



GOA

Judicial Services Exam

CIVIL JUDGE CADRE

High Court of Bombay

Judgement

Volume - 2



Goa JUDICIAL SERVICES

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Indian Evidence ACT, 1872

S.No.	Case Name	Related to
1.	Raju Mahjhi vs. State of Bihar	Section 27
2.	Motiram Pandu Joshi vs. The State of Maharashtra	Evidentiary value of eye witness evidence
3.	Shafiq Mohammad vs. State of H.P., (2018) 5 SCC 311	Criminal Trial - Section 65A Investigation-Videographer:
4.	Sudhakar vs. State, (2018) 5 SCC 435	Criminal Trial Witnesses - Interested / Partisan witness - Evidence of interested witness - Admissibility:
5.	Bannareddy vs. State of Karnataka, (2018) 5 SCC 790	Criminal Trial- Acquittal- Generally-Presumption of innocence-When strengthened:
6.	Raju Manjhi v. State of Bihar,	The Court observed that test identification parade is not substantive evidence.
7.	Kalpana Mehta v. Union of India, (2018) 7 SCC 1	Parliament and State Legislatures - Facts and Observations contained in published Parliamentary Committee Reports Extent to which may be relied on, in court and probative value:
8.	Surinder Kumar Khanna v. Directorate of Revenue Intelligence, 2018 SCC OnLine SC 757, dated 31-07-2018]	Evidentiary value of co accused confession.
9.	Satpal v. State of Haryana, (2018) 6 SCC 610	Criminal Trial- Circumstantial Evidence Generally - To sustain conviction on basis of circumstantial evidence- Requirements of:

10.	Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801	Requirement of certificate under S. 65-B(4) being procedural, can be relaxed by court wherever interest of justice so justifies. Thus, requirement of certificate under S. 65- B(4) Is not) always mandatory.
11.	Surinder Kumar Khanna v. Directorate of Revenue Intelligence, (2018) 8 SCC 271	Indian evidence Act, 1872 Ss. 30 and 3 - Scope Confession of co-accused - Admissibility against other accused:

Code of Civil Procedure, 1908

S.No	Case Name	Facts	Date
1.	Gurmit Singh Bhatia Versus Kiran Kant Robinson and others	Plaintiff Cannot Be Forced To Add Parties Against Whom He Does Not Want To Fight.	July 17, 2019
2.	Ramesh Das (DEAD) thr. Lrs. Versus State of Madhya Pradesh and ors.	[Section 100 of code of Civil procedure, 1908] Private claim does not falls under the ambit of the "substantial question of law"	July 22, 2019.

3.	<p>State of rajasthan & ors.</p> <p>Versus</p> <p>Shiv dayal & anr.</p>	<p>[Section 100 Code Of Civil Procedure, 1908]</p> <p>If any one or more ground made out in an appropriate case on the basis of the pleading and evidence such ground will constitute substantial Question of law.</p>	August 14, 2019
4.	<p>S. Bhaskaran</p> <p>Versus</p> <p>Sebastian (Dead) by Lrs. & Ors.</p>	<p>[Section 47 and 115 of the cod of civil Procedure, 1908]</p> <p>High court cannot look into the factual merits of the case after the attainment of finality, at the stage of execution.</p>	September 13, 2019
5.	<p>Bansidhar Sharma (SINCE DECEASED)</p> <p>Rep by his legal Representative</p> <p>Versus</p> <p>The state of Rajasthan & ors.</p>	<p>[Section 151 and 144 of the CPC]</p>	November 05,2019

