



REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.14138-14139 OF 2024
(arising out of SLP (C) Nos.2050-2051/2023)

JAICHAND (DEAD) THROUGH LRS & ORS.

Appellant(s)

VERSUS

SAHNULAL & ANR.

Respondent(s)

O R D E R

1. Leave granted.
2. These appeals arise from the judgment and order passed by the High Court of Chhattisgarh, Bilaspur in Second Appeal No.279 of 2011 dated 23 March 2021 by which the High Court allowed the second appeal filed by the respondents herein (original plaintiffs) thereby setting aside the judgment and order passed by the first appellate court and restoring the judgment and decree passed by the trial court in the civil suit instituted by the respondents (plaintiffs herein).

3. The facts giving rise to these appeals may be summarised as under:-

(i) The appellants before us are the legal heirs of the original defendant and the respondents before us are the original plaintiffs.

(ii) It appears from the materials on record that the parties entered into an agreement of sale with respect to the suit property bearing Khasra number 111/3 admeasuring 0.238 hectares situated in village Parsahi Tehsil District Bilaspur. The original defendant namely Juglal was the lawful owner of the suit property. He died during the pendency of the suit instituted by the plaintiff seeking specific performance of the contract based on an agreement of sale dated 28 April, 1996.

(iii) In the agreement of sale, the total sale consideration fixed was Rs.50,000/- per acre. Rs.6000/- was paid to deceased Jugal by way of earnest money.

There is no dispute to the aforesaid extent.

(iv) It is the case of the original plaintiff that time was not made the essence of the contract in the agreement of sale. Although the agreement is of the year 1996, yet it is only in the year 2001 when the plaintiff realized that the defendant was not ready and willing to perform his part of the contract, that the suit had to be instituted."

4. The trial court framed the following issues:-

	Issue	Conclusion
1.	Whether on 28.04.1996 the Defendant had agreed to sell land Khasra No. 111/3 acre 0.238 hectares located in Village Parsahi P.H. No.20, Tehsil and District Bilaspur to the plaintiff?	Affirmative
2.	Did the defendant get an advance of Rs.6,000/- by executing the agreement on the same date?	Affirmative
3.	Whether the Earnest Money Receipt is forged?	Negative
4.	Whether the suit is barred by limitation?	Negative
5.	Whether the plaintiff is entitled to get the relief desired from the defendant no.1?	Affirmative

6.	Other relief and cost?	Suit is allowed
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5. The Trial Court upon appreciation of the oral as well as documentary evidence on record allowed the suit granting specific performance of contract in favour of the plaintiff. The operative part of the order passed by the trial court reads thus:-

"(13) After considering the above issues, this Court come to the conclusion that the plaintiff has been successful in proving his claim. Consequently, after accepting the claim of the plaintiff, an order is passed to the effect that:

(a) The defendants should execute the sale deed of the suit land, which is situated in Village Parsahi P.H. No.20, Tehsil and District Bilaspur bearing Khasra No. 111/3 acre 0.238 hectares, in favour of the plaintiff after taking the balance amount from the plaintiff within two months. Otherwise the plaintiff can get the sale deed of suit land executed through the court.

(b) The defendants will bear the litigation expenses of the plaintiff addition to themselves.

(c) If the advocate fee is certified on time, according to the schedule or according to the certificate, whichever is less, should be added to the litigation expenses."

6. The appellants herein (original defendants) being dissatisfied with the judgment and order passed by the trial court preferred a regular first appeal before the Court of the District Judge, Balasore being Civil Appeal No. 29-A of 2010.

7. The First Appellate Court framed the following points for determination :-

"10. In view of the pleadings of the parties and grounds of appeal, the issues considered for disposal of appeal are as follows:-

1. Whether on 28/4/1996 the deal was done by the deceased Jugalal with the Respondent/Plaintiff to sell the disputed land?

2. Whether earnest money of Rs.6,000/- was paid by the respondent/plaintiff to the deceased Jugalal on 28/4/1996?

3. Is the suit of the respondent/plaintiff time barred?

4. Relief and cost."

8. The First Appellate Court looked into two issues. First, whether the plaintiff was ready and willing to perform his part of the contract, and secondly whether hardship would be caused to the defendant, which could not be foreseen at the time of the execution of the agreement of sale.

