The High Court of Madhya Pradesh
Second Appeal No. 2254/2018
Bhikam Singh and Others vs. Ranveer Singh & Others

Gwalior, dtd. 14/11/2018

Shri Sarvesh Sharma, counsel for the appellant.

Shri KS Tomar, Senior Counsel with Shri JS Kaurav, counsel for the respondent No.1.

This Second Appeal under Section 100 of CPC has been filed calling in question the judgment and decree dated 10/09/2018, passed by Fourth Additional District Judge, Bhind, District Bhind in Regular Civil Appeal No.49/2018, by which the judgment and decree dated 01/05/2018 passed by First Civil Judge, Class II, Bhind, District Bhind in Civil Suit No. 2400063A/2015, has been affirmed and the appeal filed by the appellant has been dismissed.

The necessary facts for the disposal of the present appeal in short are that the respondent no.1 had filed a civil suit against the appellants for declaration of title, permanent injunction and correction of revenue records in respect of agricultural land, having survey no.940, area 5 bigha 3 biswa (new survey nos. 1388 & 1393).

It was the case of the plaintiff that his father late Khilan Singh is the resident of village Kalyanpura, Mouza Rachhedi and survey no.940 area 5 bigha 3 biswa was lying barren and his father made it fit for cultivation and the Collector, by order passed in the year 1960 in Case No. 110/60x162, gave a Patta in favour of his father and accordingly, he is in possession of the same. Survey no.940 was renumbered and new survey numbers are 1388 & 1393. Late Kundan Singh, who is father of the appellants, was Patel of the village and he got annoyed because of allotment of land in favour of father of the plaintiff/respondent no.1 and by hatching a conspiracy the plaintiff was made an

accused in a case of murder, which continued for a long time and ultimately, the plaintiff has been sentenced by the Supreme Court for a period of seven years. However, the plaintiff continued to be in cultivating possession of the land in dispute. The cultivated crop was lying on the disputed land and was set on fire and accordingly, the plaintiff had made a complaint to the Patwari, Tehsildar and Collector and obtained revenue records and came to know that instead of entire 5 bigha and 3 biswa of land, the name of the father of the plaintiff was recorded, merely in respect of 1 bigha and 13 biswa land and the remaining land i.e. 3 bigha and 10 biswa has been recorded in the name of the appellants/defendants. It was further pleaded that the father of the appellants/defendants was the Patel of the village and taking advantage of innocence of the father of the plaintiff, he got the revenue records corrected. When the plaintiff demanded the certified copy of the documents, then his application was returned on the ground that as the records are in dilapidated condition, therefore, the certified copy cannot be granted. It was further pleaded that the appellants have got their names mutated in the revenue records by playing fraud and accordingly, the suit was filed for declaration of title, permanent injunction and correction of revenue records.

The appellants and Pooran Singh, who was the defendant no.2 in the suit, filed written statement and denied that the land in dispute was made cultivable by the father of the plaintiff. They also denied that the father of the plaintiff was declared as ''Bhoomiswami'' in Samvat 2018-19. It was pleaded that Kundan Singh was in possession of the land in dispute and after his death, the appellants are cultivating the land. Even name of the father of the appellants continued to be recorded in the revenue records and after his death, the names of the appellants have been mutated in the revenue records.

The trial Court after recording the evidence of the parties, decreed the suit.

Being aggrieved by the judgment and decree passed by the trial Court, the appellants filed the First Appeal and the objection was raised that Pooran Singh, who was the defendant no.2, had expired on 31/03/2017. The legal representatives of Pooran Singh were not brought on record and thus, it is clear that the decree dated 01/05/2018 has been passed by the trial Court against the dead person and thus, it is a nullity. The appellate Court, after considering the grounds raised by the appellants before it, also dismissed the appeal by judgment and decree dated 10/09/2018 passed in Regular Civil Appeal No.49/2018.

Challenging the judgment and decree passed by the Courts below, it is submitted by the counsel for the appellants that Pooran Singh was impleaded as defendant no.2, being legal representative of Late Kundan Singh. Pooran Singh had expired on 31/03/2017 i.e. during pendency of the civil suit and his legal representatives were not brought on record and later on, the judgment and decree dated 01/05/2018 was passed by the trial Court against the defendants, which clearly shows that the decree has been passed against dead person and thus, it is a nullity.

