

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4939 of 2021

[@ Special Leave to Appeal (C) No(s). 11173/2019]

SINGARAM

Appellant(s)

VERSUS

RAMANATHAN

Respondent(s)

O R D E R

1. Leave granted.
2. The respondent instituted the suit to declare that he has easementary right to reach his lands in the property by walking on the A,B,C,D ridges, which were stated to be situated in the centre of the appellant's land in Survey Nos. 461/8D, 8E, 9B and 9C. He also sought to establish his right to ride the cart on the lands in Survey Nos. 8E and 9C during the non cultivation period and as a consequential relief to pass a mandatory injunction restraining the appellant or his agent from using the right of the plaintiff. He further sought, as per the amended plaint, to pass a mandatory injunction to remove the barricades made by the appellant on the way shown in A point.
3. After written statement was filed and evidence was led, which included two Commission Reports, the Trial Court found that the respondent had failed to establish his right as claimed. It is further found that there was an

alternate way to the respondent's land.

4. The First Appellate Court affirmed the view taken by the Trial Court. Thereupon, the respondent carried the matter in the Second Appeal. The High Court, in Second Appeal, has reversed the concurrent findings of the courts and granted relief in the following manner:

"10. The learned counsel appearing on behalf of the respondents though disputed all other contentions, had not disputed the fact that the land belongs to the plaintiff is situated in adjacent to the land belongs to the defendant. The learned counsel for the respondents is more on the emphasis that the plaintiff was claiming cart track for the purpose of reaching his land, which cannot be provided in the absence of establishing any easementary rights to that extent. The defendant is not restraining the plaintiff from using the varapu for the purpose of reaching his land. However, the defendant is objecting the usage of the common pathway as cart track or as a road for the purpose of reaching the land belongs to the plaintiff. If the plaintiff is permitted to utilize the pathway / varapu for the purpose of reaching his own agricultural land. There cannot be any serious objections on the side of the defendants also.

11. In view of the said submission, this Court is able to arrive a conclusion that the pathway / varapu, which is already in existence for the purpose of reaching the land belongs to the plaintiff is to be kept open for his usage and more specifically, to reach his agricultural lands. However, it is made clear that the plaintiff cannot claim any cart track or road for the purpose of reaching his agricultural land. The plaintiff is entitled to utilize the existing varapu / ridges for the purpose of reaching his land and to carry on his agricultural activities. Such an order is passed in the interest of both the parties concerned. In view of the fact that the appellant has established before this Court that he owns a land adjacent to the land belongs to the defendant, the plaintiff is entitled to use the pathway / varaput for the purpose of reaching his land to

carry on his agricultural activities peacefully and without any hindrance. The defendants also shall not cause any objections for the purpose of usage of varapu by the plaintiff for the purpose of reaching his land.

12. In this view of the matter, the judgment and decree passed by the Subordinate Court, Ariyalur dated 29.01.1996 in AS No. 62/1992, confirming the judgment and decree passed by the District Munsiff, Jayamkondam dated 27.08.1991 passed in OS No. 446/1986 are set aside and the second appeal stands allowed to the extent stated above. No costs."

5. We have heard Mr. S. Mahendran, learned counsel appearing on behalf of the appellant and Mr. Senthil Jagadeesan, learned counsel appearing on behalf of the respondent.

6. Learned counsel for the appellant would urge before us that the High Court has erred in not being mindful of the jurisdictional mandate in Section 100 of the CPC. A Second Appeal can be maintained before the High Court under Section 100 of the CPC only if a substantial question of law arises for its consideration.

7. He points out that a perusal of the impugned judgment would show that a substantial question of law is conspicuous by its absence. In other words, it is his complaint that the High Court has purported to deal with the Second Appeal, as if it were an ordinary appeal. Therefore, it is not in conformity with the mandatory requirement of Section 100 of the CPC. In this regard, he drew our attention to the judgment of this Court in *Biswanath Ghosh (Dead) By Legal*

Representatives and Others v. Gobinda Ghosh Alias Gobindha Chandra Ghosh and Others [(2014) 11 SCC 605] and *Mallanaguoda and Others v. Ninganagouda and Others* [2021 (5) SCALE 362]. He would further contend that the High Court has again erred insofar as it has relied upon the concession made by the counsel for the appellant. In this regard, a perusal of the paragraphs, which we have referred, would apparently show that the High Court has relied upon the statement made by the counsel for the appellant, in the manner it is done. The question, according to learned counsel for the appellant, is the legal effect of such a concession on the rights of the appellant. In this regard, he drew our attention to the judgment of this Court in *Himalayan Coop Group Housing Society v. Balwan Singh and Others* [(2015) 7 SCC 373] at paras 32 and 33:

