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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **RSA 126/2014, CM APPL. 16815/2014, CM APPL. 11428/2022, CM APPL. 2161/2024 and CRL.M.A. 19072/2014**

1. **SMT. ROSHNI**
   W/O SHRI OM PRAKASH
   R/O C-921, JAHANGIRPURI,
   DELHI-110033

2. **SHRI VIKAS**
   S/O SHRI OM PRAKASH
   R/O C-921, JAHANGIRPURI
   DELHI-110033

.....APPELLANTS

(*Through: Mr. Suhail Khan, Mr. Vishal Raj Sehijpal, Mr. Farid Ahmed Nizami and Ms. Priyanka Handa, Advocates.)*

Versus

1. **SMT. DAYA WANTI**
   W/O SHRI SAT PAL

2. **SHRI SUNIL KUMAR**
   S/O SHRI SAT PAL

3. **SHRI ANIL KUMAR**
   S/O SHRI SAT PAL

(ALL RESIDENTS OF: C-1251,

JAHANGIRPURI, DELHI-110033)

4. LATE MS. KAMLESH (THROUGH LR'S)
D/O SHRI SAT PAL

(i) MR. DALIP (HUSBAND)
S/O SHRI AMARCHAND
(ii) MR. GAURAV (SON)
S/O SHRI DALIP

(iii) MR. SAURABH (SON)
S/O SHRI DALIP

(iv) MR. NITIN (SON)
S/O SHRI DALIP

(v) MR. VIPIN (SON)
S/O SHRI DALIP

(ALL RESIDENT OF EE - 2354,
JAHANGIRPURI, DELHI-110033)

5. LATE MS. SUNITA (THROUGH LR'S))
D/O SHRI SAT PAL

(i) MR. CHANDERPAL, (HUSBAND)
SON OF SHRI KALU

(ii) MR. BHARAT, (SON)
S/O SHRI CHANDERPAL,

(iii) MR. SHANKAR, (SON)
S/O SHRI CHANDERPAL,

(ALL RESIDENT OF VILLAGE DALLUPURA,
FARIDABAD, HARYANA)

.....RESPONDENTS

(*Through: Mr. Manish Srivastava, Mr. Moksh Arora, Mr. Santosh Ramdurg and Mr.Yash Srivastava, Advs. for Tata Power.*
Mr. Niraj Chaudhry and Mr. Satinder Yadav, Advocates.)

\+ **RSA 128/2014 and CM APPL. 8819/2014**

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W/O SHRI OM PRAKASH
R/O C-921, JAHANGIRPURI,
DELHI-110033

2. SHRI VIKAS
S/O SHRI OM PRAKASH
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S/O SHRI CHANDERPAL,

(iii) MR. SHANKAR, (SON)
S/O SHRI CHANDERPAL,

(ALL RESIDENT OF VILLAGE DALLUPURA,
FARIDABAD, HARYANA)

**6. NORTH DELHI POWER LIMITED,
THROUGH ITS REGIONAL MANAGER,
SHALIMAR BAGH, DELHI**

.....RESPONDENTS

(*Through: Mr. Manish Srivastava, Mr. Moksh Arora, Mr. Santosh Ramdurg and Mr.Yash Srivastava, Advs. for Tata Power.*
Mr. Niraj Chaudhry and Mr. Satinder Yadav, Advocates.)

% Reserved on: 11.11.2024
Pronounced on: 28.11.2024

J U D G M E N T

Since the issue involved in both these appeals revolves around a similitude of facts, therefore, the captioned appeals are being decided by this common order. For the sake of convenience, the facts are extracted from RSA No. 126/14.

2. This appeal is preferred by the appellants/defendants assailing the judgment and decree dated 29.03.2014 passed in RCA No. 21/2009, whereby, the judgment and decree dated 31.07.2009 passed by the learned Trial Court, has been affirmed, wherein, the suit instituted by the plaintiffs/respondents for recovery of possession, damages/mesne profits and permanent injunction was decreed.

