

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2023
(@ Special Leave to Appeal (C) Nos.6474-6475/2019)

ASHOK KUMAR GOEL (SINCE DECEASED)
THROUGH HIS LRS.& ORS.

Appellant(s)

VERSUS

RAM NIWAS GOEL

Respondent(s)

O R D E R

Leave granted.

2. The captioned Civil Appeals are directed against the order dated 23.03.2018 in Second Appeal No. 41 of 2009 and order dated 25.10.2018 in Review Petition No.1278 of 2018 passed by the High Court of Uttarakhand at Nainital.

3. Heard the learned counsel appearing on both sides.

4. The judgment of the High Court dated 25.04.2016 would reveal that the substantial question of law, formulated by the High Court *vide* order dated 29.07.2009 under misconception, was recalled thereunder. However, the impugned judgment dated 23.03.2018 would reveal that despite the recalling of the substantial question of law framed on 29.07.2009, no new question(s) of law was framed and considered thereunder.

5. In Paragraph 4, the question of law that was recalled was extracted as follows:-

"The regular second appeal was admitted on the following substantial question of law on 29.07.2009:-

"Whether the act on the part of the counsel (Sri

J.M. Singhal) who appeared earlier on behalf of appellant (plaintiff) in the suit and thereafter the said counsel appeared on behalf of respondent at the stage of first appeal, vitiated the entire proceedings before the first appellate court?" "

6. A further scanning of the impugned judgment would reveal that referring to the said substantial question of law that was recalled, it was held that it could not even be considered as a question of law and it could, at the most, be a case of professional misconduct and too, required to be proved. Evidently, after observing thus the High Court permitted the parties to advance arguments on the issues arising from the pleadings and the oral and documentary evidence led by the parties qua partition. Evidently, thereafter the High Court had undertaken re-appreciation of the evidence, without formulating any question of law warranting such re-appreciation. In the contextual situation it is relevant to refer to the decision of this Court in *Govindaraju V. Mariamman (AIR 2005 SC 1008)* whereunder this court held that from the analysis of Section 100 that if the appeal was entertained without framing substantial questions of law, then it would be illegal and would amount to failure or abdication of the duty cast on the court. Further, it was held that existence of substantial question of law is the *sine qua non* for exercise of power under Section 100, Code.

7. In view of the factual position obtained as above and in view of the legal position obtained in the matter of exercise of power under Section 100 of the Code, the impugned judgment passed by the High Court in the aforementioned Second Appeal and the order in the Review Application are set aside. The matter is remanded to the High Court of Uttarakhand to frame

the question(s) of law, if any, exist for consideration and to deal with it in accordance with law. Taking note of the fact that the appeals are of the year 2019, we request the High Court to dispose of the appeal, expeditiously.

8. The Civil Appeals are allowed, as above.

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

....., J.
(C.T. RAVIKUMAR)

....., J.
(SUDHANSHU DHULIA)

NEW DELHI;
5TH SEPTEMBER, 2023.

ITEM NO.28

COURT NO.13

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (C) No.6474-6475/2019

(Arising out of impugned final judgment and order dated 23-03-2018 in SA No. 41/2009 25-10-2018 in RA No. 1278/2018 passed by the High Court of Uttarakhand at Nainital)

ASHOK KUMAR GOEL (SINCE DECEASED) THROUGH HIS LRS & ORS.
Petitioner(s)

VERSUS

RAM NIWAS GOEL Respondent(s)

Date : 05-09-2023 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE C.T. RAVIKUMAR
HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Petitioner(s) Mr. Kailash Vasdev, Sr. Adv. (via V.C.)
Mr. Navin Prakash, AOR
Mr. Umrao Singh Rawat, Adv.
Ms. Shagun Chauhan, Adv.
Ms. Srishti Prakash, Adv.

For Respondent(s) Mr. Alok Krishna Agarwal, Adv.
Mr. Naveen Chawla, Adv.
Mr. Mayank Bughani, Adv.
Mr. T. Mahipal, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.
2. The Civil Appeals are allowed in the terms of the Signed Order.
3. Pending application(s), if any, shall stand disposed of

(VIJAY KUMAR)
COURT MASTER (SH)

(MATHEW ABRAHAM)
COURT MASTER (NSH)

(Signed Order is placed on the file)