“32. Generally, admissions of fact made by a counsel are binding upon their principals as long as they are unequivocal; where, however, doubt exists as to a purported admission, the Court should be wary to accept such principal to make such admissions. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not authorized to make. A lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender to conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed. We hasten to add neither the client nor the court is bound by the lawyer’s statements or admissions as to matters of law or legal

conclusions. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their make decisions without consulting the client. While in others, the decision is reserved for the client. It is often said that the lawyer can make decisions as to tactics without consulting the client, while the client has right to make decisions that can affect his rights.

33. We do not intend to prolong this discussion. We may conclude by noticing a famous statement of Lord Brougham:

an advocate in the discharge of his duty knows but one person in the world and that person is his client."

8. He also reinforced this proposition, namely that counsel cannot make concession and thereby bind the party in circumstances as the present by referring to the decision reported in *Bharat Heavy Electricals Limited v. Mahendra Prasad Jakhmola and Others* [(2019) 13 SCC 82] at para 13, which reads as follows:

"13. Even a concession on facts disputed by a respondent in its written statement cannot bind the respondent. Thus, in *Swami Krishnanand Govindanand v. Oswal Hosier*, this Court held:

2. ...It appears that when the case was posted for trial, the learned counsel appearing for the respondent conceded the facts disputed by the advocate was recorded by the Additional Rent Controller thus: The respondent's learned counsel has admitted the ground of eviction and also the fact that the applicant is a public charitable institution and for that purpose it required the premises....

3. ... Whether the appellant is an institution within the meaning of Section 22 of the Act and whether it required bona fide the premises for furtherance of

its activities, are questions touching the jurisdiction of the Additional Rent controller. He can record his satisfaction only when he holds on these questions in favour of the appellant. For so holding there must be material on record to support his satisfaction otherwise the satisfaction not based on any material or based on irrelevant material, would be vitiated and any order passed on such a satisfaction will be without jurisdiction. There can be no doubt that admission of a party is a relevant material. But can the statement made by the learned counsel of a party across the Bar be treated as admission of the party? Having regard to the requirements of Section 18 of the Evidence Act, on the facts of this case in our view, the aforementioned statement of the counsel for the respondent cannot be accepted as an admission so as to bind the respondent. Excluding that statement from consideration, there was thus no material before the Additional Rent Controller to record his satisfaction within the meaning of clause (d) of Section 22 of the Act. It follows that the order of eviction was without jurisdiction."

It is pointed out there was denial of the plaintiff's case in the written statement.

9. Mr. Senthil Jagdeesan, learned counsel for the respondent, on the other hand, would point out that a perusal of the Second Appeal Memorandum would show that three substantial questions of law were, in fact, raised in the Second Appeal. The Second Appeal is of the year 1999. At the time when the Second Appeal was admitted, a substantial question of law was indeed framed by the High Court mindful of the jurisdiction of Section 100 of the CPC. He points out that in fact, (a) substantial question of law (b) to be found in the Memorandum of Appeal was framed by the High Court.

10. He would further submit that the appeal was taken up recently and this Court may not in these circumstances set aside the judgment for the reason that the learned Judge did not advert to any substantial question of law. He would further contend that this is a case where the documents, which form part of the substantial question of law framed, were not considered and there was occasioned failure of justice requiring the interference of the High Court. He further pointed out that there was concession made also and which only conduced to promote the interest of justice. All that has been done by the High Court was to accept a right to the respondent to make use of the land of the appellant for the purpose of walking across his property admittedly located adjacently.

11. The scheme of the Code of Civil Procedure accords finality to the findings of fact rendered by the First Appellate Court.

12. This is undoubtedly subject to various well known exceptions which, however, cannot permit the Second Appellate Court to interfere with the findings of fact as a matter of course. Such restrictions are placed on the High Court in order that there is finality to litigation at a particular level in the hierarchy of Courts. The limitation on the exercise of power by the High Court in the Second Appeal interfering with the judgment of the First Appellate Court is premised on high public policy.

This limitation is sought to be secured by insisting upon the requirement that a Second Appeal is considered only when there is a substantial question of law. Therefore, the existence of substantial question of law and the judgment which revolves around answering the substantial questions of law are not mere formalities. They are meant to be adhered to.

