

Ganpat v. Smt. Ram Devi etc. (Sandhawalia, J.)

Advocate-General for Punjab is identical to that of the two petitioners referred to above, whose petitions have been dismissed. It is stated by him that their interrogation in custody is absolutely essential for further investigation of the case. In addition, the learned Additional Advocate-General points out that the limited investigation so far made discloses that Shri Joginder Pal Pandey who began from humble origins had migrated to England in 1958 and returned to this country in 1962 and started working in hosiery. According to the learned Additional Advocate-General the net value of the property now in the name of Shri Pandey and his close relatives and held benami exceeds Rs 45 lakh. This is entirely disproportionate to all known sources of this petitioner's income.

(73) A close persual of the merits of the cases of these three petitioners shows that no case even remotely satisfying the test laid down by us is made out. These petitions therefore, must also necessarily be dismissed.

Prem Chand Jain, J.—I agree.

S. C. Mital, J.—I agree.

FULL BENCH

APPELLATE CIVIL

Before S. S. Sandhawalia, S. C. Mital and Rajendra Nath Mittal, JJ.

GANPAT,—Appellant.

versus

RAM DEVI ETC.,—Respondents.

Regular Second Appeal No. 79 of 1977

October 13, 1977.

Code of Civil Procedure (V of 1908) as amended by the Code of Civil Procedure (Amendment) Act (104 of 1976)—Sections 4 and 100—Punjab Courts Act (VI of 1918)—Section 41(1)—Amendment in section 100 of the Code—Whether has affected the provisions of section 41(1) of the Punjab Courts Act.

Held. that section 4(1) of the Code of Civil Procedure 1908 saves the provisions of the Punjab Courts Act 1918 in general and the specific provisions of section 41 thereof in particular, from being in any

way overridden or affected by the general provisions of the said Code. The provisions of section 41 of the Act are in no way affected, or curtailed by the amended section 100 of the Code. Therefore in the jurisdiction, to which the Punjab Courts Act extends, the admission and adjudication of second appeals would be governed by section 41 of the Act to the exclusion of the general provisions of section 100 of the Code.

(Paras 11 and 23).

Case referred by Hon'ble Mr. Justice S. C. Mital, to a larger Bench on 29th April, 1977, for the opinion on the following important question of law involved in the case. Now the Full Bench consisting of Hon'ble Mr. Justice S. S. Sandhawalia, Hon'ble Mr. Justice S. C. Mital and Hon'ble Mr. Justice Rajendra Nath Mittal, has finally decided the case on merits on 13th October, 1977.

- “1. Has the amended section 100 of the Code in any way affected the provisions of section 41 (1) of the Punjab Courts Act ?
2. What interpretation is to be placed on the phrase “substantial question of law” occurring in amended section 100 of the Code of Civil procedure ?

Regular Second Appeal from the decree of the Courts of Shri K. D. Mohan, Additional District Judge, Narnaul, dated 23rd August, 1973, affirming that of Shri P. K. Goyal, Sub-Judge 1st Class, Rewari, dated 7th May, 1971, dismissing the suit of the plaintiff with costs.

Gopi Chand, A. N. Mittal, Viney Mittal, Harbhagwan Singh and M. S. Jain, Advocates, for the Appellant.

S. S. Rothor and K. D. Singh, Advocates, for the Respondents.

JUDGMENT

S. S. Sandhawalia, J.

(1) The two significant questions succinctly formulated in the Reference Order, which call for determination by this Full Bench are in the following terms:—

1. Has the amended section 100 of the Code in any way affected the provisions of section 41(1) of the Punjab Courts Act ?
2. What interpretation is to be placed on the phrase ‘substantial question of law’ occurring in amended section 100 of the Code of Civil Procedure ?

Ganpat v. Ram Devi etc. (Sandhawalia, J.)

(2) It is evident from the above that the issues aforesaid are prestine legal ones and, therefore, any reference to the facts of the case is, indeed, unnecessary. It suffices to mention that they arise at the very threshold at the stage of the admission of innumerable Regular Second Appeals in this Court in view of the radical amendments introduced in section 100 by the Civil Procedure (Amendment Act), 1976.

(3) At the very outset it may be pointed out that we would first devote ourselves to question No. 1 because it is plain that if an answer is returned to the said question in the negative, the second question perhaps would hardly arise or in any case would become academic in nature.