To buttress his contention, the counsel for the appellants has relied upon the judgment passed by the Supreme Court in the case of **Amba Bai and Others vs. Gopal and Others** reported in **(2001) 5 SCC 570** and in the case of **Jaladi Suguna (Deceased) through LRS. vs. Satya Sai Central Trust and Others,** reported in **(2008) 8 SCC 521.**

Considered the submissions made by the counsel for the appellants.

The defendants no.1, 2 and 3 are the real brothers, whereas the defendant no.4 is the mother of the defendants

no.1, 2 and 3. The defendant no.2, according to the appellants, had expired on 31/03/2017 i.e. during pendency of the civil suit. However, it is admitted that the defendant no.4 i.e. mother of the defendant no.2 was already on record and after the death of defendant no.2, the mother of the defendant no.2 is one of the legal representatives, being Class-I heir of the defendant no.2. It is also admitted that the defendants never informed the Court about the death of the defendant no.2 or the details of his legal representatives as required under Order 22 Rule 10A of CPC and all the defendants including the mother of the dead defendant no.2 continued to contest the suit and allowed the trial Court to pass a decree. Even when the defendants filed an appeal against the judgment and decree passed by trial Court, they did not disclose the names of the legal representatives of the dead defendant no.2 and dead defendant no.2 was made party as respondent no.3 by showing that Pooran Singh is dead but his legal representatives are not on record. After dismissal of Regular Civil Appeal even in the present appeal, the appellants have not disclosed the details of the legal representatives of deceased Pooran Singh and he has been made as respondent no.3 by showing Pooran Singh dead (the legal representatives are not brought on record).

There is no dispute that when the legal representatives of a dead person are not brought on record, then the decree passed against the dead person would be a nullity. But in the present case,the facts are distinguishable. Undisputedly, the defendant no.3/appellant no.3 is the mother of the defendant no.2 who had expired during pendency of the civil suit. Being Class-I heir the mother is one of the legal representatives of defendant No.2 Pooran Singh. Thus, it is clear that one of the legal representatives of deceased Pooran Singh was already on record.

It is well-established principle of law that where one of the

legal representatives of a dead person is already on record, then no abatement would take place only on the ground of non-bringing the remaining legal representatives on record within the stipulated period. Similarly, when there is substantial representation of estate of deceased, then the suit cannot be dismissed.

The Supreme Court in the case of **P. Chandrasekharan and Others vs. S. Kanakarajan and Others,** reported in **(2007) 5 SCC 669** has held as under:-

> ''**19.**Indisputably, an appeal would abate automatically unless the heirs and legal representatives of a deceased plaintiffs or defendants are brought on record within the period specified in the Code of Civil Procedure. Abatement of the appeal, however, can be set aside if an appropriate application is filed therefor. The question, however, as to whether a suit or an appeal has abated or not would depend upon the fact of each case. Had such a question been raised, the respondents could have shown that their cross-objection did not abate as the estate of the deceased cross objector was substantially represented.
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> **20**. In Mithailal Dalsangar Singh & Ors. v. Annabai Devram Kini & Ors. [(2003) 10 SCC 691] whereupon Mr. Balakrishnan himself relied, this Court held :
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> > "8. Inasmuch as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally. A simple prayer for bringing the legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside the abatement. So also a prayer for setting aside abatement as regards one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is automatic and a specific order dismissing the suit as abated is not called for. Once the suit has abated as a matter of

law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words is in effect being actually asked for and is necessarily implied. Too technical or pedantic an approach in such cases is not called for.

9. The courts have to adopt a justice-oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the court. The opinion of the trial Judge allowing a prayer for setting aside abatement and his finding on the question of availability of sufficient cause within the meaning of sub-rule (2) of Rule 9 of Order 22 and of Section 5 of the Limitation Act, 1963 deserves to be given weight, and once arrived at would not normally be interfered with by superior jurisdiction."

21. The ratio of the said decision does not militate against the observations made by us hereinbefore. The question in regard to abatement of a suit or appeal has not been raised. We cannot enter into the disputed question of fact at this stage as to whether there has been a substantial representation of the estate of the deceased cross-objectors.''