3. The factual matrix of the case would indicate that the suit for recovery of possession, damages/mesne profits and permanent injunction was filed by the respondents/plaintiffs against the appellants/defendants qua shop number one at the ground floor of respondents/plaintiffs premises bearing no. C-1251, Jahangir Puri, Delhi (hereinafter referred as "*suit property*").

4. Admittedly, the suit property was initially allotted to Shri Satpal by the Delhi Development Authority. The respondents/plaintiffs are legal heirs of Shri Satpal. It was averred that during his lifetime, Shri Satpal had let out the suit property to one Shri Shyam Lal in the year 1990. The said Shri Shyam Lal paid rent upto the year 2003 but afterwards stopped paying the rent. The said tenant had arrears of electricity dues amounting to Rs 93,330/- owing to its non-payment, the electricity connection was also disconnected.

5. Therefore, in order to escape liability, it was contended that Shri Shyam Lal sold the property to Shri Bishamber Dayal *vide* GPA, Deed of Sale Agreement, Will, Possession Letter, Affidavit and Receipt all dated

28.11.2002. Thereafter, it was contended that the appellants/defendants had eventually purchased the suit property from Shri Bishamber Dayal *vide* GPA, Deed of Sale Agreement, Will, Possession Letter, Affidavit and Receipt all dated 27.08.2003.

6. Thereafter, the respondents/plaintiffs requested the appellants/defendants to vacate the suit property as after the death of the original allottee, the legal heirs of the original allottee are the rightful owners of the suit property. However, the appellants/defendants refused to vacate the said premises as they claimed that since they had purchased the suit property, therefore, they were the rightful owners of the said property.

7. Pursuant thereto, the respondents/plaintiffs filed a suit for recovery of possession, damages/ mesne profits and permanent injunction and the Trial Court *vide* judgement and decree dated 31.07.2009 decreed the suit. The first appeal at the instance of the appellants/defendants was also dismissed *vide* judgment and decree dated 29.03.2014. Aggrieved thereto, the appellants/defendants have preferred the instant second appeal.

8. Mr. Vishal Raj Sehijpal, learned counsel appearing for the appellants/defendants submits that the present appeal deserves to be admitted as the impugned judgment and decree suffer from material perversity. He argued that the decree of eviction could not have been passed against the appellants/defendants as they were already in possession of the suit premises on the basis of (a) Agreement to Sell, (b) Registered Power of Attorney, (c) Registered Will and (d) Possession Letter.

9. He further assailed the impugned judgment and decree on the ground that the Trial Court did not have jurisdiction in the present case due to the express bar provided under Section 50 of the Delhi Rent Control Act, 1958.

He further submitted that the suit was bad in law for non-joinder of parties as the original tenant was never made a party to the proceedings. On the fulcrum of the aforenoted submissions, learned counsel submits that the instant appeal deserves to be admitted and the impugned judgment and decree ought to be set aside.

10. I have heard the learned counsel appearing for the appellants/defendants and perused the record.

11. Assailing the concurrent findings of the Courts below, the appellants/defendants have proposed the following substantial questions of law for this Court's consideration:-

> *"i) Whether a decree of eviction can be passed against the defendants who are in possession of the suit premises on the basis of (a) Agreement to Sell, (b) Registered Power of Attorney, (c) Registered Will and (d) Possession Letter, on the basis of Hon'ble Supreme Court's judgment in Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & Anr, reported in (2012) 1 SCC 656, even though in the said judgment it has been clearly laid down that the said documents can be relied upon to the limited extent of Section 53 A of the Transfer of Property Act?*
>
> *ii) Whether in a case of eviction on the grounds on unauthorized sub-letting, the Learned Civil Judge was not ousted of jurisdiction to pass the judgment and decree dated 31.07.2009 under Section 14 read with Section 50 of the Delhi Rent Control Act, 1950, once the Learned Civil Judge came to the conclusion that the plaintiffs had not been able to produce any evidence to show that the rent of the Original tenant had been enhanced from Rs. 2000/- to Rs. 4000/-?*
>
> *iii) Whether the suit filed by the Plaintiffs claiming themselves as landlord and the defendants as sub-tenants was not bad in law for non-joinder of proper and necessary party since the alleged original tenant was never made a party to the proceedings?*
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> *iv) Whether in a suit of possession on the allegations of unauthorized sub-tenancy, eviction decree can be passed without there being any evidence on*

record by the Plaintiff regarding tenancy having being created in favour of the original tenant?"

