Gujarat High Court
Kiran Ramanlal Inamdar vs Gujarat Housing Board on 4 May, 2023
Bench: Rajendra M. Sareen

C/SA/104/2023 CAV ORDER DATED: 04/05/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SECOND APPEAL NO. 104 of 2023
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2023
In R/SECOND APPEAL NO. 104 of 2023

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KIRAN RAMANLAL INAMDAR Versus GUJARAT HOUSING BOARD

========== Appearance:

MR PK JANI, Senior Advocate for M/S.VYAS ASSOCIATES (1559) for the Appellant(s) No. 1
MR GH VIRK (7392) for the Respondent(s) No. 1,2,3

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CORAM:HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN Date : 04/05/2023 CAV ORDER

1. By way of this second appeal, the appellant - original plaintiff has challenged the judgement and decree dated 28/2/2023 passed by the 3rd Additional District Judge, Surat in Regular Civil Appeal No.29 of 2021 upholding the judgement and decree dated 21/7/2020 passed in Regular Civil Suit No.444 of 2009 inter-alia dismissing the suit filed by the appellant.

2. Factual aspect of the case are as under :-

2.1. That the appellant - plaintiff was appointed as a Junior Clerk in Gujarat Housing Board, Surat and he was allotted residential premises being House No.1981, Keshavkunj 24, M.I.G. Staff Quarters, situated at Sachin, Surat by the Gujarat Housing Board, Surat vide allotment C/SA/104/2023 CAV ORDER DATED: 04/05/2023 order dated 3/12/1992.

2.2. The appellant - original plaintiff preferred a suit being Regular Civil Suit No.444 of 2009 against the respondents- original defendants inter-alia seeking declaration inasmuch as transfer of ownership rights with respect to the suit premises in favour of the appellant from the respondent and further sought permanent injunction.

2.3. In the aforesaid suit, Written Statement was filed by the defendants vide 16 and the trial court framed Issues at Ex.21. Upon adducing the evidence and appreciating the evidence, the learned 3rd Additional Senior Civil Judge, Surat dismissed the Regular Civil Suit No.444 of 2009 vide judgement and decree dated 21/7/2020.

2.4. Being aggrieved by the aforesaid judgement and decree passed in Regular Civil Suit No.444 of 2009 dated 21/7/2020, the appellant - original plaintiff preferred Regular Civil Appeal No.29 of 2021 before the Principal District Judge, Surat which came to be dismissed by the judgement and decree dated 29/4/2022.

2.5. Being aggrieved by the aforesaid order of the first appellate court passed in Regular Civil Appeal No.29 of 2021, the appellant preferred Second Appeal No.301 of 2022 before this Court and Co-ordinate Bench of this Court C/SA/104/2023 CAV ORDER DATED: 04/05/2023 quashed and set aside the judgement and decree dated 29/4/2022 passed by the first appellate court and remanded the matter to the trial court to decide the matter afresh and also directed the parties to maintain status-quo with respect to the suit property.

2.6. Thereafter, on remand, the matter was heard and the learned 3rd Additional District Judge Surat vide judgement and decree dated 28/2/2023 dismissed the Regular Civil Appeal No.29 of 2021 upholding the judgement and order dated 21/21/7/2020 passed in Regular Civil Suit No.444 of 2009.

2.7. Against the aforesaid judgement and decree passed by the first appellate court on remand, the appellant herein - original plaintiff has preferred the present Second Appeal.

3. Heard Mr.P.K. Jani, learned senior advocate appearing on behalf of M/s.Vyas Associates for the appellant and Mr.G.H. Virk, learned advocate for the respondents.

4. SUBMISSIONS OF APPELLANT :

4.1. Mr.P.K. Jani, learned senior advocate for the appellant has vehemently submitted that the learned first appellate court has not considered the provision of law. It is submitted that the defendant - Gujarat Housing Board has come out with a case that the the property in question was C/SA/104/2023 CAV ORDER DATED: 04/05/2023 parted with the possession by the appellant and that parting of the possession was with consideration and when the defendants came out with this defence of sub-letting the property, the basic and fundamental liability is on the defendant to prove the defence of subletting the property. He has submitted that as such, the aspect of sub-letting the property has not been proved. It is submitted that, however, the trial court and the first appellate court has failed to appreciate this aspect.

4.2. Mr.P.K. Jani, learned senior advocate for the appellant has further submitted that the learned first appellate court failed to appreciate that merely on exhibiting the documents, the contents of the documents cannot be said to have been proved and the contents of the document are required to be proved.

4.3. Mr.P.K. Jani, learned senior advocate for the appellant has further submitted that the learned trial court and first appellate court have applied erroneous principles of Evidence Act in relying upon the letter written by the Estate Officer to the Gujarat Housing Board.

4.4. Mr.P.K. Jani, learned senior advocate for the appellant has further submitted that the impugned judgement and decree passed by the first appellate court are perverse and and there are substantial questions of law involved in the C/SA/104/2023 CAV ORDER DATED: 04/05/2023 present Second Appeal. He has, therefore, submitted that the present Second Appeal may be admitted and allowed.

4.5. Mr.P.K. Jani, learned senior advocate for the appellant has relied on the following decisions :

> [1] (2010) 4 SCC 491 (Life Insurance Corporation of India and another Vs. Ram Pal Singh Bisen) [2] (2011) 4 SCC 240 (H. Siddiqui (Dead) by Lrs. Vs. A. Ramalingam) [3] (2016) 11 SCC 374 (Haryana State and another Vs. Gram Panchayat Village Kalehri) [4] (2013) 7 SCC 490 (M.B. Ramesh (Dead) by Lrs. vs. K.M. Veeraje URS (Dead) by Lrs. And others)

5. SUBMISSIONS OF THE DEFENDANTS:

5.1. Mr.G.H. Virk, learned advocate for the respondents - Gujarat Housing Board, who is on Caveat, has submitte4d that in the entire plaint, it was never the case of the plaintiff that they were not residing in the premises in question, but when the defence was filed by the defendants - Gujarat Housing Board contending that the premises in question was sub-letted to a third party, the appellant - plaintiff came out with a case of permissive user who was taking care of the property on behalf of the appellant.