The Supreme Court in the case of **Collector of 24 Parganas and Others vs. Lalith Mohan Mullick and Others** reported in 1988 (Supp) SCC 578 has held as under:-

''1. This Review Petition has been instituted on the plea that original respondent No. 2 Smt. Sibadasi Mullick, widow of Shri Krishna Mohan Mullick had died during the pendency of the appeal in this Court and that original respondent No. 5 Smt. Kamalini Mullick.

> widow of Shri Khirode Mohan Mullick had also died during the pendency of the appeal in this Court which was disposed of on merits by a Judgment and Order dated February 13. 1986 reported in AIR 1986 SC 622 after hearing the parties. So far as Smt. Sibadasi Mullick, widow of Shri Krishna Mohan Mullick is concerned, her two sons viz. Lakshmi Kanto Mullick and Nilkanto Mullick were already on record as respondents Nos. 3 and 4. Therefore, the estate of the deceased was sufficiently represented before this Court. So far as respondent No. 5 Smt. Kamalini Mullick, widow of Shri Khirode Mohan Mullick is concerned, her son Ramendra Mullick was already on record as respondent No. 6. In her case also the estate was sufficiently represented. Under the circumstances it is not possible to uphold the plea that the appeal had abated and the judgment on merits rendered by this Court on February 13, 1986 requires to be set aside on this ground.''

The Supreme Court in the case of **K. Naina Mohamed (Dead) through LRS. vs. A.M. Vasudevan Chettiar (Dead) through LRs and Others,** reported in **(2010) 7 SCC 603** has held as under:-

> **''18**. A reading of the judgment under challenge shows that neither the factum of death of Rukmani Ammal and her son was brought to the notice of the learned Judge who decided the appeal nor any argument was made before him that the second appeal will be deemed to have abated on account of non impleadment of the legal representatives of the deceased. The reason for this appears to be that Rukmani Ammal and her son A.B.M. Ramanathan Chettiar, who had also signed the sale deed as one of the vendors did not challenge the judgment and decree of the trial Court and only the appellant had questioned the same by filing an appeal. A.B.M. Ramanathan Chettiar did not even contest the second appeal preferred by respondent Nos.1 and 2.
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> 19. Before this Court, the issue of abatement has been raised but the memo of appeal is conspicuously silent whether such a plea was raised and argued before the High Court. Therefore, we do not think that the appellant can be allowed to raise this plea for frustrating the right of respondent Nos.1 and 2 to

question alienation of the suit property in violation of the restriction contained in clause 11 of the Will. Here, it is necessary to mention that by virtue of the Will executed by her sister, Rukmani Ammal got only life interest in the property of the testator and her male heir, A.B.M. Ramanathan Chettiar got absolute right after her death. Therefore, during her life time, Rukmani Ammal could not have sold the property by herself. This is the precise reason why she joined her son in executing the sale deed in favour of the appellant.

20. If an objection had been taken before the High Court that legal representatives of A.B.M. Ramanathan Chettiar have not been brought on record, an order could have been passed under Rule 4 of Order XXII which reads as under:

> "The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place."

21. The definition of the term `legal representative' contained in Section 2(11) of the Code of Civil Procedure also supports the argument of the learned counsel for the respondents that the second appeal cannot be treated as having abated because the appellant who had purchased the property was representing the estate of the deceased. In Mohd. Arif v. Allah Rabbul Alamin (1982) 2 SCC 455, this Court considered a somewhat similar issue and held as under:(SCC p456, para 2)

> "2.....It is true that the appellant did not prefer any appeal to the District Court against the original decree but in the first appeal he was a party respondent. But that apart, in the second appeal itself Mohammad Arif had joined as co-appellant along with his vendor, Mohammad Ahmed. On the death of Mohammad Ahmed all that was required to be done was that the appellant who was on record should have been

> shown as a legal representative inasmuch as he was the transferee of the property in question and at least as an intermeddler was entitled to be treated as legal representative of Mohammad Ahmed. He being on record the estate of the deceased appellant qua the property in question was represented and there was no necessity for application for bringing the legal representatives of the deceased appellant on record. The appeal in the circumstances could not be regarded as having abated and Mohammad Arif was entitled to prosecute the appeal."