12. Before embarking on the voyage of analysis of proposed substantial questions of law, it is crucial to peruse and take a brief detour of the findings rendered by the Courts below.

13. The Trial Court *vide* order dated 24.05.2004 framed the following issues for its consideration:-

"1. Whether the plaintiff has no cause of action to file the present suit? OPD
2. Whether the plaintiff has no locus standi to file the present suit? OPD
3. Whether the suit is bad for non-joinder of necessary parties? OPD
4. Whether the plaintiff is entitled for recovery of possession of the suit property? OPP
5. Whether the plaintiff is entitled to damages and mesne profits? If so, at what rate? OPP
6. Whether the plaintiff is entitled for relief of permanent injunction? OPP
7. Relief"

14. It is evident that the onus to prove issue nos. 1, 2 and 3 was put on the appellants/defendants, while issue nos. 4, 5 and 6 were to be proved by the respondents/plaintiffs.

15. With respect to issue nos. 1, 2 and 3, the Trial Court held that since the respondent/plaintiff was the widow of the original allottee, therefore, she had the cause of action to institute the present suit. Moreover, so far as the question of the non-joinder of parties was concerned, the Trial Court held that a suit had been filed by the respondents/plaintiffs for the possession of disputed property which was in possession of the appellants/defendants, therefore, they were the only necessary parties to the suit. The relevant extracts of the Trial Court judgment read as under:-

"ISSUE No.1, 2&3

All the three issues are being discussed collectively since all are preliminary issues. Since the husband of plaintiff No.1 was original allotee of the disputed property by DDA, hence, the plaintiff No.1 as the widow of the original allotee and other plaintiffs as children of original allotee have locus standi to file the present suit. Hence, issue No.1 & 2 are decided in favour of plaintiffs. The plaintiffs have cause of action to file the present suit.

Onus to prove that the suit is bad for non-joinder of necessary party was placed on defendants. Since the suit has been filed by the plaintiffs for possession of disputed property which is in possession of the defendants, they were the only necessary parties to the suit. Hence, the issue no.3 is also decided in favour of plaintiffs and against defendants."

16. With respect to issue no. 4, the onus to prove was on the respondents/plaintiffs. The Trial Court after analyzing the statements made by the witnesses from both the sides, came to the conclusion that since the land was originally allotted to Shri Satpal, therefore, without any valid registration deed, such land cannot be transferred to any other person. Moreover, the Trial Court held that the documents presented by the appellants/defendants like the agreement to sell, receipt, GPA dated 28.11.2002, do not constitute a valid transfer of title in the eyes of law. Based on the aforementioned rationale, the Trial Court held this issue in favour of the respondents/plaintiffs and ruled that since the respondents/plaintiffs are the legal heirs of the original allottee, therefore, they are entitled for the possession of the suit property. The relevant extracts of the Trial Court's judgment with respect to issue no. 4 reads as under:-

"In the present case, the defendants have ascerted that they have purchased the suit shop from Sh.Bishamber Dayal who had earlier purchased it from Sh.Shyam Singh who had purchased the said shop from late Sh.Satpal i.e. the original allottee. But the original documents Ex.DW2/1 to Ex.DW2/5 have not been registered with the Sub-Registrar as per Section 17 of Registration Act. The immovable property worth Rs. 100 or above can not be transferred merely by the documents GPA, Agreement, Will, Affidavit etc. Moreover, this can not even be held to be an Agreement to Sell since the thumb impressions of late Sh.Satpal are disputed here and

the defendants have failed to show that thumb impression match with the sample thumb impressions on pension records of late Sh.Satpal.

The defendant no.2 as DW2 in his cross examination has himself admitted that late Sh.Satpal was the original allottee of the premises. He has stated in his cross examination that he had purchased the property from Sh.Bishamber Dayal but he did not know whether Sh.Bishamber Dayal had got permission from DDA to sell the property to him. He has admitted in his cross examination that he was not aware whether his name had been mutated in the office of DDA and MCD as the owner of the disputed property.
DW2 alleges himself to be the owner of the suit property this clearly shows that he had just tried to by pass the express law by trying to create some evidence of ownership and possession of the suit property which has no evidentiary value in eyes of law unless and until a valid sale deed duly registered with Sub-Register office as per Section 17 of Indian Registration Act is produced before the court.