C/SA/104/2023 CAV ORDER DATED: 04/05/2023 5.2. Mr.Virk, learned advocate for the respondent Board has further contended that the appellant - plaintiff has never denied the fact that the premises was not parted with. But as per the case of the plaintiff himself, he has given the property to Mr.Devendrabhai Hirjibhai who was taking care of the suit premises as permissive user. As such, the plaintiff ought to have examined said Mr.Devendrabhai Hirjibhai who according to the plaintiff was care taker on behalf of the appellant. It is submitted that it is proved by the defendant Board from the case of the plaintiff himself that the suit property was parted with.

5.3. Mr.Virk, learned advocate for the respondent Board has further contended that the burden was on the plaintiff to prove that he has complied with all the terms and conditions of the allotment order and he could have lead rebuttal evidence against parting with possession and sub- letting by examining said Mr.Devendrabhai Hirjibhai.

5.4. Mr.Virk, learned advocate for the respondent Board has further contended that the plea of permissive user or sub-lessee was never raised by the plaintiff before the trial court on the contrary the plaintiff admitted that he has parted with the possession but according to the plaintiff the possession was parted with in favour of Devendrabhai Hirjibhai as a permissive user to take care of the suit C/SA/104/2023 CAV ORDER DATED: 04/05/2023 property. But the plaintiff has not produced any documentary evidence in support of the said case of the plaintiff of permissive user. It is submitted that even before parting with the possession as permissive user, no permission of the respondent Board has been obtained. He has submitted that there is clear breach of conditions of

condition Nos.3 and 6 of the allotment order.

5.5. Mr.Virk, learned advocate for the respondent Board has further contended that initially it was the case of the plaintiff before the trial court that he was residing in the suit premises and after the defendant filed Written Statement, the plaintiff changed his case to permissive user and thereafter also changed his stand to care taker. He has submitted that when it has come on record that the plaintiff has parted with the possession of the suit premises without prior permission of the defendant Board, there is breach of condition of the allotment order. He has submitted that therefore, it cannot be said that the courts below have not considered the principles of Evidence Act.

5.6. Mr.Virk, learned advocate for the respondent Board has further contended that the appellant plaintiff was transferred to Bharuch but he has not resumed his duty at transferred place and that fact is undisputed and from the letter addressed by the Estate Officer to the Gujarat Housing Board, it is clear that the appellant plaintiff has C/SA/104/2023 CAV ORDER DATED: 04/05/2023 parted with the possession to a third party.

5.7. Mr.Virk, learned advocate for the respondent Board has further contended that the judgement and decree passed by both the courts below are just, legal and proper and no error of law or facts has been committed by the courts below.

5.8. Mr.Virk, learned advocate for the respondent Board has further contended that no substantial question of law arise in the present Second Appeal and hence the appeal is is not required to be admitted. He, has, therefore, requested to dismiss the appeal at admission stage.

5.9. Mr.Virk, learned advocate for the respondents - Gujarat Housing Board has relied on the following decisions:

> [1] (2020) 4 SCC 659 (C.Doddanarayana Reddy(D) By Lrs. vs C.Jayarama Reddy (Dead) By Lr.) (2020) 4 SCC 659.
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> [2] (2020) 19 SCC 57 (Nazir Mohamed vs. J. Kamala & Ors.) [3] 2022 SCC OnLine SC 1273 (Haryana Vs. Harnam Singh & Ors.) [4] (2022) 10 SCC 281 Kapil Kumar Vs. Raj C/SA/104/2023 CAV ORDER DATED: 04/05/2023 Kumar, (2022) 10 SCC 281.

6. FINDINGS :

6.1. Here in this case, having heard the learned advocates for the respective parties and considering the judgement of the trial court as well as first appellate court, it is undisputed that the appellant was allotted suit property being House No.1981 and allotment order Ex.32 allotting the suit property in favour of the plaintiff contains certain terms and conditions more particularly condition nos.3 and

6. As per the case of the respondents - original defendants - Gujarat Housing Board, the appellant - plaintiff has committed breach of the order of allotment of the suit premises. The trial court and the

first appellate court on appreciation of evidence have recorded a finding that the appellant - original plaintiff has committed breach of the allotment order and therefore, it cannot be said that the said finding is an error apparent on the face of the record, as the same is on the basis of appreciation of evidence.

6.2. Section 100 of the Code of Civil Procedure relates to the Second Appeal and sub-section (3) of Section provides that in an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal and sub-section (4) of section 100 provides that where the High Court is satisfied that a substantial question of law is involved in any case, it shall C/SA/104/2023 CAV ORDER DATED: 04/05/2023 formulate that question. Second Appeal is not totally debarred but it is admissible provided such a Second Appeal involves a substantial question of law and/or out of the judgement and decree of the courts below any substantial question of law arises. Thus, Second Appeal is required to be admitted only if there is substantial question of law.

6.3. In the present appeal, the appellant has formulated the proposed substantial questions of law. The proposed questions of law are in fact not the substantial questions of law but the same are questions of facts. One of the question is relating to Order 41 Rule 31 of the Code of Civil Procedure. It is pertinent to note that in earlier round of litigation, the Co-ordinate Bench of this Court remanded the matter to the first appellate court on the ground of non- compliance of the provisions of Order 41 Rule 31 and thereafter on remand, the first appellate court after complying with the provisions of Order 41 Rule 31 and appreciating evidence on record, passed the impugned judgement and decree. Thus, there is compliance of Order 41 Rule 31 of the Code of Civil Procedure. As stated above, the questions formulated by the appellant are not the substantial questions of law.

6.4. In exercise of powers under section 100 of the Code of Civil Procedure, jurisdiction is confined to substantial C/SA/104/2023 CAV ORDER DATED: 04/05/2023 question of law only. Here in this case, no substantial question of law has been raised so as to enable this Court to admit the present appeal.