The Supreme Court in the case of **Bhurey Khan vs. Yaseen Khan (Dead) by LRs. and Others,** reported in **1995 Supp (3) SCC 331** has held as under:-

> ''**4**. We have heard the learned counsel for the parties. After the order dismissing the appeal for non-prosecution was set aside by this Court the parties were relegated to the position as it stood earlier, namely, that the substitution application filed by the appellant for bringing on record the legal representatives to whom the notices were issued stood dismissed. But that could not furnish valid ground for abating the appeal as the six sons of Yaseen were already on record. The estate of the deceased was thus sufficiently represented. If the appellant would not have filed filed any application to bring on record the daughters and the widow of the deceased the appeal would not have abated under Order 22 Rule 4 of the Code of Civil Procedure as held by this Court in *Mahabir Prasad v. Jage Ram (1971)1 SCC 265*. The position, in our opinion, would not be worse where an application was made for bringing on record other legal representatives but that was dismissed for one or the other reason. Since the estate of the deceased was represented the appeal could not have been abated. ''

When some of the legal representatives of the deceased party are not joined, then the suit cannot be dismissed on the said ground as held by the Supreme Court in the case of **Dolai Maliko and Others vs. Krushna Chandra Patnaik and**

Others, reported in **AIR 1967 SCC 49,** in which it has been held as under:-

> **''11**.We are of opinion that these cases have been correctly decided and even where the plaintiff or the appellant has died and an his heirs have not been brought on the record because of oversight or because of some doubt as to who are his heirs, the suit or the appeal as the case may be, does not abate and the heirs brought on the record fully represent the estate unless there are circumstances like fraud or collusion to which we have already referred above.''

Thus, it is clear that the defendant no.2 Pooran Singh had expired during pendency of the civil suit but the other defendants who are the real brother of the deceased Pooran Singh and mother of the deceased Pooran Singh, did not file an application under Order 22 Rule 10-A of CPC, informing about the death of Pooran Singh as well as the details of the legal representatives of Pooran Singh. Even otherwise, till today, the defendants/ appellants have not disclosed the details of the legal representatives of Pooran Singh. It is not known that whether Pooran Singh had any other legal representatives except his mother or not? Even otherwise, when one of the legal representatives of dead person was already on record, then it cannot be said that the suit had abated or the decree has been passed against a dead person. When the estate of the deceased was being substantially represented by one of the legal representatives, then the suit cannot be dismissed as having abated. Thus, the substantial question of law formulated by the appellants, does not arise.

It is next contended by the counsel for the appellants that the trial Court has misread the evidence and the documents which give rise to substantial question of law. It is further submitted that as the plaintiff was not in possession of the land in dispute and the finding with regard to possession over the

land in dispute is erroneous and, therefore, in view of Section 34 of the Specific Relief Act, the civil suit was not maintainable in absence of relief for possession. To buttress his contention, the counsel for the appellants has relied upon the judgment passed by the Supreme Court in the case of **Matindu Prakash (Deceased) by LRS. vs. Bachan Singh and Others**, reported in **AIR 1977 SCC 2029.**

So far as the concurrent findings of fact given by the Courts below with regard possession of the plaintiff over the land in question are concerned, it is well-established principle of law that the findings with regard to possession are findings of fact and it is equally established principle of law that in exercise of power under Section 100 of CPC, this Court cannot interfere with the concurrent findings of fact, until and unless they are found to be contrary to the record or based on no evidence. Merely because, the findings of fact are erroneous findings of fact, cannot give rise to substantial questions of law. Thus, in view of the concurrent findings of fact given by the Courts below that the plaintiff/respondent no.1 is in possession of the land in dispute, this Court is of the considered opinion that the civil suit cannot be dismissed on the ground of non-claiming of relief of possession.

It is next contended by the counsel for the appellants that the Courts below have misread the evidence as well as the documents which give rise to substantial substantial of law. It is further submitted that the name of the father of the appellants was mutated in the revenue record vide order Ex.D3 which was based on the consent given by the father of the plaintiff Ex.D4. Once the father of the plaintiff has given consent that he is not in possession of the land in dispute and in fact, Kundan Singh, the father of the appellants is in possession and he has no

objection if Kundan Singh is recorded in the revenue record, then it is not open for the plaintiff/respondent no.1 to challenge the revenue entries and declaration of Kundan Singh as ''Bhoomiswami''.