13. It is clear from the perusal of the judgment in this case that the High Court has not framed any substantial question of law. It is also beyond dispute that two Courts have concurred in their findings. The respondent, as it has been found, has failed to establish his case that he had the right, which he claimed, which was a right of way as it were of making use of the property of the appellant.

14. The property of the appellant, undoubtedly, is situated adjacent to the property of the respondent. In fact, it is located on the north of the property of the respondent. It is also not in dispute that there is a road running east-west on the north of the property of the appellant.

15. The case, in fact, of the appellant in this regard was it was a road which was formed not too long in the past but the formation of the said road was occasioned by surrendering of the land by the persons (including the appellant), who had lands in the area.

16. The case set up by the respondent is one of easement. It does not appear to be on the basis of the

materials which have been produced before the Court, a case which fell under Section 13 of the Indian Easements Act, 1882 which deals with 'easements of necessity'. It is true that the respondent has averred that the respondent, who purchased the property, was using it and his predecessors were also using it from nearly 100 years.

17. The First Appellate Court has come to the conclusion that the case based on Section 15 of the Indian Easements Act, 1882 is not made out. Easement is a right. It may fall under any of the different kinds of easements but short of a right which it is for the plaintiff to establish, there cannot be a natural right as it were to make use of the property of another. When the two Courts have concurred on appreciation of evidence, as is done in this case to discountenance the plea of the respondent and the High Court has not borne in mind any substantial question of law, we would think that the High Court has clearly erred in coming to the findings.

18. We would also notice even the substantial question of law, which is said to have been framed by the High Court at the time when the Second Appeal was admitted, really does not appeal to us as a substantial question of law. The question of law raised is whether the two Courts were correct in not considering A4, C2 and C4. A4 appears to be a survey sketch. The survey sketch can at best indicate the lie of the properties. The lie of the property in this case is really not in dispute as it is not

in dispute that the property of the respondent is located to the south of the property of the appellant. The question is whether the right, which is claimed in the plaint, namely the right of way, is established. At best, it may facilitate a finding that there was occasion giving rise to rights as claimed. C2 and C4 are Commission Reports. It may be one thing to say that the Courts did not look into the Commission Reports in which case it may amount to the Courts ignoring a vital piece of evidence and giving rise to a substantial question of law. It is a far cry from the above when the Courts have bestowed their attention on a piece of evidence and then come to a particular conclusion. In the latter eventuality, it would only be a case of the Courts appreciating a piece of evidence and arriving at a finding. Unless the said finding is dubbed as perverse, it may not give rise to a substantial question of law. It is not the submission of the respondent that the Commission Reports i.e. C2 and C4 are not considered by the Trial Court. No doubt it was contended that the First Appellate Court did not consider.

19. We are of the view that in the facts of this case there was no occasion for the High Court to interfere in Second Appeal. In such circumstances, even though it may be true that initially the High Court while admitting the Second Appeal may have framed a question of law but the judgment in the instant case is unsupportable. We also do not see any reason why we should remit back to the High

Court for fresh consideration.

20. In above view, the appeal is allowed and the judgment of the High Court is set aside. No order as to costs.

.....J.
[K.M. JOSEPH]

.....J.
[S. RAVINDRA BHAT]

NEW DELHI;
AUGUST 24, 2021

ITEM NO.7 Court 10 (Video Conferencing) SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 11173/2019

(Arising out of impugned final judgment and order dated 22-11-2018 in SA No. 1532/1999 passed by the High Court Of Judicature At Madras)

SINGARAM

Petitioner(s)

VERSUS

RAMANATHAN

Respondent(s)

(IA No. 66492/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No. 184424/2019 - EXEMPTION FROM FILING O.T. and IA No. 66496/2019 - EXEMPTION FROM FILING O.T. and IA No. 184422/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No. 66501/2019 - PERMISSION TO FILE LENGTHY LIST OF DATES)

Date : 24-08-2021 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE K.M. JOSEPH
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Petitioner(s) Mr. S. Mahendran, AOR

For Respondent(s) Mr. Senthil Jagadeesan, AOR
Ms. Mrinal Kanwar, Advocate
Ms. Sonakshi Malhan, Advocate

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending applications stand disposed of.

(MEENAKSHI KOHLI)
ASTT. REGISTRAR-cum-PS

(RENU KAPOOR)
BRANCH OFFICER

[Signed order is placed on the file]