6.5. The scope of Second Appeal under section 100 is limited. Second Appeal is competent only if it involves, at the stage of admission, substantial question of law. High Court can interfere with the concurrent findings of fact, if the findings are perverse but the perversity should be apparent on the face of record.

6.6. Here in this appeal, the question of law raised cannot be said to be substantial question of law and there are question of law but not the substantial question of law.

6.7. In the case of Easwari Versus Parvathi and others, reported in (2014) 15 SCC 255, it is held that High Court can entertain a Second Appeal on a substantial question of law and it has absolutely no jurisdiction to entertain the Second Appeal on the ground of erroneous findings of fact, however, gross error seems to be looked into. High Court can interfere in the concurrent findings of facts in the Second Appeal if the appellate court has not properly appreciated the evidence on record.

6.8. In the case of Samina Khatun, AIR 1995 Gauhati 104, also it is held that High Court can only entertain C/SA/104/2023 CAV ORDER DATED: 04/05/2023 Second Appeal only on substantial question of law. High Court has absolutely no jurisdiction to entertain Second Appeal on the ground of erroneous findings of fact.

6.9. As laid down in the case of State of Haryana Versus Khalsa Motors Limited, reported in (1990) 4 SCC 659, on the basis of evidence on record it is held that the trial court and first appellate court has given concurrent findings of facts and the High Court cannot reverse the said findings under ordinary circumstances.

6.10. In the case of C.Doddanarayana Reddy & Ors. Vs. C. Jayarama Reddy & Ors., reported in (2020) 4 SCC 659, the Hon'ble Apex Court has observed and held as under :-

> "25. The question as to whether a substantial question of law arises, has been a subject matter of interpretation by this Court. In the judgment reported as Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un-Niswan (1999) 6 SCC 343, it was held that findings of the fact could not have been interfered within the second appeal. This Court held as under:
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> "12. This Court had repeatedly held that the power of the High Court to interfere in second appeal under Section 100 CPC is limited solely to decide a substantial question of law, if at all the same arises in C/SA/104/2023 CAV ORDER DATED: 04/05/2023 the case. It has deprecated the practice of the High Court routinely interfering in pure findings of fact reached by the courts below without coming to the conclusion that the said finding of fact is either perverse or not based on material on record.
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> 13. In Ramanuja Naidu v. V. Kanniah Naidu (1996 3 SCC 392), this Court held:
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> "It is now well settled that concurrent findings of fact of trial court and first appellate court cannot be interfered with by the High Court in exercise of its 8 (1999) 6 SCC 343 jurisdiction under Section 100 of Civil Procedure Code. The Single Judge of the High Court totally misconceived his jurisdiction in deciding the second appeal under Section 100 of the Code in the way he did."
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> 14. In Navaneethammal v. Arjuna Chetty (1996 6 SCC 166), this Court held :
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> "Interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In any case, the High Court is not expected to reappreciate the evidence just to re- place the findings of the lower courts. ... Even assuming that another view is possible on a reappreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the first appellate court was based on no material."

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15. And again in Secy., Taliparamba Education Soci- ety v. Moothedath Mallisseri Illath M.N. (1997 4 SCC 484), this Court held: (SCC p. 486, para 5) "The High Court was grossly in error in trenching upon the appreciation of evidence under Section 100 CPC and recording reverse finding of fact which is impermissible."

26. In a judgment reported as Kondiba Dagadu Kadam v. Savitkibai Sopan Gujar & Ors.9, this Court held that from a given set of circumstances if two inferences are possible then the one drawn by the lower appellate court is binding on the High Court. In the said case, the First Appellate Court set aside the judgment of the trial court. It was held that the High Court can interfere if the conclusion drawn by the lower court was erroneous being contrary to mandatory provisions of law applicable or if it is a settled position on the basis of a pronouncement made by the 9 (1999) 3 SCC 722 court or based upon inadmissible evidence or arrived at without evidence. This Court held as under:

"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 C/SA/104/2023 CAV ORDER DATED: 04/05/2023 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."

27. In another judgment reported as Santosh Hazari v. Purushottam Tiwari, this Court held as under:

"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 bearing on the decision of the case, if answered either way, in so far 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. An entirely new point raised for the first time before the High

Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and C/SA/104/2023 CAV ORDER DATED: 04/05/2023 circumstance of each case whether a question 10 (2001) 3SCC 179 of law is a substantial one and involved in the case, 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."

28. Recently in another judgment reported as State of Rajasthan v. Shiv Dayal11, it was held that a concurrent finding of the fact is binding, unless it is pointed out that it was recorded de hors the pleadings or it was based on no evidence or based on misreading of the material on records and documents. The Court held as under:

"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 lastly, 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)."

29. The learned High Court has not satisfied the tests laid down in the aforesaid judgements. Both C/SA/104/2023 CAV ORDER DATED: 04/05/2023 the courts, the trial court and the learned First Appellate Court, have examined the School Leaving Certificate and returned a finding that the date of birth does not stand proved from such certificate. May be the High Court could have taken a different view acting as a trial court but once, two 11 (2019) 8 SCC 637 courts have returned a finding which is not based upon any misreading of material documents, nor is recorded against any provision of law, and neither can it be said that any judge acting judicially and reasonably could not have reached such a finding, then, the High Court cannot be said to have erred. Resultantly, no substantial question of law arose for consideration before the High Court.

15. In the recent decision in the Case of Kapil Kumar Vs. Raj Kumar reported in (2022) 10 SCC 281, the Hon'ble Apex Court has observed and held as under :-

"10. At the outset, it is required to be noted that as such there were concurrent findings of facts recorded by the learned trial court as well as the learned first appellate court on execution of pronote by the defendant in favour of the plaintiff. The said findings were on appreciation of entire evidence on record. Therefore, unless the findings recorded by the courts below were found to be perverse, the same were not required to be interfered with by the High Court in exercise of powers under section 100 CPC.