I have gone through the evidence of the parties for the limited purpose that whether the consent letter Ex.D4 purportedly executed by Khilan Singh, was admitted by the plaintiff/respondent no.1 or not. It is the case of the respondent No.1 that Ex.D4 does not contain signature of his father and it is a forged document. It is the case of the respondent No.1 that his father had never given consent for recording the name of Khilan Singh as ''Bhoomiswami''.

It is submitted by the counsel for the appellants that in order to controvert the stand taken by the plaintiff/respondent No.1, they had filed Ex.D1, which is a sale deed executed by the father of plaintiff/ respondent no.1 which bears his signatures.

Thus, it is clear that the father of the plaintiff/ respondent no.1 was in habit of signing the documents and the contention made by the plaintiff/respondent no.1 that his father was an illiterate person and was always putting thumb impression is incorrect. When Ex.D1 was put to the plaintiff/respondent No.1 in his cross-examination, then it was replied by him that if his father had learnt to sign, at a later stage, then he cannot say anything with regard to signatures of his father Ex.D1. Consent letter Ex.D4 purportedly executed by the father of the plaintiff/ respondent no.1 is of the year 1964, whereas the sale deed Ex.D1 is of the year 1996. Thus, it is clear that the sale deed was executed after 32 years of execution of so-called consent letter. Furthermore, it is an undisputed fact that the application filed by Kundan Singh, the father of the appellants for mutation of his name, was rejected by Tahsildar and Kundan Singh being

aggrieved by the order of Tahsildar, had filed an appeal before the Court of SDO. It is also a matter of doubt that when Khilan Singh, the father of the respondent no.1/ plaintiff had succeeded in the Court of Tahsildar, then why he would give consent letter, admitting that Kundan Singh, the father of the appellants is in possession of the land in dispute and he has no objection if he is declared as ''Bhoomiswami''.Thus, this Court is of the considered opinion that the concurrent findings of fact given by the Courts below are based on appreciation of evidence and cannot be kept within the category of perverse findings.

The Supreme Court in the case of **Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar and Others,** reported in **(1999) SCC 722**, has held as under:-

> ''**3**. After the amendment a second appeal can be filed only if a substantial question of law is involved in the case. The memorandum of appeal must precisely state the substantial question of law involved and the High Court is obliged to satisfy itself regarding the existence of such question. If satisfied, the High Court has to formulate the substantial question of law involved in the case. The appeal is required to be heard on the question so formulated. However, the respondent at the time of the hearing of the appeal has a right to argue that the case in the court did not involve any substantial question of law. The proviso to the Section acknowledges the powers of the High Court to hear the appeal on a substantial point of law, though not formulated by it with the object of ensuring that no injustice is done to the litigant where such question was not formulated at the time of admission either by mistake Or by inadvertence.
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> **4.** It has been noticed time and again that without insisting for the statement of such substantial question of law in the memorandum of appeal and formulating the same at the time of admission, the High Courts have been issuing notices and generally deciding the second appeals without adhering to the procedure prescribed under Section 100, Code of Civil Procedure, It has further been found in a number of cases that no efforts are made to distinguish; between a question of

law and a substantial question of law. In exercise of the powers under this Section the findings of fact of the 1st appellate court are found to have been disturbed. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in the Section must be strictly fulfilled before a second appeal can be maintained and no court has the power to add to or enlarge those grounds. The second appeal : cannot be decided on merely equitable grounds. The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under this Section. The substantial question of law has to be distinguished from a substantial question of fact This Court in Sir Chunilal V. Mehta and Sons Ltd. v. Century Spinning and Manufactuing Co. Ltd, AIR (1962) SC 1314 held that :-

> "The proper test for determining whether a question of law raised in the case is substantial would, in bur opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is 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 absurbed the question would not be a substantial question of law."

5. It is not within the domain of the High Court to investigate the grounds on which findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court had given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court

in second appeal. Adopting any other approach is not permissible. 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 tower appellate court were erroneous being contrary to the mandatory provisions of law applicable of its settled position on the basis of pronouncements made by the apex Court, or was based upon in inadmissible evidence or arrived at without evidence.