6.	<p>Ashok kumar kalra</p> <p>Versus</p> <p>Wing cdr. Surendra Agnihotri & ors</p>	<p>No embargo on filing counter-claim after Filing written Statement, order viii</p> <p>Rule 6a code of civil procedure, 1908.</p>	<p>November 19, 20</p>
7.	<p>N. Mohan</p> <p>Appellant</p> <p>V</p> <p>R.madhu</p> <p>Respondent</p>	<p>Section 96(2), O9R13 of CPC, Section 5 of The Limitation Act and Negotiable Instrument section 138</p>	<p>21 November R, 2019</p>
8.	<p>Sri Prabodh Ch. Das &anr</p> <p>VS.</p> <p>Versus</p> <p>Mahamaya Das &Ors</p> <p>Others.</p>	<p>[Order XLI Rule 17 and ; Section 100 of the code of Civil Procedure, 1908]</p> <p>Appeal would not be said to be decide on merits, when the appellant fails to appear before the court.</p>	<p>December 13, 2019</p>
9.	<p>Kapilaben & Ors.</p> <p>Versus</p> <p>Ashok Kumar Jayantilal Sheth</p> <p>Through POA Gopalbhai Madhusudan Patel & Ors.</p>	<p>NA</p>	<p>2019 SCC</p>

[Order 1 Rule 10 of the Code of Civil Procedure, 1908]

Plaintiff Cannot Be Forced To Add Parties Against Whom He Does Not Want To Fight.

Gurmit Singh Bhatia

Versus

Kiran Kant Robinson and others

Division bench

Hon'ble Dr. D.Y. Chandrachud and M. R. Shah JJ.

Dated: July 17, 2019.

Delivered by: M. R. Shah, J.

Law Point

1. The test to determine the question who is a necessary party are
 - a) There must be a right to some relief against such party in respect of the controversies involved in the proceedings;
 - b) No effective decree can be passed in the absence of such party.
2. Party, who is not a party to contract and claiming title and possession adverse to the plaintiff cannot be said to be a proper party therefore, cannot impleaded as a party to the suit under Order 1 Rule 10 of the CPC. If such party is impleaded in the suit, the scope of the suit for specific performance shall be enlarged to a suit for title and possession, which is impermissible.

Facts

The original plaintiffs' i.e Respondent no. 2 and 3 (herein after R2 and R3) filed a suit against respondent no. 1 (defendant no.1/ R1) for specific performance of the agreement to sell executed by RI in the Court of learned 4th Additional District Judge, Bilaspur. The court granted the injunction against RI not to alienate or transfer the suit property. During the pendency of the aforesaid suit and despite the injunction against RI executed a sale deed in favour of the appellant (A) sale deed dated 10.07.2008. A, after purchasing the suit property, filed an application under Order 1 Rule 10 of the CPC for impleadment as a defendant in the suit on the ground that he has

purchased the suit property and therefore, became a necessary and proper party to the suit as he has a direct interest in the suit property.

Decision of the trial court

The learned Trial Court allowed the said application and directed R2 and R3 to join A as a defendant in the suit.

Dissatisfied R2 & R3 herein filed a writ petition before the High Court of Chhattisgarh.

Decision of the High Court

The High Court allowed the said writ petition and set aside the order passed by the Trial Court by holding that the relief claimed by R2 and R3 was only against R1 and as no relief has been claimed against A and therefore, A cannot be said to be a necessary or formal party. Dissatisfied by the decision of the High Court a preferred review application which came to be dismissed

Assailing the dismissal order in review petition, a filed appeal by way of special leave petitions before the Hon'ble Supreme Court.

Contention of the parties

Appellant A

Learned Senior Advocate appearing on behalf of a vehemently submitted that:

1. Once the Trial Court allowed the impleadment application under Order 1 Rule 10 of the CPC holding that A as a necessary and proper party, the High Court ought not to have interfered with the same while exercising the powers given under Article 227 of the Constitution of India.
 2. A had purchased the suit property from the same vendor and, in fact, A was prior holder of the agreement to sell. To protect the interest of A, he should be the necessary and proper party.
 3. The learned Trial Court rightly allowed the impleadment application of A. therefore, prayed to allow appeal and set aside the judgments and orders passed by the High Court and restore the order passed by the learned trial Court.
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[Reliance placed on the decision of Hon'ble Supreme Court in Robin Ramjibhai Patel v. Anandibai Rama @ Rajaram Pawar, reported in 3 and the decision of the Bombay High Court in Shri Swastikavelopers us. Saket Kumar Jain, reported in "]