> 11. Even the substantial question of law framed by the High Court cannot be said to be as such a question of law much less substantial question of law. From the impugned judgement and order C/SA/104/2023 CAV ORDER DATED: 04/05/2023 passed by the High Court, it appears that as such no specific substantial question of law seems to have been framed by the High Court. However, it appears that what was considered by the High Court was whether the plaintiff proves the execution of pronote and the receipt by leading cogent evidence."

6.11. In the case of Ram Pal Singh Bisen (supra), the Hon'ble Apex Court has observed and held as under :-

> "12. To prove his averments in the suit, respondent- plaintiff tendered himself in the witness box and proved his case as also documents filed in support thereof. Surprisingly enough, appellants herein did not lead any oral evidence, yet some of the documents filed by appellants were exhibited, probably under misconception of law that they were not disputed in Court by respondent. It is also necessary to mention here that appellants had also not served any notice of admission or denial of documents on the respondent during trial as contemplated under Order XII Rule 2 of the Code of Civil Procedure (for short, `CPC').
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> 23. No doubt, it is true that failure to prove the defence does not amount to an admission, nor does it reverse or discharge the burden of proof of the plaintiff but still the duty cast on the defendants has to be discharged by adducing oral evidence, which the appellants have miserably failed to do. Appellants, even though a defaulting party, committed breach and failed to carry out a legislative imposition, then had still to convince this Court as to what was the just cause for doing the same. Thus looking to the matter C/SA/104/2023 CAV ORDER DATED: 04/05/2023 from any angle, it is fully established that appellants had miserably failed to prove and establish their defence in the case.
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> 26. As has been mentioned herein above, despite perusal of the record, we have not been able to come to know as to under what circumstances respondent plaintiff had admitted those documents. Even otherwise, his admission of those documents cannot carry the case of the appellants any further and much to the prejudice of the respondent.
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> 27 It was the duty of the appellants to have proved documents Exh. A-1 to Exh. A-10 in accordance with law. Filing of the Inquiry Report or the evidence adduced during the domestic enquiry would not partake the character of admissible evidence in a court of law. That documentary evidence was also required to be proved by the appellants in accordance with the provisions of the Evidence Act, which they have failed to do."

6.12. The Hon'ble Supreme Court in the case of A. Ramalingam (supra), has observed and held as under :-

> "13. The Trial Court decreed the suit observing that as the parties had deposed that the original power of attorney was not in their possession, question of laying any further factual foundation could not arise. Further, the Trial Court took note of the fact that the respondent herein has specifically denied execution of power of attorney authorising his brother R. Viswanathan to alienate the suit property, but brushed aside the same observing that it was not necessary for the appellant/plaintiff C/SA/104/2023 CAV ORDER DATED: 04/05/2023 to call upon the defendant to produce the original power of attorney on the ground that the photocopy of the power of attorney was shown to the respondent herein in his cross-examination and he had admitted his signature. Thus, it could be inferred that it is the copy of the power of attorney executed by the respondent in favour of his brother (R. Viswanathan, second defendant in the suit) and therefore, there was a specific admission by the respondent having executed such document. So it was evident that the respondent had authorised the second defendant to alienate the suit property.
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> 14. In our humble opinion, the Trial Court could not proceed in such an unwarranted manner for the reason that the respondent had merely admitted his signature on the photocopy of the power of attorney and did not admit the contents thereof. More so, the court should have borne in mind that admissibility of a document or contents thereof may not necessary lead to drawing any inference unless the contents thereof have some probative value.
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> 15. In State of Bihar and Ors. v. Sri Radha Krishna Singh & Ors., (1983) 3 SCC 118, this Court considered the issue in respect of admissibility of documents or contents thereof and held as under:
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> "40. Admissibility of a document is one thing and its probative value quite another - these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and the weight of its probative value may be nil."
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> 16. In Madan Mohan Singh & Ors. v. Rajni Kant & Anr., (2010) 9 SCC 209, this Court examined a C/SA/104/2023 CAV ORDER DATED: 04/05/2023 case as a court of fifth instance. The statutory authorities and the High Court has determined the issues taking into consideration a large number of documents including electoral rolls and school leaving certificates and held that such documents were admissible in evidence. This Court examined the documents and contents thereof and reached the conclusion that if the contents of the said documents are examined making mere arithmetical exercise it would lead not only to improbabilities and impossibilities but also to absurdity. This Court examined the probative value of the contents of the said documents and came to the conclusion that Smt. Shakuntala, second wife of the father of the contesting parties therein had given birth to the first child two years

prior to her own birth. The second child was born when she was 6 years of age; the third child was born at the age of 8 years; the fourth child was born at the age of 10 years; and she gave birth to the fifth child when she was 12 years of age.

17. Therefore, it is the duty of the court to examine whether documents produced in the Court or contents thereof have any probative value."

6.13. The Hon'ble Supreme Court in the case of Gram Panchayat Village Kalehri (supra), has observed and held as under :-

"7. Having heard the learned counsel for the appellants and on perusal of the record of the case, we are inclined to allow the appeal and remand the case to the High Court for deciding the second appeal afresh on merits after hearing both C/SA/104/2023 CAV ORDER DATED: 04/05/2023 the parties. Learned Single Judge while dismissing the appeal held as under:

"After hearing learned counsel, I am of the considered view that there is no question of law which would require determination by this Court under Section 100 of the Code. The aforementioned findings are pure findings of fact, which are based on ample evidence. Therefore, there is no merit in the appeal. Dismissed."

8. In our considered view, the appeal does involve the substantial questions of law and, therefore, the High Court should have admitted the appeal by framing substantial questions of law arising in the case and then after giving notice to the respondent for its final hearing as provided under Section 100 of the Code should have decided the appeal finally on merits.

