formulating a standard or mechanical question such as "whether on the facts and circumstances the judgment of the first appellate court calls for interference" as the substantial question of law.

(d) Failing to consider and formulate relevant and appropriate substantial question(s) of law involved in the second appeal.

(e) Rejecting second appeals on the ground that the case does not involve any substantial question of law, when the case in fact involves substantial questions of law.

(f) Reformulating the substantial question of law after the conclusion of the hearing, while preparing the judgment, thereby denying an opportunity to the parties to make submissions on the reformulated substantial question of law.

(g) Deciding second appeals by reappreciating evidence and interfering with findings of fact, ignoring the questions of law.

These lapses or technical errors lead to injustice and also give rise to avoidable further appeals to this Court and remands by this Court, thereby prolonging the period of litigation. Care should be taken to ensure that the cases not involving substantial questions of law are not entertained, and at the same time ensure that cases involving substantial questions of law are not rejected as not involving substantial questions of law."

[14] (2000) 3 SCC 708
[15] (2008) 8 SCC 92

(vi) Municipal Committee, Hoshiarpur v. Punjab SEB[16]

> *"16… The court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC. It is the obligation on the court to further clear the intent of the legislature and not to frustrate it by ignoring the same."*

(vii) Umerkhan v. Bismillabi[17]

> *"11. In our view, the very jurisdiction of the High Court in hearing a second appeal is founded on the formulation of a substantial question of law. The judgment of the High Court is rendered patently illegal, if a second appeal is heard and judgment and decree appealed against is reversed without formulating a substantial question of law. The second appellate jurisdiction of the High Court under Section 100 is not akin to the appellate jurisdiction under Section 96 of the Code; it is restricted to such substantial question or questions of law that may arise from the judgment and decree appealed against. As a matter of law, a second appeal is entertainable by the High Court only upon its satisfaction that a substantial question of law is involved in the matter and its formulation thereof. Section 100 of the Code provides that the second appeal shall be heard on the question so formulated. It is, however, open to the High Court to reframe substantial question of law or frame substantial question of law afresh or hold that no substantial question of law is involved at the time of hearing the second appeal but reversal of the judgment and decree passed in appeal by a court subordinate to it in exercise of jurisdiction under Section 100 of the Code is impermissible without formulating substantial question of law and a decision on such question."*

(viii) In *Bhagyashree Anant Gaonkar* (supra), this Court has observed that the exclusive jurisdiction of the High Court to deal with a regular second appeal is

[16] (2010) 13 SCC 216
[17] (2011) 9 SCC 684

stipulated in section 100 CPC, which grants power to the High Court to consider a regular second appeal only on a substantial question of law; and after referring to the aforesaid earlier judgments, has ultimately, set aside the impugned judgment passed in the Regular Second Appeal and remanded the matter to the High Court for a fresh consideration after ascertaining whether substantial questions were framed at the time of admitting the matter and if not, to frame the substantial questions of law on hearing the learned counsel for the respective parties and thereafter to dispose of the second appeal in accordance with law.

(ix) Following the aforesaid judgments, this Court in *Hemavathi & others v. V.Hombegowda and another*[18], has observed that if no substantial question of law arose in the case, then, the appeal could not have been entertained and ought to have been dismissed at the stage of admission. The relevant passage reads as under:

> *"The jurisdiction of the High Court to entertain a Second Appeal is well-known. It is a unique jurisdiction of the High Court where the High Court can entertain a Regular Second Appeal purely on a "substantial" question of law not even a question of law or a question of fact. It is a settled law that the first appellate court is the final Court insofar as the question of facts are concerned and it is only when substantial questions of law would arise in a case that the High Court can entertain a Regular Second Appeal and if at the stage of admission such substantial questions of law are discerned by the High Court the same would have to be framed and the appeal(s) would have to be admitted. It is only thereafter that the parties have to be heard on the substantial questions of law that are framed by the High Court at the stage of admission.*
>
> *However, the CPC gives power to the High Court to frame additional substantial questions of law or to mould the substantial questions of law already*

[18] 2023 INSC 848 : 2023 SCC OnLine SC 1206

> *framed on hearing the parties at the time of final hearing of a Second Appeal. In the event the respondents before the High Court are on record even at the stage of admission of a Regular Second Appeal and the same is to be disposed of finally even at this stage substantial questions of law must be framed and answered before the Regular Second Appeal is admitted and disposed."*