Though the document including the agreement to sell, receipt, GPA dated 28.11.2022 vide which Sh. Bishamber Dayal purported to purchase the property from Sh.Shyam Singh had been registered with Sub-Registrar, Delhi, but they do not transfer any title in property from Sh.Shyam Singh to Sh.Bishamber Dayal since Sh.Shyam Singh was not entitled to transfer the property in the name of Sh. Bishamber Dayal. The documents through which Sh,Shyam Singh purported to have purchased the disputed property from Sh. Satpal, the original allottee had not been registered with the Sub-Registrar, Delhi and hence, Shyam Singh did not get any title in the disputed property in the eyes of law. Hence, the original property as per record of file still stands in the name of late Sh.Satpal who was the original allottee."

17. With respect to the issue no. 5, though the Trial Court recorded that respondents/plaintiffs were not able to bring any evidence on record to show that the rent of the original tenant was increased to Rs 4000/-, however, it held that since the appellants/defendants have unauthorizedly occupied in the suit property, which admittedly was allotted to Shri Satpal, therefore, the respondents/plaintiffs were entitled for mesne profits of Rs 3000/- from the date of filing of the suit till the date of handing over the possession of the suit property.

18. The said findings were assailed by the appellants/defendants in the first Appellate Court and the first Appellate Court affirmed the findings of the Trial Court and held as under:-

> *"In view of law laid down in the above judgment, it is manifest that an immovable property can be sold only by a registered deed of conveyance and the transactions of the nature of 'Sale Agreement/General Power of Attorney/Will transfers' neither convey title nor create any interest in an immovable property except to the limited extent of Section 53A of the Transfer of Property Act. Similarly, a lease can be validly transferred only through a registered assignment of lease. In the present case, it is an admitted fact that the suit shop was initially allotted to Sh. Satpal by DDA. It is not the case of the appellants that any registered assignment of lease was ever executed by Sh. Satpal in the name of Sh. Shyam Singh. Even if it is assumed that Sh. Satpal had executed GPA, Sale Agreement and Will in respect to suit shop in favour of Sh. Shyam Singh as alleged by the appellants, the suit shop could not have been transferred by Sh. Shyam Singh to Sh. Bishamber Dayal and thereafter, by Sh. Bishamber Dayal to the appellant No.2 on the basis of GPA, Agreement to Sell and Will. That being so, it is clear that the possession of the appellants qua suit shop is unauthorised and illegal. It is not in dispute that the respondents are the legal heirs of Sh. Satpal. The respondents have produced on record the death certificate of Sh. Satpal as Ex.PW1/2. Thus the trial court rightly held that after the death of Sh. Satpal i.e. the original allottee of the suit shop, his legal heirs i.e. the respondents are entitled to recover the possession of the suit shop from the appellants. Resultantly, the appeal fails and is hereby dismissed."*

19. A bare perusal of the first Appellate Court's decision would signify that the first Appellate Court has rightly relied upon the decision in ***Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana***[1], to come to the conclusion that the documents like the agreement to sell, receipt, GPA etc. do not confer the transfer of the title or ownership of the property. The relevant findings of the Supreme Court in the case of ***Suraj Lamp & Industries (P) Ltd.*** reads as under:-

[1] (2012) 1 SCC 656.

