

**HIGH COURT OF MADHYA PRADESH**  
**BENCH AT GWALIOR**

**SINGLE BENCH:**

**JUSTICE SHEEL NAGU**

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**MISC. PETITION NO. 3237 OF 2020**

**[Khyaliram Vs. State of M.P. and others]**

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Shri Amit Lahoti, learned counsel for the petitioner.

Shri Abhishek Singh Bhadoriya, learned counsel for the respondent/State.

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Whether approved for reporting : Yes

**Law laid down:**

(1) There is no vested right to file a Second Appeal either under unamended Section 44(2)(b) or amended Sec.44(3)(b) M.P. Land Revenue Code.

(2) Therefore, the remedy of Second Appeal which was otherwise available to the petitioner under the unamended MPLRC at the time of dismissal of his First Appeal, cannot be made available under the amended Sec.44(3)(b) M.P. Land Revenue Code not only because remedy of Second Appeal is not available after the amendment in the MPLRC but also because no litigant has a vested right to Second Appeal due to the very nature of interference permissible in a Second Appeal.

**Significant Paras: 5 to 10**

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**ORDER**  
**(20.01.2021)**

Learned counsel for the rival parties are heard through video conferencing.

1. Present petition filed u/Art.227 of the Constitution of India invoking supervisory jurisdiction of this Court assails the final order dated 03.10.2020 passed by the Additional Commissioner Revenue, Gwalior rejecting the second appeal preferred by the petitioner against the order of SDO passed in first appeal on the ground that the amended M.P. Land Revenue Code does not recognize the concept of second appeal since 25.09.2018.
2. Learned counsel submits that the right to second appeal is a vested right which emanates and continues to be available to the litigant since the institution of the suit/original case and therefore the amendment in the M.P. Land Revenue Code with effect from 25.09.2018 cannot take away this right which had accrued prior thereto.
3. Learned counsel for petitioner has not been able to cite any judicial pronouncement in his favour and this Court is of the considered view that the remedy of second appeal which was otherwise available to petitioner having lost in the first appeal under the unamended MPLR Code prior to 25.09.2018, would not be available thereafter for the reason that remedy of second appeal by its very nature is not available to a litigant as a vested right since the institution of the *lis* in the court of first instance.
4. For ready reference and convenience, the unamended Section

44(2)(b) and amended Sec.44(3)(b) are reproduced below:

**Unamended Section 44(2)(b):**

**“44. Appeal and appellate authorities. -**

(1) XX XX XX

(2) Save as otherwise provided a second appeal shall lie against every order passed in first appeal under this Code or the rules made thereunder-

(i) XX XX XX

(ii) XX XX XX

(iii) XX XX XX

(a) XX XX XX

(b) on any of the following grounds and no other, namely :-

(i) that the order is contrary to law or, usage having the force of law; or

(ii) that the order has failed to determine some material issue of law, or usage having force of law; or

(iii) that there has been a substantial error or defect in the procedure as prescribed by this Code, which may have produced error or defect in the decision of the case upon merits.”

**Amended Sec.44(3)(b):**

**44. Appeal and appellate authorities.-**

(1) xx xx xx

(2) xx xx xx

(3) The second appeal shall lie only-

(a) xx xx xx

(b) on any of the following grounds and no other, namely-

(i) that the order is contrary to law or, usage having the force of law; or

(ii) that the order has failed to determine some material issue of law, or usage having force of law; or

(iii) that there has been a substantial error or defect in the procedure as prescribed by this Code, which may have produced error or defect in the decision of the case upon merits.”

5. From perusal of the unamended Section 44(2)(b) and amended Sec.44(3)(b), it is evident that the scope of interference in a second appeal was restricted and not as wide and open as in a first appeal.

6. First Appeal is available to a litigant as a matter of vested right and this proposition cannot be doubted. However, Second Appeal having restrictive scope of interference and being somewhat akin to the scope available in revision or Second Appeal u/S.100 CPC cannot and ought not to be available to a litigant as a matter of vested right since the beginning of the original proceedings. This Court is bolstered in its view by the decision of the Apex Court in the case of “**Nazir Mohamed Vs. J. Kamala & Ors [2020 SCC Online SC 676]**”.

7. The principles applicable to entertainment and admissibility of a second appeal can be taken note of from the said decisions of the Apex Court rendered to explain Section 100 CPC pertaining to Second Appeal. After analyzing various previous decisions, the Apex Court in the said case of **Nazir Mohamed (supra)** has laid down the following principles on the anvil of which it can be gathered as to whether a substantial question of law in a Second Appeal is made out or not:

*“37. The principles relating to Section 100 CPC relevant for this case may be summarised thus :*

*(i) An inference of fact from the recitals or contents of a document is a question of fact, but the legal effect of the*

*terms of a document is a question of law. Construction of a document, involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.*

*(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue.*

*(iii) A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the Court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.*

*(iv) The general rule is, that High Court will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but*

*also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”*

8. Admittedly, the scope of interference in a Second Appeal u/S.44 of the M.P. Land Revenue Code is not the same as u/S.100 of CPC. The remedy of Second Appeal u/Sec.100 CPC is more restrictive than in a Second Appeal u/S.44 of the M.P. Land Revenue Code. However, bare perusal of the unamended Section 44(2)(b) and amended Section 44(3) (b) of MPLRC reveals that a Second Appeal under the MPLRC can be entertained when the grounds of the order assailed being contrary to law/usage or having ignored material issue of law/usage or existence of substantial error/defect of procedure are made out. On the other hand, a Second Appeal u/S.100 CPC is entertainable only on existence of a substantial question of law which concept is though not defined in CPC but involves question which substantially affects the rights of the parties and is an open one i.e. not finally settled by any court and is fairly arguable and is not covered by any earlier decision.

9. From the textual and contextual comparative interpretation of Section 100 CPC and Section 44 of M.P. Land Revenue Code *qua* the aspect of Second Appeal, it appears that both the provisions, if not substantially, are fairly similar in respect of scope of interference. Therefore, the principle laid down in the aforesaid decision of the Apex Court in **Nazir Mohamed (supra)** can very well be borrowed for the purpose of analyzing the scope of interference of Second Appeal u/S.44 of M.P. Land Revenue Code.

10. Going by the abovesaid discussion, this Court has no manner of doubt that there is no vested right available to any party to file a Second Appeal u/S.44 of the M.P. Land Revenue Code, for the obvious reason as aforesaid and that interference in Second Appeal is not open on questions of fact. As such the petitioner neither under the unamended nor under amended Section 44 of the MPLRC has any vested right to prefer a Second Appeal.

11. In view of above discussion, the decision of learned Additional Commissioner passed in Annexure P-1 cannot be found fault with.

12. The petitioner is still not remediless in view of remedy of revision available to him in the amended Section 50 before the appropriate forum.

13. This Court, therefore, without commenting upon merits of the matter, declines interference and disposes of the present petition with the aforesaid liberty which as and when and if availed, the Revisional Authority may consider deducting the period spent by petitioner in pursuing the present litigation while dealing with the aspect of limitation.

**(Sheel Nagu)**  
**Judge**