9. As a matter of fact, having regard to the nature of controversy and keeping in view the issues involved, such as the issue regarding ownership rights coupled with the issue regarding proper interpretation of documents (exhibits) to prove the ownership rights over the suit land, we are of the view that these issues do constitute substantial questions of law, viz., whether the Courts below were justified in properly interpreting the documents/exhibits relied upon by the parties for determining the ownership rights over the suit land? In other words, we are of the view that where the Court is required to properly interpret the nature of the documents, it does not involve any issue of fact as such but it only involves legal C/SA/104/2023 CAV ORDER DATED: 04/05/2023 issue based on admitted documents. It is, therefore, obligatory upon the High Court to decide the legality and correctness of such findings as to which party's documents are to be preferred for conferring title over the suit land. In this case, the High Court could do so only when it had first admitted the appeal and framed substantial questions of law as required under Section 100 of the Code."

6.14. In the case of K.M. Veeraje URS (Dead) by Lrs. And others (supra), the Hon'ble Apex Court has observed and held as under :-

> "16. We may, however, note in this behalf that as held by a Constitution bench of this Court in Chunilal Mehta Vs. Century Spinning and Manufacturing Company reported in AIR 1962 SC 1314, it is well settled that the construction of a document of title or of a document which is the foundation of the rights of parties, necessarily raises a question of law. That apart, as held by a bench of three judges in Santosh Hazari Vs. Purushottam Tiwari reported in 2001 (3) SCC 179, whether a particular question is a substantial question of law or not, depends on the facts and circumstances of each case. When the execution of the will of Smt. Nagammanni and construction thereof was the subject matter of consideration, the framing of the question of law cannot be faulted. Recently, in Union of India Vs. Ibrahim Uddin reported in 2012 (8) SCC 148, this Court referred to various previous judgments in this behalf and clarified the legal position in the following words:-

C/SA/104/2023 CAV ORDER DATED: 04/05/2023 "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."

6.15. In the case of C.Doddanarayana Reddy(D) By Lrs. (supra), the Hon'ble Apex Court has observed and held as under :-

> "25. The question as to whether a substantial question of law arises, has been a subject matter of interpretation by this Court. In the judgment reported as Karnataka Board of Wakf v. Anjuman- E- Ismail Madris-Un-Niswan (1999) 6 SCC 343, it was held that findings of the fact could not have been interfered within the second appeal. This Court held as under:
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> "12. This Court had repeatedly held that the power of the High Court to interfere in second appeal under Section 100 CPC is limited solely to decide a substantial question of law, if at all the same arises in the case. It has deprecated the practice of the High Court routinely interfering in pure findings of fact reached by the courts below without coming to the conclusion that the said finding of fact is either perverse or not based on material on record.
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> C/SA/104/2023 CAV ORDER DATED: 04/05/2023
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> 13. In Ramanuja Naidu v. V. Kanniah Naidu (1996 3 SCC 392), this Court held:
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> "It is now well settled that concurrent findings of fact of trial court and first appellate court cannot be interfered with by the High Court in exercise of its jurisdiction under Section 100 of Civil Procedure Code. The Single Judge of the High Court totally

misconceived his jurisdiction in deciding the second appeal under Section 100 of the Code in the way he did."

14. In Navaneethammal v. Arjuna Chetty (1996 6 SCC 166), this Court held :

"Interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In any case, the High Court is not expected to reappreciate the evidence just to re- place the findings of the lower courts. ... Even as- suming that another view is possible on a reappreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the first appellate court was based on no material."

15. And again in Secy., Taliparamba Education Soci- ety v. Moothedath Mallisseri Illath M.N. (1997 4 SCC

484), this Court held: (SCC p. 486, para 5) "5. ...The High Court was grossly in error in trenching upon the appreciation of evidence under Section 100 CPC and recording reverse finding of fact which is impermissible."

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26. In a judgment reported as Kondiba Dagadu Kadam v. Savitkibai Sopan Gujar & Ors., 1999 3 SCC 722, this Court held that from a given set of circumstances if two inferences are possible then the one drawn by the lower appellate court is binding on the High Court. In the said case, the First Appellate Court set aside the judgment of the trial court. It was held that the High Court can interfere if the conclusion drawn by the lower court was erroneous being contrary to mandatory provisions of law applicable or if it is a settled position on the basis of a pronouncement made by the court based upon admissible evidence or arrived at without evidence. This Court held as under :

"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 C/SA/104/2023 CAV ORDER DATED: 04/05/2023 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."

27. In another judgment reported as Santosh Hazari v. Purushottam Tiwari, reported in (2001) 3 SCC 179, this Court held as under:

> "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 bearing on the decision of the case, if answered either way, in so far 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. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, 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."

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28. Recently in another judgment reported as State of Rajasthan v. Shiv Dayal11, it was held that a concurrent finding of the fact is binding, unless it is pointed out that it was recorded de hors the pleadings or it was based on no evidence or based on misreading of the material on records and documents. The Court held as under:

> "16. 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 lastly, 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)."

29. The learned High Court has not satisfied the tests laid down in the aforesaid judgements. Both the courts, the trial court and the learned First Appellate Court, have examined the School Leaving Certificate and returned a finding that the date of birth does not stand proved from such certificate. May be the High Court could have taken a different view acting as a trial court but once, two Courts have returned a finding which is not based upon any misreading of material documents, nor is recorded against any provision of law, and neither can it be said that any judge acting judicially and reasonably C/SA/104/2023 CAV ORDER DATED: 04/05/2023 could not have reached such a

finding, then, the High Court cannot be said to have erred. Resultantly, no substantial question of law arose for consideration before the High Court.

30. Thus, we find that the High Court erred in law in interfering with the finding of fact recorded by the trial court as affirmed by the First Appellate Court. The findings of fact cannot be interfered with in a second appeal unless, the findings are perverse. The High Court could not have interfered with the findings of the fact.