> *"**23.** Therefore, an SA/GPA/will transaction does not convey any title nor creates any interest in an immovable property. The observations by the Delhi High Court in Asha M. Jain v. Canara Bank [(2001) 94 DLT 841] , that the "concept of power-of-attorney sales has been recognised as a mode of transaction" when dealing with transactions by way of SA/GPA/will are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/will transactions are some kind of a recognised or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognise or accept SA/GPA/will transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.*
>
> ***24.** We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of "GPA sales" or "SA/GPA/will transfers" do not convey title and do not amount to transfer, nor can they be recognised or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognised as deeds of title, except to the limited extent of Section 53-A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered assignment of lease. It is time that an end is put to the pernicious practice of SA/GPA/will transactions known as GPA sales.*
>
> ***25.** It has been submitted that making declaration that GPA sales and SA/GPA/will transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularise the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship."*

20. Thus, it is manifestly evident that the argument that the appellants/defendants are entitled to the possession of the suit property on the basis of the agreement to sell, receipt, GPA etc. does not hold feet as these documents do not constitute a valid transfer of title or ownership of the property in view of the categorical findings rendered by the Supreme Court

in ***Suraj Lamp & Industries (P) Ltd.*** There is no question of legalizing or validating a patently illegal act and the consequences shall flow as per law.

21. Furthermore, so far as the proposed question with respect to the non-joinder of parties is concerned, the Trial Court has rightly held, as reproduced above, that a suit has been filed by the respondents/plaintiffs for possession of suit property which is in possession of the appellants/defendants, thus they were the only necessary parties to the suit.

22. Moreover, so far as the proposed question regarding the express bar provided in Section 50 of the Delhi Rent Control Act, 1958 is concerned, the same also does not merit any consideration of this Court on two fundamental counts. *Firstly*, the Trial Court did not come to the conclusion that both the parties shared any landlord-tenant relationship and the respondents/plaintiffs have given the suit property on rent to the appellants/defendants. Therefore, once it is ascertained that the relationship between the contesting parties is not of the nature of landlord and tenant, the bar under Section 50 of the Delhi Rent Control Act would not be applicable. *Secondly*, the appellants/defendants themselves claimed that they were the owners of the suit property and thus, when the contesting party has itself denied and denounced any relationship of being a tenant then, in that particular scenario, after the failure of the suit, it cannot be allowed to take advantage of Section 50 of the Delhi Rent Control Act.

23. At this juncture, it is apropos to lend credence to the observations of this Court in the case of ***S. Makhan Singh v. Smt. Amarjeet Bali***[2], wherein, it was held that once a tenant denies the title of the landlord, then by virtue

[2] 2008 SCC OnLine Del 1188.

of Section 111(g) of the Transfer of Property Act, 1882, the relationship of landlord and tenant comes to an end and the suit could, therefore, be filed in a Civil Court for possession of the property from the erstwhile tenant. The relevant paragraph of the said judgment reads as under:-

> *"A tenant has been given protection under Delhi Rent Control Act from eviction only where the jural relationship of tenant and landlord was not disputed and the tenant claims himself to be the tenant and not the owner. A perusal of Section 14, which gives protection to a tenant against eviction, clearly shows that this protection is available only to the person who is undisputedly a tenant and does not claim himself to be the owner of the premises. The moment a person refuses the title of the landlord and claims title in himself he ceases to be a tenant in the eyes of law and the protection of Delhi Rent Control Act is not available to him. Section 111(g) of Transfer of Property Act provides that a lease of immovable properties come to an end by forfeiture in case of lessee renouncing his character as such by setting up a title in a third person or claiming title in himself. Thus, once a lease stands forfeited by operation of law, the person in occupation of the premises cannot take benefit of the legal tenancy. This provision under Section 111(g) is based on public policy and the principle of estoppels. A person who takes permission on rent from landlord is estopped from challenging his title or right to let out the premises. If he does so he does at his own peril and law does not recognize such a person as legal tenant in the premises. A lease may come to an end by termination of lease by or by efflux of time. Where the rent is below Rs.3,500/-, a landlord cannot recover possession from tenant whose term of lease comes to an end or whose tenancy is terminated by a notice because such a tenant is a protected tenant. The landlord can recover possession only if the case falls within the ambit of Section 14 of DRC Act. Where a tenant repudiates the title of the landlord and does not recognize him as landlord or as a owner of the premises, the protection from eviction under Delhi Rent Control Act is not available to him. Where the tenant does not recognize anyone as landlord or owner and claims ownership in himself he cannot seek protection of Delhi Rent Control Act against the true landlord or owner. The Trial Court therefore rightly held that the petitioner was not entitled to protection under Section 50 Delhi Rent Control Act."*

24. The aforesaid view in ***S. Makhan Singh*** was doubted by the learned Single Judge of this Court and referred to the Division Bench of this Court. The Division Bench of this Court in the case of ***Naeem Ahmed v. Yash Pal***

Malhotra[3], affirmed the findings rendered in the ***Makhan Singh*** and ultimately held as under.