(4) To appreciate the issues in a correct perspective some reference to the legislative background of the two provisions appears inevitable. The history of the Codes of Civil Procedure in India now goes back beyond a century. The real predecessor of present section 100 of the Code of Civil Procedure was section 372 of the Code of Civil Procedure, 1859 (Act No. 8 of 1859). It was followed by the Code of Civil Procedure, 1877, but its provisions were almost the same as those of the later Code of 1882, wherein section 584 sharply corresponds to the unamended provisions of section 100 of the Code of Civil Procedure, 1908. Substantial and material changes to the Code were envisaged in the Fifty Fourth Report of the Law Commission. In particular, the Law Commission considered the right of second appeal under section 100 and after a study in depth thereof (Reference in this connection may be made to pages 74 to 93 of the Report, 1973) recommended the virtual re-drafting of section 100. The Code of Civil Procedure (Amendment) Bill, 1974 by and large was drafted on the recommendation of the Law Commission. In the statement of objects and reasons thereof, it was noticed with reference to section 100 that second appeals were now to be allowed only on such questions as are certified by the High Courts to be substantial questions of law. The Bill aforesaid was ultimately enacted as the Code of Civil Procedure (Amendment Act), 1976 and the amended Section 100 is in the following terms:—

“100. (1) *Save as otherwise expressly provided in the body of this Code or by another 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 by it, if it is satisfied that the case involves such question".

(5) It appears that within the State of Punjab (both prior to the partition of the country and thereafter as well) there has existed what may will be termed as parallel legislation within a limited field in the shape of a local statute. The earliest statute of this nature was the Punjab Courts Act, 1884 (Act No. 18) which was succeeded by a number of similar Acts. For our purposes it suffices to refer to the present Punjab Courts Act, 1918, which was notified on the 12th July, 1918, but was given retrospective effect from the first day of August, 1914. This provides for the creation of Subordinate Civil Courts within the State and Chapter IV further provides for the Appellate and Revisional Jurisdiction in civil cases. The material provision in the said Chapter is section 41 dealing with the Second Appeals, which is in the following terms:—

"41. (1) An appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the following grounds, namely:—

- (a) the decision being contrary to law or to some custom or usage having the force of law;

Ganpat v. Ram Devi etc. (Sandhawalia, J.)

- (b) the decision having failed to determine some material issue of law or custom or usage having the force of law;
- (c) a substantial error or defect in the procedure provided by the Code of Civil Procedure, 1908, or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits.

(Explanation.—A question relating to the existence or validity of a custom or usage shall be deemed to be a question of law within the meaning of this section.

- (2) An appeal may lie under this section from an appellate decree passed *ex-parte*.

(6) What deserves highlighting in this context is the fact that the Punjab Courts Act was enacted after the Code of Civil Procedure, 1908 and the above quoted section 41 though not absolutely but is virtually in *pari materia* with the unamended provisions of section 100 of the Code. The only material difference in the language is the addition of the word 'custom' in clauses (a) and (b) of subsection (1) of section 41 and the existence of an explanation therein, which does not find any place in the corresponding section 100 of the Code. Because of this virtual identity in these two provisions the Second Appeals within the areas to which the Punjab Courts Act extends have continued to be governed and regulated thereby. However, with the radical recasting of section 100 by the amending Act of 1976, whilst section 41 aforesaid has remained intact, there has now arisen a conflict—namely whether one or the other of the two provisions would be attracted for the purposes of both the admission and the decision of Second Appeals within this jurisdiction. It is this problem which has rightly necessitated this reference.

(7) The core of the argument on behalf of the appellants is that section 41 of the Punjab Courts Act always held and continues to hold the field to the total exclusion of the earlier and the amended section 100 of the Code of Civil Procedure. It is the case that the former being a statute which falls within the purview of a special and local law is entirely saved by virtue of section 4 of the Code and in any case by the opening part of the section 100 itself. Consequently, it was submitted that in all those areas to which the Punjab Courts Act applies the provisions of section 100 of the Code, both

prior and subsequent to the amending Act of 1976, are excluded by necessary implication. In sum the argument is that both for the purposes of admission and subsequent decision Regular Second Appeals within this jurisdiction are governed entirely by section 41 of the Punjab Courts Act alone and are unaffected by the provisions of the amended section 100 of the Code.

(8) The argument aforesaid has necessarily to be tested on the specific language of section 4 of the Code in the first instance. For facility of reference the relevant part thereof may first be set down:—

“4(1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force”.