R2 and R3

The counsel of the R2 and R3 vehemently opposed the appeal filed by A and submitted that:

1. A purchased the suit property during the pendency of the suit in violation of the injunction granted by the Trial Court.
2. The prior agreement to sell upon which reliance has been placed by A was a concocted and forged one.
3. A cannot be impleaded as a defendant in a suit filed by R2 and R3 for specific performance of the agreement to sell to which A was not a party.
4. R2 and R3 were the dominus litis and without their consent nobody could be permitted to be impleaded as defendant.
5. The issue involved in the present case was squarely covered against A as per the decision of the apex Court in the case of Kasturi v. Iyyamperumal, reported
6. The Cases relied by counsel of A shall not be applicable to the facts of the case on hand because in these two cases it was an application by the original plaintiff to be implead the subsequent purchaser who purchased the property during the pendency of the suits.
7. Apex Court in Kasturi (supra) held that it is for the plaintiff who implead a particular person as defendant and if he does not/do not join then it will be at the risk of the plaintiff.
8. The plaintiff cannot be forced to implead any other person, more particularly who is not a party to the contract.

Issue

Whether the High Court was justified in setting aside the decision of the Trial Court by holding that A cannot be pleaded as a party to the suit because no relief was claimed against him by R2 and R3?

Decision of the Hon'ble Supreme Court

The Hon'ble Supreme Court by placing reliance upon the decision in *Kasturi* (supra) and applying the principle that the plaintiff is the dominus litis held that the High Court correctly set aside the decision of the Trial Court as in the present case A cannot be impleaded as a defendant in the suit for specific performance of the contract by R2 and R3 against R1 against the wish of the plaintiffs because of following reasons:

1. The question of jurisdiction of the court to invoke Order 1 Rule 10 CPC and to add a party who was not made a party in the suit by the plaintiff shall not arise unless a party proposed to be added has direct and legal interest in the controversy involved in the suit.
 2. The test to determine the question who is a necessary party are
 - a) There must be a right to some relief against such party in respect of the controversies involved in the proceedings;
 - b) No effective decree can be passed in the absence of such party.
 3. In a suit for specific performance the first test can be formulated is to determine whether a party is a necessary party there must be a right to the same relief against the party "claiming to be a necessary party, relating to the same subject matter involved in the proceedings for specific performance of contract to sell.
 4. A proper party is a party whose presence is necessary to adjudicate the controversy involved in the suit. Parties claiming an independent title and possession, adverse to the title of the plaintiff - not on the basis of the contract, are not proper parties. If such party is impleaded in the suit, the scope of the suit for specific performance shall be enlarged to a suit for title and possession, which is impermissible.
 5. A third party or a stranger cannot be added in a suit for specific performance, merely in order to find out who is in possession of the contracted property or to avoid multiplicity of the suits.
 6. A third party or a stranger to a contract cannot be added so as to convert a suit of one character into a suit of different character.
 7. The plaintiff who has filed a suit for specific performance of the contract to sell is the dominus litis, he cannot be forced to add parties against whom, he does not want to fight unless it is a compulsion of the rule of law. Considering the decision of this Court in the case of *Kasturi* (supra).
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[Section 100 of Code of Civil Procedure, 1908]

Private claim does not falls under the ambit of the "substantial question of law"

Ramesh das (dead) thro Irs.

Versus

Radesh and ors.

Division Bench of the Hon'ble Supreme Court

Hon'ble R. Banumathi and A.S. Bopanna, JJ.

Dated: July 22, 2019.

Delivered by: A.S. Bopanna, J.

Law Point

1. The private claim does not falls under the ambit of the "substantial question of law" as per the requirement of section 100 of CPC for filing a second appeal.
2. If the plaintiff fails to prove any document regarding the claim of his title over the property, in such a case mere entries in the revenue book does not create any title over the property nor does it prove his claim of title.

Brief facts

The appellant plaintiff filed a suit for the relief of declaration and perpetual injunction claiming that Shri Ram Mandir situate at Dedla Village, Dhar Tehsil is a private temple which belonged to the forefathers of the plaintiff appellant, the temple was built out of their own funds and the idol was installed by them.