9. The First Appellate Court observed the following in paras 28, 29 and 32 respectively:-

"28. It is to be mentioned that the Exhibit P 1 Agreement was executed on 28/4/1996 between the Respondent/Plaintiff and the deceased Jugalal, while the first written notice was given by him on 13/1/01 i.e. after about 5 years. In Exhibit P.1, although no time limit was prescribed in relation to the registration of the sale deed, but even after not registering the sale deed by the deceased Jugalal for 5 years, no action is taken by the respondent / plaintiff, which raises doubts about his readiness. It is also noteworthy that in December 2001, even after receiving the refusal notice to register the sale deed by the deceased Jugalal, the second notice (Exhibit P.2) was not given immediately and it was sent by the respondents on 23.07.2002 i.e. after 7 months.

29. If the respondent/plaintiff was actually ready to register the sale deed, the suit should have been filed immediately after the refusal of registration by the deceased Jugalal in December, 2001, but by not doing so, after 7 months the notice Exhibit P.2 was given, even after the reply of which November, 2002, the suit was not filed till 4/3/03. All the above facts indicate that the respondent/plaintiff has not kept any readiness for registration of sale deed.

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32. Therefore, in the present case, in the context of the above-mentioned case law and on the basis that the agreement was executed by the respondent / plaintiff in the year 1996 but no legal action was taken for 7-8 years, it is

not legal to pass the order for the specific performance of the contract. In the above circumstances, it will be open specific the sufficient grant alternate relief to refund the amount of earnest money."

10. Thus, the first appellate court partly allowed the appeal filed by the plaintiffs herein and set aside that part of the decree passed by the trial court directing specific performance.

11. The operative part of the judgment and order passed by the first appellate court read thus:-

"34. Issue No.4:

In the context of the above discussion, the present Appeal under Order 41 Rule 1 read with Section 96 of CPC is partly allowed and the impugned judgment and decree dated 15/2/10 passed by the learned trial court i.e. paragraph 13 (a) is set aside and it is ordered that -

1. Appellants/Defendants should return the Earnest Money of Rs.6,000/- (Six thousand) to the Respondent/Plaintiff within 01 month from today i.e. the date of order.

2. Appellants/Defendants will bear the litigation expenses of their own and of the respondent. Advocate fee should be given after being certified as per rules."

12. The respondents herein (original plaintiffs) being dissatisfied with the judgment and order passed by the

appellate court, preferred second appeal before the High Court under Section 100 of the Civil Procedure Code, 1908 (for short, the "CPC").

13. The High Court formulated the following substantial question of law for its consideration:-

"Whether lower appellate court has committed an illegality by not affirming the finding of the trial court and has denied the grant of discretionary relief in arbitrary manner."

14. The High Court in para 4 of its impugned judgment has observed as under:-

"4. On appeal being preferred by legal representatives of original defendant No.1, the first appellate Court concurred with findings of the trial Court with regard to valid agreement to sell by defendant No.1 in favour of the plaintiff and plaintiff is ready and willing to perform his part of contract and also that the suit is within limitation, but interfered on the ground that the plaintiff is not entitled for relief of decree for specific performance of contract and by partly granting appeal, granted decree for return/refund of earnest money, against which, this second appeal under Section 100 of the CPC has been filed, in which one substantial question of law has been formulated, which has been set out in the opening paragraph of this judgment for sake of completeness."

15. The High Court allowed the second appeal and thereby quashed and set aside the judgment and order passed by

the appellate court and restored the judgment and decree passed by the trial court.