6.16. In the case of J. Kamala & Ors. (supra), the Hon'ble Apex Court has observed and held as under :-

> "1. These appeals are against a common judgment and order dated 06.11.2008 dismissing the Second Appeal being S.A. (MD) No.64 of 2000, filed by the Appellant, but allowing the Second Appeal being S.A. (MD) No.558 of 2000 filed by the Respondent, and setting aside the judgment and decree dated 17.09.1999 of the First Appellate Court in A.S. No.16/1998, to the extent the First Appellate Court had declined the Respondent's claim to a decree of recovery of possession of the suit premises. The High Court held that the Respondent, being the Plaintiff in the suit was entitled to a declaration of title in respect of half portion of the suit premises, recovery of possession of the said half portion of the suit premises and also to recovery of income from the said half of the suit property owned by the Respondent and/or charges for use, enjoyment and/or occupation thereof.

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14. The First Appellate Court analyzed the oral evidence adduced on behalf of the parties, scrutinized and examined the documentary evidence on record, including in particular the registered deed of conveyance by which the Respondent Plaintiff's father had purchased his portion of the suit premises from Rajagopala Pattar (Exhibit P1), the registered documents by which Rajagopala Pattar had acquired the suit premises in a Court Auction (Exhibits P2 and P3) and the registered deed of conveyance executed on 17.02.1938 being Exhibit D1 by which the Appellant-Defendant's father M. Abdul Aziz had purchased his portion of the suit premises, examined the extent of the rights of the respective vendors of the Appellant-Defendant's father and the Respondent-Plaintiff's father and/or their predecessors-in-interest, and concluded that the Appellant- Defendant's father had only purchased a portion of the suit premises, not the entire suit premises, and the other portion had been purchased by the Respondent-Plaintiff's father. The First Appellate Court, therefore, held that the Respondent- Plaintiff was entitled to a declaration in respect of the said portion of the suit premises, purchased by his father.

15. The First Appellate Court also took note of the fact that the Appellant-Defendant's family had been residing in the suit property since 1940, and that the Respondent-Plaintiff had not produced any rent agreement or receipts or any tax receipts in respect of the suit premises to show that the Respondent- Plaintiff or his father or any other family member had ever paid any taxes in respect of the suit premises.

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21. Section 100 of the Civil Procedure Code (CPC) which provides for a Second Appeal, as amended by the Civil Procedure Code (Amendment) Act, 104 of 1976, with effect from 1.2.1977,provides as follows:-

> "100. Second Appeal. - (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.
>
> (2) An appeal may lie under this section from an appellate decree passed ex parte.
>
> (3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.
>
> (4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.
>
> (5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated C/SA/104/2023 CAV ORDER DATED: 04/05/2023 by it, if it is satisfied that the case involves such question.]"

22. A second appeal, or for that matter, any appeal is not a matter of right. The right of appeal is conferred by statute. A second appeal only lies on a substantial question of law. If statute confers a limited right of appeal, the Court cannot expand the scope of the appeal. It was not open to the Respondent-Plaintiff to re-agitate facts or to call upon the High Court to reanalyze or re-appreciate evidence in a Second Appeal.

23. Section 100 of the CPC, as amended, restricts the right of second appeal, to only those cases, where a substantial question of law is involved. The existence of a "substantial question of law" is the sine qua non for the exercise of jurisdiction under Section 100 of the CPC.

26. The principles for deciding when a question of law becomes a substantial question of law, have been enunciated by a Constitution Bench of this Court in Sir Chunilal v. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd. 1, where this Court held:-

> "6. The proper test for determining whether a question of law raised 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 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 C/SA/104/2023 CAV ORDER DATED: 04/05/2023 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 absurd the question would not be a substantial question of law."

27. In Hero Vinoth v. Seshammal,(2006) 5 SCC 545 this Court referred to and relied upon Chunilal v. Mehta and Sons Ltd.AIR 1962 SC 1314 and other judgments and summarised the tests to find out whether a given set of questions of law were mere questions of law or substantial questions of law.

31. The relevant paragraphs of the judgment of this Court in Hero Vinoth (supra) are set out hereinbelow:-

> "21. The phrase "substantial question of law", as occurring in the amended Section 100 CPC is not defined in the Code. The word substantial, as qualifying "question of law", means of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with- technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance"

as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal C/SA/104/2023 CAV ORDER DATED: 04/05/2023 2(2006) 5 SCC 545 shall be heard need not necessarily be a substantial question of law of general importance. In Guran Ditta v. Ram Ditta [(1927-28) 5I5 IA 235 : AIR 1928 PC 172] the phrase substantial question of law as it was employed in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. In Sir Chunilal case [1962 Supp (3) SCR 549 : AIR 1962 SC 1314] the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in Rimmalapudi Subba Rao v. Noony Veeraju [AIR 1951 Mad 969 : (1951) 2 MLJ 222 (FB)] : (Sir Chunilal case [1962 Supp (3) SCR 549 : AIR 1962 SC 1314] , SCR p. 557) "5. When a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular fact of the case it would not be a substantial question of law."

28. To be "substantial", a question of law must be debatable, not previously settled by the law of the C/SA/104/2023 CAV ORDER DATED: 04/05/2023 land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way.

29. To be a question of law "involved 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 Courts of facts, and it must be necessary to decide that question of law for a just and proper decision of the case.

30. Where no such question of law, nor even a mixed question of law and fact was urged before the Trial Court or the First Appellate Court, as in this case, a second appeal cannot be entertained, as held by this Court in Panchagopal Barua v. Vinesh Chandra Goswami, (1997) 4 SCC 713.

31. Whether a question of law is a substantial one and whether such question is involved in the case or not, would depend on the facts and circumstances of each case. The paramount overall consideration is the need for striking a judicious balance between the indispensable obligation to do justice at all stages and the impelling necessity of avoiding prolongation in the life of any lis. This proposition finds support from Santosh Hazari v. Purushottam Tiwari (2001) 3 SCC 179.

32. In a Second Appeal, the jurisdiction of the High Court being confined to substantial question of law, a finding of fact is not open to challenge in second appeal, even if the appreciation of evidence is C/SA/104/2023 CAV ORDER DATED: 04/05/2023 palpably erroneous and the finding of fact incorrect as held in Ramchandra v. Ramalingam, AIR 1963 SC 302. An entirely new point, raised for the first time, before the High Court, is not a question involved in the case, unless it goes to the root of the matter.