The appellant plaintiff contended that

- * The temple belongs to the family of the appellant plaintiff and he had succeeded as the pujari in the said temple.
- * He was appointed as pujari of the temple by the Government and not on the fact that his father use to performed pooja.

And prayed the suit in his favour since he was the devotee of Shri Ram Mandir the Jagirdar gifted 25 bighas of land from his jagir village of which the land in question bears Survey No.442.

The defendant appeared and filed a detailed written statement disputing the claim put forth by the plaintiff. The defendant contented that the manner of claim as put forth in respect of the property was disputed and the revenue entry as stated by the plaintiff explained that such entry was in the name of the temple and the name of the father of the plaintiff Late Laxmandas was only in the capacity of the Manager of the temple. The name of the District Collector has been recorded as Manager in the year 1974 as per the directions of the State Government. According to the respondent, Laxmandas did not make any objection during his life time on deletion of his name. When Laxmandas did not object for such deletion, Ramesh Das has no right to raise objection. The auction held on 29th April, 1992 was sought to be justified as the plaintiff had no right. It was further contented that the procedure for appointment of pujari was known to the plaintiff and he had also made an application but since no pujari was appointed for the temple and the land was not being utilised, the auction was ordered for the benefit of the temple. In that view, the defendants had sought for dismissal of the suit.

Decision of the Trial Court

Trial Court accepted the claim put forth by the appellant plaintiff on relying upon the revenue documents which were marked by him and decreed the suit by holding Ram Mandir as private temple.

The Respondent assailed the decree of the Trial Court before the Lower Appellate Court.

Decision of the First Appellate Court

The First Appellate Court in the appeal filed under section 96 of CPC while re-appreciating the evidence set aside the judgment of the trial court by holding that plaintiff has not adduced any evidence that the suit temple was a private temple. Thereafter, aggrieved appellant plaintiff filed second appeal under section 100 of Civil Procedure Code, 1908, (CPC) before the High Court.

Decision of the High Court

The High Court in second appeal filed under section 100 of CPC accepted the finding rendered by the First Appellate Court that the appellant plaintiff failed to prove that the suit temple was a private temple and opined that the appeal does not involve any substantial question of law within the meaning of section 100 CPC, therefore, dismissed the Second Appeal.

Assailing the decision of the High Court the appellant plaintiff filed an appeal by way of special leave petition before the Hon'ble Supreme Court.

Issue

Whether the assessment of the evidence done by the First Appellate Court and confirmed by the High Court in the second appeal was justified by the law?

Decision of the Hon'ble Supreme Court

The Hon'ble Supreme Court observed that:

1. The First Appellate Court and the High Court rightly observed that no document of title to acquire right and title over the land has been relied upon by the plaintiff.
2. Though the plaintiff had relied upon the Revenue entries but the Revenue entries are of no assistance since as per the well established position of law the revenue documents do not create title.
3. Even otherwise as stated in the evidence of the defendants, the entries were in the name of temple and none of the entries contained the name of the plaintiff.
4. The First Appellate Court as well as the High Court has relied upon the *Shri Ram Mandir Indore vs. State of Madhya Pradesh & Others (2019 SC)*, where the Apex Court dismissed the appeal on the ground that the claim made against the Shri Ram Mandir Indore was a private temple and it cannot be decided as a substantial question within the meaning of the Section 100 of CPC.

Considering the above observation, the Hon'ble Supreme Court confirmed the decision of the First Appellant Court and High Court and held that the the First Appellate Court and the High Court correctly held that the Appellant plaintiff failed to prove his title over the temple as he failed to bring evidences in regards to his claim. The entries of revenue book don't create a title over the property.

Accordingly, dismissed the appeal.



[Section 100 Code of Civil Procedure, 1908]

If any one or more ground made out in an appropriate case on the basis of the pleading and evidence, such ground will constitute substantial question of law.

State of rajasthan & ors.

Versus

Shiv dayal & anr.

Division bench of hon'ble supreme court

Hon'ble abhay manohar sapre and r. Subhash Reddy JJ.