10.3. As per Section 100, a High Court can proceed to hear a Second Appeal only if the case involves a substantial question of law, implying that when the appeal is taken up for admission, it must satisfy itself that a substantial question of law is involved. Thereafter, the High Court must frame such question and direct the parties to submit their arguments on such question. The scheme of the Code also enables the High Court to hear the parties on any other substantial question of law, not framed by it at the first hearing, but during the course of hearing for the reasons to be recorded. Again, if the court is not satisfied at the first hearing that the case does not involve a substantial question of law, it cannot proceed further. Once such additional question of law is framed during the course of hearing, the parties must be given opportunity to submit their arguments on the other substantial question of law(s). We take cognizance of the fact, that in some High Courts, there is a practice to order Notice of Motion, whereby even before an appeal is admitted, an opportunity is granted to the respondents therein to contest the case. In such a case, it is implied that the High Court is not satisfied *prima facie* with the case. Such dissatisfaction could be either for a reason that the case does not involve a substantial question of law or for a reason that in the facts of the case, the question of law, though substantial, would not warrant

interference. In such cases, though the High Court in exercise of its power under Section 151 of CPC is generally empowered to grant interim orders to preserve the subject matter of the dispute and to avoid multiplicity of proceedings, we are of the opinion, the court cannot grant any interim protection to the appellant, unless the substantial question of law is framed under Section 100 (4) or as per the Proviso. On the other hand, if the High Court is *prima facie* of the view that the substantial question of law involved would not require much time for disposal, the court is bound to frame the substantial question of law at the stage of admission and then order short notice. The High Court cannot use its inherent power under Section 151 in violation of the express mandates in other provisions of the Code. We find support to this view from the following passage in *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal*[19]:

> ***"42.*** *The Code of Civil Procedure is undoubtedly not exhaustive : it does not lay down rules for guidance in respect of all situations nor does it seek to provide rules for decision of all conceivable cases which may arise. The civil courts are authorised to pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of court, but where an express provision is made to meet a particular situation the Code must be observed, and departure therefrom is not permissible. As observed in LR 62 IA 80 (Maqbul Ahmed v. Onkar Pratab) "It is impossible to hold that in a matter which is governed by an Act, which in some limited respects gives the court a statutory discretion, there can be implied in court, outside the limits of the Act a general discretion to dispense with the provisions of the Act". Inherent jurisdiction of the court to make orders ex debito justitiae is undoubtedly affirmed by Section 151 of the Code, but that jurisdiction cannot be exercised so as to nullify the provisions of the Code. Where the Code deals expressly with a particular matter, the provision should normally be regarded as exhaustive."*

[19] 1961 SCC OnLine SC 17 : 1962 Supp (1) SCR 450 : AIR 1962 SC 527

10.4. Thus, the law is clear that a second appeal will be maintainable before the High Court, only if it is satisfied that the case involves a substantial question of law. If no substantial question of law arises, the second appeal could not have been entertained and the same ought to have been dismissed, as the jurisdiction of the High Court itself is not yet invoked.

11. Concededly, in the present case, the High Court, without formulating substantial questions of law, granted the interim relief by directing the parties to maintain *status quo*, till the next date of hearing. The said interim order was also subsequently extended. It is also pertinent to point out that all the respondents in the second appeal have not been served and notice was unserved *qua* Respondent Nos.4, 6 and 7 therein. Therefore, we are of the opinion that the High Court could not have passed the interim order without satisfying itself of the existence of a substantial question of law, as mandated under Section 100 CPC.

12. Though the learned counsel for the Respondent No.1/plaintiff made an attempt to contend that the High Court has jurisdiction to pass any interim order and the order impugned herein is only an ad interim arrangement to protect the interest of the subject matter of the proceedings, the same cannot be countenanced by us in the facts of this case. Indisputably, the High Court has jurisdiction to pass an interim order *ex parte*, however, it does not empower to grant ad interim relief,

without examining the parties and formulating the substantial question of law involved in the second appeal as it is contrary to section 100 CPC. The judgements relied upon by the learned counsel for the contesting respondent are of no avail as they are factually distinguishable and do not support the case of the respondent.

13. In the light of the aforesaid settled legal position, we have no hesitation to set aside the interim order passed by the High Court. Accordingly, the impugned order dated 20.09.2024 made in SA.No.518 of 2023 is set aside and this appeal stands allowed. There is no order as to costs.

14. Pending application(s), if any, shall stand disposed of.

……J.
[J.B. Pardiwala]

……J.
[R. Mahadevan]

NEW DELHI
JANUARY 17, 2025.