6. If the question of law termed as substantial question stands already decided by a larger bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court, its merely wrong application on facts of the case would not be termed to be a substantial question of Jaw. Where a point of law has not been pleaded or is found to be arising between the parties in the absence of any factual format, a litigant should not be allowed to raise that question as substantial question of law in second appeal. The mere appreciation of the facts, the documentary evidence or the meaning of entrie and the contents of the document cannot be held to be raising a substantial question of law. But where it is found that the first appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as substantial question of law. Where the first appellate court is shown to have exercised its discretion in a judicial manner, it Cannot be termed to be an error either of law or procedure requiring interference in second appeal. This Court in Reserve Bank of India & Anr, v. Ramakrishan Govind Morey, AIR (1976) SC 830 held that whether trial court should not have exercised its jurisdiction differently is not a question of law justifying interference.''

The Supreme Court in the case of **Gurvachan Kaur and Others vs. Salikram (dead) through Lrs.** reported in **(2010) 15 SCC 530** has held as under:-

''10. It is settled law that in exercise of power under Section 100 of the Code of Civil Procedure, the High Court cannot interfere with the finding of fact recorded by the first appellate court which is the final court of fact, unless the same is found to be perverse. This being the position, it must be held that the High Court

was not justified in reversing the finding of fact recorded by the first appellate court on the issues of existence of landlord-tenant relationship between the plaintiff and defendant and default committed by the latter in payment of rent.''

The Supreme Court in the case of **D.R.Rathna Murthy vs. Ramappa**, reported in **(2011) 1 SCC 158,** has held as under:-

''9. Undoubtedly, the High Court can interfere with the findings of fact even in the Second Appeal, provided the findings recorded by the courts below are found to be perverse i.e. not being based on the evidence or contrary to the evidence on record or reasoning is based on surmises and misreading of the evidence on record or where the core issue is not decided. There is no absolute bar on the re-appreciation of evidence in those proceedings, however, such a course is permissible in exceptional circumstances. *(Vide Rajappa Hanamantha Ranoji v. Mahadev Channabasappa (2000) 6 SCC 120, Hafazat Hussain vs. Abdul Majeed (2001) 7 SCC 189 and Bharatha Matha vs. R. Vijaya Renganathan, (2010) 11 SCC 483)''*

The Supreme Court in the case of **Union of India vs. Ibrahim Uddin and Another,** reported in **(2012) 8 SCC 148** has held as under:-

''**59**. Section 100 CPC provides for a second appeal only on the substantial question of law. Generally, a Second Appeal does not lie on question of facts or of law. In State Bank of India & Ors. v. S.N. Goyal, AIR 2008 SC 2594, this Court explained the terms "substantial question of law" and observed as under : (SCC p.103, para 13)

"13.....The word 'substantial' prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. ..... any question of law which affects the final decision in a case is a substantial question of law

as between the parties. A question of law which arises incidentally or collaterally, having no bearing on the final outcome, will not be a substantial question of law. There cannot, therefore, be a straitjacket definition as to when a substantial question of law arises in a case." (Emphasis added).

60. Similarly, in Sir Chunilal V. Mehta & Sons Ltd. v. Century Spinning and Manufacturing Co. Ltd., AIR 1962 SC 1314, this Court for the purpose of determining the issue held:- (AIR P. 1318, para 6)

"6. …...The proper test for determining whether a question of law raises in the case is substantial, would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties…."

(Emphasis added)

61. In Vijay Kumar Talwar v. Commissioner of Income Tax, New Delhi, (2011) 1 SCC 673, this Court held that:(SCC pp.679-80, para 21)

''21.....14. A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be 'substantial' a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law 'involving in the case' there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. It will, therefore, depend on the facts and circumstance of each case, whether a question of law is a substantial one or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in

the life of any lis." (See also: Rajeshwari v. Puran Indoria, (2005) 7 SCC 60).

62. The Court, for the reasons to be recorded, may also entertain a second appeal even on any other substantial question of law, not formulated by it, if the Court is satisfied that the case involves such a question. Therefore, 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. The second appeal does not lie on the ground of erroneous findings of facts based on appreciation of the relevant evidence.