Dated: August 14, 2019

Delivered by: Abhay Manohar Sapre, J.

Law Point

When any concurrent finding of fact is assailed in second appeal, the Appellant is entitled to point out that it is bad in law because

- * It was recorded de hors the pleadings or
- * It was based on no evidence or
- * It was based on misreading of material documentary evidence or
- * It was recorded against any provision of law and;
- * The decision is one which no Judge acting judicially could reasonably have reached.

Brief Facts

The Appellant No. 1 is the State of Rajasthan and Respondent No. 1 claims to be the mining lessee in relation to the suit land under the Mines and Minerals (Development & Regulation) Act (hereinafter referred to as "MMRD Act")."

The Respondent No. I filed a civil suit against the Appellant State and its authorities and claimed a relief of grant of permanent injunction restraining the State and its authorities from interfering in carrying out the mining operations on the suit land by Respondent No. 1.

Respondent No. 1 claimed this relief inter alia on the averments that the suit land was not the part of any protected Forest area as claimed by the State authorities but it was a part of the Revenue area. It was averred that since the suit land did not fall in the protected forest area, the Respondent No. 1 (plaintiff) had a right to carry out mining operation on the suit land without any interference of the State and its authorities. The State contested the suit by denying the averments made in the plaint.

The Trial Court framed issues. Parties led their evidence. By Judgment and decree dated 10.05.1998, the Trial Court decreed in favour of the plaintiff the suit and granted an injunction against the State and its authorities in relation to the suit land, as prayed in the plaint.

The State felt aggrieved and filed first appeal before the District Judge.

Decision of the first Appellant Court

The First Appellate Court dismissed the appeal and affirmed the judgment/decree of the Trial court giving rise to filing of the second appeals by the State in the High Court.

Decision of the High Court

The High Court dismissed the second appeals holding that the appeals did not involve any substantial question of law.

The State felt aggrieved and has filed the present appeals by way of special leave before the Hon'ble Supreme Court.

Issue

Whether the High Court was justified in dismissing the State's second appeals on the ground that these appeals did not involve any substantial question of law?

Decision of the Hon'ble Supreme Court

In the light of facts and circumstances of the case, the Hon'ble Supreme Court allowed the appeals, set aside the order of the High Court and remanded the case to the High Court for deciding the second appeals afresh on merits

in accordance with law essentially on the ground that since the two Courts have decreed the suit, no substantial question of law arises in the appeals.

Further, the Hon'ble Supreme Court held that it is not the principle of law that where the High Court finds that there is a concurrent finding of two Court, such finding becomes unassailable in the second appeal. However, it has been laid down by Apex Court in several decisions that this rule of law is subject to certain well known exceptions mentioned infra.

- * It is a trite law that in order to record any finding on the facts, the Trial Court is required to appreciate the entire evidence (oral and documentary) in the light of the pleadings of the parties.
- * Similarly, it is also a trite law that the Appellate Court also has the jurisdiction to appreciate the evidence de novo while hearing the first appeal and either affirm the finding of the Trial Court or reverse it.
- * .If the Appellate Court affirms the finding, it is called "concurrent finding of fact" whereas if the finding is reversed, it is called "reversing finding". These expressions are well known in the legal parlance.
- * When any concurrent finding of fact is assailed in second appeal, the Appellant entitled to point out that it is bad in law because
 - * it was recorded de hors the pleadings or
 - * it was based on no evidence or
 - * it was based on misreading of material documentary evidence or
 - * it was recorded against any provision of law and;
- * The decision is one which no Judge acting judicially could reasonably have reached (see observation made by learned Judge Vivian Bose, J. as His Lordship then was a Judge of the Nagpur High Court in *Rajeshwar Vishwanath Mamidwar & Ors. vs. Dashrath Narayan Chilwelkar & Ors.* AIR 1943 Nagpur 117 Para 43).

Therefore, the Hon'ble Supreme Court opinion that if any one or more ground is made out in an appropriate case on the basis of the pleading and evidence, such ground will constitute substantial question of law within the meaning of section 100 of the Code.