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

> 33.1 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.
>
> 33.2. 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.

33.3 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 C/SA/104/2023 CAV ORDER DATED: 04/05/2023 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 5 AIR 1963 SC 302 on a material question, violates the settled position of law.

33.4 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;

33.5 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."

6.17. In the case of Haryana Vs. Harnam Singh & Ors., 2022 SCC OnLine SC 1273, the Hon'ble Apex Court has observed and held as under :-

> "16. The High Court considered the following questions.

"(I) Whether the first appellate Court has committed error in not considering the circumstance that other transactions of sale made by the defendant No.1 in C/SA/104/2023 CAV ORDER DATED: 04/05/2023 respect of three agricultural lands like Survey Nos.86/1, 100/3 and 109/2 which were left behind by Baliram are not challenged by the plaintiff in the suit?

(II) Whether the first appellate Court has committed error in not considering the circumstance that after the death of Baliram name of defendant No.1 only was mutated in the revenue record as successor of Baliram and the name of the plaintiff was not entered as successor of Baliram?

(III) Whether the first appellate Court has committed error in not considering the circumstance that the cooperative credit society could not have given loan to the plaintiff on the lands left behind by Baliram as plaintiff was not shown as owner in the revenue record and further there is the circumstance that it is defendant No.1 who had repaid the loan?

(IV) Whether the first appellate Court has committed error in not giving due weight to the circumstance like plaintiff never used name of Baliram as his father anywhere and he continued to use the name of his natural father Rambhau?

(V) Whether due to absence of specific pleadings with regard to particulars of adoption and due to inconsistencies in the evidence of the witnesses it can be said that there is sufficient evidence to prove the factum of adoption?"

17. We find there were no questions of law before the High Court, not to speak of substantial questions of law.

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23. It is well settled that a Second Appeal under Section 100 of the Civil Procedure Code, 1908 (CPC) can only be entertained on a substantial question of law. In H.P. Pyarejan v. Dasappa (Dead) by LRs. and Others1, this Court held:-

> "16. In our opinion, therefore, the judgment of the High Court suffers from serious infirmities. It suffers from the vice of exercise of jurisdiction which did not vest in the High Court under the law. Under Section 100 of the Code (as amended in 1976) the jurisdiction of the High Court to interfere with the judgments of the courts below is confined to hearing on substantial questions of law. Interference with finding of fact by the High Court is not warranted if it involves reappreciation of evidence (see Panchugopal Barua v. Umesh Chandra Goswami [(1997) 4 SCC 713] and Kshitish Chandra Purkait v. Santosh Kumar Purkait [(1997) 5 SCC 438]). The High Court has not even discussed any evidence. No basic finding of fact recorded by the courts below has been reversed much less any reason assigned for taking a view contrary to that taken by the courts below.

The finding on the question of readiness and willingness to perform the contract which is a mixed question of law and fact has been upset. It is statutorily provided by Section 16(1)(c) of the Act that to succeed in a suit for specific performance of a contract the plaintiff shall aver and prove that he has performed and has always been ready and willing to perform the essential terms of the contract which were to be performed by him other than the terms the performance of C/SA/104/2023 CAV ORDER DATED: 04/05/2023 which has been prevented or waived by the defendant."

24. In Ram Prasad Rajak v. Nand Kumar & Bros. and Another2, this Court held that, "Once the proceeding in the High Court is treated as a Second Appeal under Section 100 CPC, the restrictions prescribed in the said Section would come into play. The High Court could and ought to have dealt with the matter as a Second Appeal and found out whether a substantial question of law arose for consideration. Unless there was a substantial question of law, the High Court had no jurisdiction to entertain the Second Appeal and consider the merits."

25 In Kshitish Chandra Purkait v. Santosh Kumar Purkait and Others, this Court held that existence of substantial question of law was the sine qua non for the exercise of jurisdiction under Section 100 of the CPC.

26. In Kshitish Chandra Purkait (supra), this Court held:-

> "10. We would only add that (a) it is the duty cast upon the High Court to formulate the substantial question of law involved in the case even at the initial stage; and (b) that in (exceptional) cases, at a later point of time, when the Court exercises its jurisdiction under the proviso to sub-section (5) of Section 100 CPC in formulating the substantial question of law, the opposite party should be put on notice thereon and should be given a fair or proper opportunity to meet the point. Proceeding to

> hear the C/SA/104/2023 CAV ORDER DATED: 04/05/2023 appeal without formulating the substantial question of law involved in the appeal is illegal and is 2 (1998) 6 SCC 748 3 (1997) 5 SCC 438 an abnegation or abdication of the duty cast on court; and even after the formulation of the substantial question of law, if a fair or proper opportunity is not afforded to the opposite side, it will amount to denial of natural justice. The above parameters within which the High Court has to exercise its jurisdiction under Section 100 CPC should always be borne in mind. We are sorry to state that the above aspects are seldom borne in mind in many cases and second appeals are entertained and/or disposed of, without conforming to the above discipline."

27. The guidelines to determine what is a substantial question of law within the meaning of Section 100 CPC has been laid down by this Court in Sir Chunnilal V. Lal Mehta & Sons v. Century Spinning and Manufacturing Co. Ltd.4

28. In Sir Chunilal V. Mehta and Sons (supra), this Court agreed with and approved a Full Bench judgment of the Madras High Court in Rimmalapudi Subba Rao v. Noony Veeraju and Ors. which laid down the principles for deciding when a question of law becomes a substantial question of law.

29. In Hero Vinoth v. Seshammal, this Court followed Sir Chunilal v. Mehta & Sons (supra) and other judgments and summarized the tests to find out whether a given set of questions of law were mere questions of law or substantial questions of law.