> *"12. As aforesaid, in Kurella's case (supra) and Abdulla Bin Ali's case (supra) when the tenants deny the title of the landlord and the tenancy, the suit filed for recovery of possession is not on the basis of the relationship of landlord and tenant between the parties, and would lie only in the civil suit and not otherwise. In the present case also it is observed that in response to the legal notice, the respondent no.1 denied the relationship of landlord and tenant and denied that the appellant had let out the premises in suit to the respondent no.1. Consequently, the respondent no.1 had repudiated and renounced the relationship of landlord and tenant and set up his own title in the property. Therefore, the appellant had filed the suit for recovery of possession in the civil court since the occupation of the respondent no.1 had become unauthorized and that of a trespasser.*
>
> *13. In view of the above we hold that the ratio of the decision in S. Makhan Singh case (supra) does not warrant reconsideration. We are, therefore, of the considered opinion that in the facts and circumstances of the case the suit was cognizable by the civil court and the impugned order was erroneous, inasmuch as it held that the same was barred by provisions of Section 50(4) of the Delhi Rent Control Act. The appeal is allowed accordingly. Consequently, the impugned order is set aside. The case is remanded back to the Trial Court with directions to readmit the suit under its original number in the register of civil suits and to proceed to determine the suit from the stage when the impugned order was passed in accordance with law. A copy of this order and judgment along with Trial Court record be transmitted to the court of the concerned District Judge with directions that the matter to be posted before the concerned civil judge for further proceedings."*

25. Thus, on the conspectus of the judicial precedents analyzed above, it is palpably clear and manifestly evident that the bar under Section 50 of the Delhi Rent Control Act [DRC Act] would not be attracted in the present case. For, the appellants/defendants have unequivocally advanced a claim of ownership and title over the subject property on the basis of GPA documents

[3] 2012 SCC OnLine Del 1189.

and the claim of tenancy is only intended to save a sinking ship by invoking the benevolent provisions of the DRC Act.

26. After analyzing the judgments rendered by the Courts below, it is now pertinent to delineate the contours of the jurisdiction being exercised by this Court in a second appeal under Section 100 of CPC.

27. The exposition of law under Section 100 of CPC clearly elucidates that a second appeal could only be entertained if it raises a substantial question of law. While entertaining a second appeal, the Court is not expected to interfere in the impugned judgment on the ground of erroneous findings of fact irrespective of how gross or inexcusable the error may seem to be.[4] It is pertinent to point out that after the amendment in 1976, the scope of the second appeal under Section 100 CPC was further curtailed and it was restricted only to cases wherein substantial questions of law arise. Thus, the jurisdiction invoked by the appellants/defendants is confined to cases wherein a substantial question of law is involved.

28. The Supreme Court in the case of ***Roop Singh v. Ram Singh***[5] has unequivocally reiterated that under Section 100 CPC, the 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.

29. Furthermore, in the case of ***Umerkhan v. Bismillabi***[6], the Supreme Court noted that the second appellate jurisdiction of the High Court under

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[4]Ramratan Shukul v. Mussumat Nandu (1892) 19 Cal 249 (252) (PC).

[5] (2000) 3 SCC 708.

[6] (2011) 9 SCC 684.