63. There may be a question, which may be a "question of fact", "question of law", "mixed question of fact and law" and "substantial question of law." Question means anything inquired; an issue to be decided. The "question of fact" is whether a particular factual situation exists or not. A question of fact, in the Realm of Jurisprudence, has been explained as under:-

> "A question of fact is one capable of being answered by way of demonstration. A question of opinion is one that cannot be so answered. An answer to it is a matter of speculation which cannot be proved by any available evidence to be right or wrong."
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> (Vide: Salmond, on Jurisprudence, 12th Edn. page 69, cited in Gadakh Yashwantrao Kankarrao v. E.V. alias Balasaheb Vikhe Patil & ors., AIR 1994 SC 678).

64. In Smt. Bibhabati Devi v. Ramendra Narayan Roy & Ors., AIR 1947 PC 19, the Privy Council has provided the guidelines as in what cases the second appeal can be entertained, explaining the provisions existing prior to the amendment of 1976, observing as under: (IA p.259.)

> ".(4).... that miscarriage of justice means such a departure from the rules which permeate all judicial procedure as to make that which happen not in the proper sense of the word 'judicial procedure' at all. That the violation of some principles of law or procedure must be such erroneous proposition of law that if that proposition to be corrected, the finding cannot

stand, or it may be the neglect of some principle of law or procedure, whose application will have the same effect. The question whether there is evidence on which the Courts could arrive at their finding, is such a question of law.

(5).That the question of admissibility of evidence is a proposition of law but it must be such as to affect materially the finding. The question of the value of evidence is not sufficient reason for departure from the practice.....”

65. In Suwalal Chhogalal v. Commissioner of Income Tax, (1949) 17 ITR 269, this Court held as under:-

“.....A fact is a fact irrespective of evidence, by which it is proved. The only time a question of law can arise in such a case is when it is alleged that there is no material on which the conclusion can be based or no sufficient evidence.”

66. In Oriental Investment Company Ltd. v. Commissioner of Income Tax, Bombay, AIR 1957 SC 852, this Court considered a large number of its earlier judgments, including Sree Meenakshi Mills Ltd., Madurai v. Commissioner of Income Tax, Madras, AIR 1957 SC 49, and held that where the question of decision is whether certain profit is made and shown in the name of certain intermediaries, were, in fact, profit actually earned by the assessee or the intermediaries, is a mixed question of fact and law. The Court further held that (Oriental Investment case, AIR p.856, para 29)

''29..... inference from facts would be a question of fact or of law according as the point for determination is one of pure fact or a “mixed question of law and fact” and that a finding of fact without evidence to support it or if based on relevant or irrelevant matters, is not unassailable.''

67. There is no prohibition to entertain a second appeal even on question of fact provided the Court is satisfied that the findings of the courts below were vitiated by non-consideration of relevant evidence or by showing erroneous approach to the matter and findings recorded in the court below are perverse. *(Vide: Jagdish Singh v. Nathu Singh, AIR 1992 SC*

1604; Smt. Prativa Devi (Smt.) v. T.V. Krishnan, (1996) 5 SCC 353; Satya Gupta (Smt.) @ Madhu Gupta v. Brijesh Kumar, (1998) 6 SCC 423;Ragavendra Kumar v. Firm Prem Machinary & Co., AIR 2000 SC 534; Molar Mal (dead) through Lrs. v. M/s. Kay Iron Works Pvt. Ltd., AIR 2000 SC 1261;Bharatha Matha & Anr. v. R. Vijaya Renganathan & Ors., AIR 2010 SC 2685; and Dinesh Kumar v. Yusuf Ali, (2010) 12 SCC 740).''

The Supreme Court in the aforesaid judgments of **Kondiba Dagadu Kadam, Gurvachan Kaur, D.R.Rathna Murthy and Ibrahim Uddin (supra)** has held that even if the findings of fact may be erroneous findings of fact, then it would not give rise to substantial question of law and it has been held that the High Court while exercising the power under Section 100 of CPC should not interfere with the concurrent findings of fact. It is further held that the substantial question of law does not mean the question of law and it is to be a substantial in nature.

No other arguments were advanced by the counsel for the appellants.

In the considered opinion of this Court, no substantial question of law arises in this appeal. Accordingly, it is **dismissed** at the stage of admission only itself.

(G. S. Ahluwalia)
Judge

MKB