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30. The relevant paragraphs of the judgment of this Court in Hero Vinoth (supra) are set out herein below:

> 21. The phrase "substantial question of law", as occurring in the amended Section 100 CPC is not defined in the Code. The word substantial, as qualifying "question of law", means of having substance, essential, real, of sound worth, important or 4 AIR 1962 SC 1314 5 AIR 1951 Mad 969 6 (2006) 5 SCC 545 considerable. It is to be understood as something in contradistinction with technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In Guran Ditta v. Ram Ditta 55IA 235 : AIR 1928 PC 172] the phrase "substantial question of law" as it was employed in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. In Sir Chunilal case [1962 Supp (3) SCR 549 : AIR 1962 SC 1314] the

> Constitution Bench expressed agreement with the following view taken C/SA/104/2023 CAV ORDER DATED: 04/05/2023 by a Full Bench of the Madras High Court in Rimmalapudi Subba Rao v. Noony Veeraju [AIR 1951 Mad 969 : (1951) 2 MLJ 222 (FB)] : (Sir Chunilal case [1962 Supp (3) SCR 549 : AIR 1962 SC 1314] , SCR p. 557) "[W]hen a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular fact of the case it would not be a substantial question of law."

31. The proper test for determining whether a question of law raised in the case is substantial would 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. 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 the question raised is palpably absurd, the question would not be a substantial question of law.

32. To be 'substantial', a question of law must be debatable, not previously settled by law of the C/SA/104/2023 CAV ORDER DATED: 04/05/2023 land or a binding precedent, and must have a material bearing 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. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case 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 Santosh Hazari v. Purushottam Tiwari).

33. The principles relating to Section 100 of the 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.
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> Therefore, when there is misconstruction of a document or wrong 7 (2001) 3 SCC 179 application of a principle of law in construing a document, it gives rise to a question of law.

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(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. 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.

(iii) The general rule is that the High Court will not interfere with findings of facts arrived at by 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. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.

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36. Right of appeal is not automatic. Right of appeal is conferred by statute. When statute confers a limited right of appeal restricted only to cases which involve substantial questions of law, it is not open to this Court to sit in appeal over the factual findings arrived at by the First Appellate Court."

6.18. In the case of Raj Kumar (supra), the Hon'ble Supreme Court has observed and held as under :-

> "10 At the outset it is required to be noted that as such there were concurrentfindings of facts recorded by the learned Trial Court as well as the learned First Appellate Court on execution of pro- note by the defendant in favour of the plaintiff. The said findings were on appreciation of entire evidence on record. Therefore, unless the concurrent findings recorded by the courts below were found to be perverse, the same were not required to be interfered with by the High Court in exercise of powers under Section 100 of CPC.
>
> 11. Even the substantial question of law framed by the High Court cannot be said to be as such a question of law much less substantial question of law. From the impugned judgment and order passed by the High Court it appears that as such no specific substantial question of law seems to have been framed by the High Court. However, it appears that what was considered by the High Court was whether the plaintiff has proved the execution of pro-note and the receipt by leading cogent

evidence.

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12. The aforesaid can be said to be a question of facts and cannot be said to be a question of law much less substantial question of law. Therefore, as such the High Court has committed a very serious error in upsetting the findings of facts recorded by the learned Trial Court confirmed by the learned First Appellate Court on execution of pro-note by the defendant in favour of the plaintiff."

6.19. In the present case, Mr.P.K. Jani, learned advocate for the appellant has raised contention with respect to Evidence Act being not followed by the court below. As per settled legal position, mere exhibiting the document does not prove the document but the contents of the documents are required to be proved and established. The appellant himself has come out with a case that he has parted with the possession of the suit property to third person as a care taker and said plea of the defendant Board that the appellant has parted with the possession is admitted by the appellant and therefore, the letter addressed by the Estate Officer to the Gujarat Housing Board is not required to be exhibited. The said case of the defendant Board is proved and established on admission of the appellant that he has parted with the possession of the suit property. Therefore, it cannot be said that the finding recorded by the courts below are erroneous or perverse.

6.20. It is also an admitted position that the appellant was C/SA/104/2023 CAV ORDER DATED: 04/05/2023 transferred from Surat to Bharuch and as per condition No.3 of the allotment order, allotment is only during the period during which the appellant holds the posts under the Board at Surat. Admittedly, the appellant was transferred from Surat to Bharuch, however, the appellant has not handed over the possession of the suit premises to the respondent Board. The appellant has faced departmental inquiry for being absent at his transferred place at Bharuch. At the same time, there is parting with the possession of the property by the appellant to some third party, which has also come on record through the report of the Estate Officer. It is the case of the appellant that he had given the suit premises for permissive use. However, even before parting with the possession in favour of third party, no permission of the respondent Board was obtained by the appellant plaintiff. Even the said stand of permissive user and care taker of the suit premises has been raised by the appellant after filing of the Written Statement by the defendant Board.

6.21. Considering the submissions made and decisions relied upon by the learned advocate for the appellant and after examining findings of both the courts on the issue raised in the suit and upon examination of the judgement and order of both the courts below, learned advocate for the appellant - original plaintiff is unable to point out any infirmity, perversity or impropriety in the concurrent findings of the fact recorded by both the courts below. Not C/SA/104/2023 CAV ORDER DATED: 04/05/2023 only that the learned advocate for the appellant is unable to show that any finding recorded by the courts below is without any evidence or there is any illegality in the findings. I am in quite agreement with the law laid down by the Hon'ble Apex Court in the decisions cited by the learned Senior Advocate for the appellant, but in the facts of the case on hand, the same are not applicable to the facts of the case.

7. This appeal, as stated above, is devoid of any substantial question of law. Both the courts have rightly decided the issue between the parties in the right perspective. As stated above, no substantial question of law arise in the present Second Appeal. The plaintiff has failed to prove his case before the trial court as well as the appellate Court. This Court does not find any substance in the present Second Appeal as the same is devoid of any merits both on facts and law and hence the same is dismissed at admission stage.

On dismissal of the main Second Appeal, the Civil Application No.1 of 2023 stands rejected.

(RAJENDRA M. SAREEN,J) R.H. PARMAR.