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. The extracts of the aforenoted judgment to the extent it is relevant to the present case read as follows:-

> *"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."*

30. Thus, the substantial question of law must not only be present but must also be formulated in the second appeal. At this juncture, it is pertinent to note the findings rendered by the Supreme Court in ***State Bank of India v. S.N. Goyal*** [7], wherein, the Supreme Court, after examining a catena of judgments, enumerated the oft-repeated errors committed by the High Court while exercising the jurisdiction in the second appeal. The Supreme Court also expressed a note of caution that care should be taken to ensure that the

[7] (2008) 8 SCC 92.

cases not involving substantial questions of law are not entertained, and at the same time, to ensure that cases involving substantial questions of law are not rejected as not involving substantial questions of law. The relevant paragraphs of the said decision read as under:-

> *"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 reap predating 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."*

31. Furthermore, the rigors of Section 100 CPC are more stringent when the second appeal is filed assailing the concurrent findings of the Courts below. This observation is noteworthy for the reason that in the present case, the record unequivocally reflects that both the Courts below are at *ad idem*

and have rendered concurrent findings. In ***Bholaram v. Amirchand***[8], the second appellate court set aside the impugned judgment on the ground that the findings are perverse and disregarded the material available on record. However, the Supreme Court, while setting aside the High Court judgment, held that even if the rationale of the High Court is accepted, at best it could be termed as an error in findings of fact, but that itself would not entitle the High Court to interfere in the absence of a clear error of law. The distinction is often a fine one and it falls upon the High Court to identify the distinction in order to maintain the sanctity of the legislative mandate of a second appeal and to not frustrate the procedure by opening the doors too wide or too narrow.

32. In ***Thiagarajan v. Sri Venugopalaswamy B. Koil***[9], the Supreme Court observed that where the findings of fact by the lower Appellate Court are based on evidence, the second Appellate Court cannot ouster such findings and substitute it with its own finding on a reappreciation of evidence, merely on the ground that another view was possible. The Supreme Court further observed that it is the obligation of the Courts of law to further the clear intendment of the legislature and not to frustrate it by excluding the same.

33. This Court must not be construed to say that interference is not permitted in any circumstances. No doubt, interference in the concurrent findings of fact is permitted but only in exceptional circumstances. As a second appeal is not the third trial on facts and the first Appellate Court is the final arbiter of facts, this interference by the second Appellate Court is

[8](1981) 2 SCC 414.

[9](2004) 5 SCC 762.

rarity rather than regularity. In ***Jai Singh v. Shakuntala***[10], the Supreme Court held that it is permissible to interfere even on questions of fact but it has to be done only in exceptional circumstances. The Court observed as under:-

> *"6. ... While scrutiny of evidence does not stand out to be totally prohibited in the matter of exercise of jurisdiction in the second appeal and that would in our view be too broad a proposition and too rigid an interpretation of law not worthy of acceptance but that does not also clothe the superior courts within jurisdiction to intervene and interfere in any and every matter—it is only in very exceptional cases and on extreme perversity that the authority to examine the same in extenso stands permissible—it is a rarity rather than a regularity and thus in fine it can be safely concluded that while there is no prohibition as such, but the power to scrutiny can only be had in very exceptional circumstances and upon proper circumspection."*

34. In ***P. Chandrasekharan v. S. Kanakarajan***[11], the Supreme Court laid down the exposition of law that the interference in the second appeal is permissible only when the findings are based on a misreading of evidence or are so perverse that no person of ordinary prudence could take the said view. More so, the Court must be conscious that intervention is permissible provided the case involves a substantial question of law. Thus, the pre-condition of the existence of a substantial question of law must be fulfilled under all circumstances.

35. In the present case, the questions formulated by the appellants/defendants do not qualify as substantial questions of law. The illegality of a sale transaction based on GPA (and other supporting

[10]AIR 2002 SC 1428.

[11](2007) 5 SCC 669.

documents) is a settled proposition and the case of the appellants/defendants is squarely hit by the same. Furthermore, the questions pertaining to the non-joinder of necessary parties and applicability of DRC Act do not arise for consideration in the facts and circumstances of the case, as discussed above. On facts, no perversity or illegality has been pointed out so as to warrant extraordinary interference by this Court in second appeal.

36. Therefore, on a conspectus of the enunciation of law discussed above and foregoing analysis, this Court is not inclined to interfere in the findings of the Trial Court and first Appellate Court, as no substantial question of law arises for consideration in the present appeals.

37. Accordingly, the appeals stand dismissed.

38. All pending applications are also disposed of. No order as to costs.

PURUSHAINDRA KUMAR KAURAV, J

NOVEMBER 28, 2024/p