16. The High Court while allowing the second appeal, observed the following in para 17:-

"17. Reverting to the facts of the present case in the light of aforesaid legal principle of law laid down by their Lordships of the Supreme Court in the above stated judgments (supra), it is quite vivid that in the instant case, though defendant No.1 in his written statement only took a plea that no agreement to sell was executed in between him and the plaintiff and took a calculated chance to proceed the suit without taking a specific plea based on Section 20(2) (b) of the Act of 1963, in which two Courts below have clearly reached to the conclusion that there was valid agreement to sell between defendant No.1 and the plaintiff and it fulfills the requirement of valid agreement to sell. Defendant No.1 did not take the plea based on Section 20(2) (b) of the Act of 1963 that the performance of the contract would involve some hardship to him and it will not cause any such hardship to the plaintiff. Consequently, the trial Court did not frame any issue based on Section 20(2) (b) of the Act of 1963 and parties also did not lead any hardship evidence to demonstrate the fact of hardship to the defendant in performance of contract and no hardship to the plaintiff in case the contract is not allowed to be performed and consequently, the trial Court has not recorded any finding in this regard, but the first appellate Court without there being any pleading on the part of defendant No.1 based on Section 20(2) (b) of the Act of 1963 and without any issue in that behalf and there being no evidence on said point, proceeded to take-up the issue of hardship to

defendant No.1 in granting decree for specific performance of contract after affirming all other findings, modified the decree holding that the plaintiff is not entitled for decree for specific performance of contract as it would cause hardship to defendant No.1 and he would be entitled only decree for return/refund of earnest money, which is in the considered opinion of this Court is not correct finding particularly in view of the fact that no pleading having been raised on behalf of defendant No.1 before the trial Court based on Section 20(2)(b) of the Act of 1963 and parties did not lead any evidence on the instant issue and therefore, the first appellate Court could not have modified the decree after affirming all other findings which were required for granting relief of specific performance of contract."

17. The appellants (original defendants) being dissatisfied with the judgment and order passed by the High Court are here before us with the present appeals.
18. It seems that the appellants herein had preferred a review application also before the High Court, which was not entertained and rejected.
19. We have heard Mr. Sameer Shrivastava, the learned counsel appearing for the appellants (original defendants) and Mr. Abhinav Shrivastava, the learned counsel appearing for the respondents herein (original plaintiffs).

20. We take notice of the following aspects of the matter:-

- (i) The agreement of sale between the parties is dated 24 August, 1996.
- (ii) The suit property ad measures half an acre.
- (iii) The sale consideration fixed in the agreement of sale is Rs.50,000/- per acre. Since the land ad-measures about half an acre, the sale consideration would come to Rs.25,000/-.
- (iv) The plaintiffs instituted the suit after a period of eight years that is in the year 2003.
- (v) The High Court seems to have proceeded under a misconception of fact that the first appellate court reversed the judgment and decree passed by the trial court only on the issue of hardship, relying on the provisions of Section 20(2) (b) of the specific relief act, 1963. Whereas in fact the first appellate court also expressed its doubt as regards the plaintiffs readiness and willingness to perform his part of the contract.

21. The High Court has not said a word in so far as the findings recorded by the first appellate court in regard to the readiness and willingness on the part of the plaintiff to perform his part of the contract is concerned.

22. In the overall view of the matter, we have reached the

conclusion that the impugned order passed by the High Court is not sustainable in law. The High Court ought not to have disturbed a well reasoned judgment and order passed by the first appellate court.

23. We are thoroughly disappointed with the manner in which the High Court framed the so-called substantial question of law. By any stretch of imagination, it cannot be termed even a question of law far from being a substantial question of law. How many times the Apex Court should keep explaining the scope of a second appeal under Section 100 of the CPC and how a substantial question of law should be framed? We may once again explain the well-settled principles governing the scope of a second appeal under Section 100 of the CPC.

24. In *Navaneethammal v. Arjuna Chetty* reported in AIR 1996 S.C. 3521, it was held by this Court that the High Court should not reappreciate the evidence to reach another possible view in order to set aside the findings of fact arrived at by the first appellate Court.

25. In *Kshitish Chandra Purkait v. Santhosh Kumar Purkait* reported in (1997) 5 S.C.C. 438), this Court

held that in the Second Appeal, the High Court should be satisfied that the case involves a substantial question of law and not mere question of law.

26. In *Dnyanoba Bhaurao Shemade v. Maroti Bhaurao Marnor* reported in 1999 (2) S.C.C. 471, this Court held:-

"Keeping in view the amendment made in 1976, the High Court can exercise its jurisdiction under Section 100, C.P.C. only on the basis of substantial questions of law which are to be framed at the time of admission of the Second Appeal and the Second Appeal has to be heard and decided only on the basis of such duly framed substantial questions of law. A judgment rendered by the High Court under Section 100 C.P.C. without following the aforesaid procedure cannot be sustained."

27. This Court in *Kondira Dagadu Kadam v. Savitribai Sopan Gujar* reported in AIR 1999 S.C. 2213 held:-

"The High Court cannot substitute its opinion for the opinion of the first appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence."

28. It is thus clear that under Section 100, C.P.C., the High Court cannot interfere with the findings of fact arrived

at by the first Appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence.

29. The High Court in the Second Appeal can interfere with the findings of the trial Court on the ground of failure on the part of the trial as well as the first appellate Court, as the case may be, when such findings are either recorded without proper construction of the documents or failure to follow the decisions of this Court and acted on assumption not supported by evidence. Under Section 103, C.P.C, the High Court has got power to determine the issue of fact. The Section lays down:-

"Power of High Court to determine issue of fact: In any Second Appeal, the High Court may, if the evidence on the record is sufficient to determine any issue necessary for the disposal of the appeal,-

(a) Which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or

(b) Which has been wrongly determined by such Court or Courts by reason of a decision on such question

of law as is referred to in Section 100."

30. In *Bhagwan Sharma v. Bani Ghosh* reported in AIR 1993 S.C. 398, this Court held:-

"The High Court was certainly entitled to go into the question as to whether the findings of fact recorded by the first appellate court which was the final court of fact were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature. But, after setting aside the findings of fact on that ground the Court had either to remand the matter to the first appellate Court for a rehearing of the first appeal and decision in accordance with law after taking into consideration the entire relevant evidence on the records, or in the alternative to decide the case finally in accordance with the provisions of Section 103(b). If in an appropriate case the High Court decides to follow the second course, it must hear the parties fully with reference to the entire evidence on the records relevant to the issue in question and this is possible if only a proper paper book is prepared for hearing of facts and notice is given to the parties. The grounds which may be available in support of a plea that the finding of fact by the court below is vitiated in law does not by itself lead to the further conclusion that a contrary finding has to be finally arrived at on the disputed issue. On a reappraisal of the entire evidence the ultimate conclusion may go in favour of either party and it cannot be prejudged."

31. In the case of *Hero Vinoth v. Seshammal* reported in (2006) 5 SCC 545 this Court explained the concept in the following words:

"It must be tested whether the question is of general public importance or whether it directly and substantially affects the rights of the parties.

Or whether it is not finally decided, or 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."

32. It is not that the High Courts are not well-versed with the principles governing Section 100 of the CPC. It is only the casual and callous approach on the part of the courts to apply the correct principles of law to the facts of the case that leads to passing of vulnerable orders like the one on hand.

33. In such circumstances, referred to above, we allow these appeals and set aside the judgment and order passed by the High Court.

34. As we are not granting the decree of specific performance in favour of the respondents herein (original plaintiffs), we direct the appellants herein i.e. the original

defendants to refund an amount of Rs.3,50,000/- (Rupees three lakh fifty thousand only) within a period of eight weeks from today. If the appellants herein fail to deposit this amount, then in such circumstances, the decree passed by the trial court shall stand restored.

35. We have thought fit to direct the appellants herein (original defendants) to refund the amount of Rs.3,50,000/- (Rupees Three lakh fifty thousand only) to the respondents-original plaintiffs, keeping in mind that the plaintiffs on their own stated before this Court that the market value of the suit property as on date is around Rs.3,50,000/- (Rupees Three lakh fifty thousand only).

36. With the aforesaid, these appeals stand disposed of.

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

.....J.
[J.B. PARDIWALA]

.....J.
[R. MAHADEVAN]

NEW DELHI;
December 10, 2024.