(9) It is manifest from the above that the saving clause aforesaid has been couched in terms of widest amplitude. The plain intention of the legislature appears to be that unless there is a specific provision to the contrary, the Code shall not affect any special or local law or any special jurisdiction or power conferred by any other law. At the very outset we may point out that no specific provision to the contrary in this context has been or could have been even remotely pointed out. It is equally plain and indeed it was not disputed before us, that the Punjab Courts Act would squarely fall within the terminology of any special or local law. This being so it is unnecessary to dissert at any great length on the true nuance to be attached to the terms special law or local law in this context. On this admitted position therefore, it follows that by virtue of section 4(1) the provisions of the Punjab Courts Act are in no way limited or otherwise affected by the provisions contained in the Code. *A fortiori* the provisions of section 100 of the Code, therefore, do not affect the corresponding provisions of Section 41 of the Punjab Courts Act either.

(10) Apart from the above, it is also plain that section 41 of the Punjab Courts Act equally provides a special jurisdiction or power as regards Second Appeals to the High Court in areas over which the jurisdiction of the said statute extends. Section 4(1) of the Code with equal emphasis exempts any such jurisdiction or power conferred by any other law for the time being in force. Undoubtedly, the Punjab

Ganpat v. Ram Devi etc. (Sandhawalia, J.)

Courts Act comes squarely within the ambit of these words as well and as a necessary consequence the provisions of the latter are again wholly saved from being affected by the Code unless of course there is a specific clause to the contrary.

(11) It appears to us that viewed from either angle, section 4(1) of the Code saves the provisions of the Punjab Courts Act in general and the specific provisions of section 41 thereof in particular, from being in any way overridden or affected by the general provisions of the said Code.

(12) In the particular context of the Second Appeals Parliament seems to have made its intention doubly clear by virtue of the opening part of section 100(1) which may be quoted again for the sake of emphasis:—

“100(1) —Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force

(13) Herein again, nothing contrary to section 100 was pointed out to us in the rest of the Code. That being so, it is plain that the afore-quoted words clearly save any other law for the time being in force on the subject of Second Appeals. Undoubtedly, section 41 of the Punjab Courts Act is such a law. The larger intention of the opening part of section 100(1) of the Code is to exempt all existing laws in this particular field from being affected in any way by the provisions of section 100. This indeed becomes clear when reference is made to the newly added provision of section 100A. The legislature in this provision wished to override all other existing laws providing for a further appeal against the judgment of a Single Judge of the High Court under section 100. Therefore, it used categorical language therein for providing that no further appeal shall lie from such a judgment despite the provision of the letters patent of any High Court or any instrument having a force of law or any other law for the time being in force. Whilst section 100A of the Code begins with a non-obstante clause of wide amplitude Section 100 on the other hand is prefaced by a saving clause as regards any other law for the time being in force. The difference in language is indeed too plain and patent to require further elaboration.

(14) We are clearly of the view that a reading of sections 4(1) and 100(1) of the Code together leads to an irresistible conclusion

that the legislature wished to save and leave unaffected all special or local laws as also any other law for the time being in force on the subject of Second Appeals. Section 41 of the Punjab Courts Act which clearly falls in this category would thus not be in any way affected by the provisions of Section 100 even on a plain construction of these statutory provisions.

(15) Even excluding out of consideration the specific provisions of section 4(1) and 100 of the Code the same result would seem to follow upon larger principles as well. There can hardly be any doubt that the Code of Civil Procedure is the general law of the land on the subject. On the contrary the Punjab Courts Act operates in a narrow and limited field both as regards the area to which it applies and the subject matter with which it deals. It is a settled law that a special provision or a special power would normally override a general one. On this general principle the particular provisions of section 41 of the Punjab Courts Act are entitled to exclude the general provisions of section 100 of the Code in the same field. If authority was at all necessary for so established a proposition, reference may be made to the recent Full Bench decision reported in *Chanan Singh v. Smt. Majo and another* (1).

(16) An overwhelming weight of authority bearing closely on the point, as also by way of analogy, again buttresses the proposition canvassed on behalf of the appellants. Pride of place in this context must be given to the Full Bench judgment in (2), *Mohamed Jamil v. Saudagar Singh and another* as the said decision of the predecessor Court even if not absolutely binding is entitled to the highest respect and weight. Therein Ram Lall, J. speaking for the Bench observed as follows:—

“The provision that deals with the subject of second appeals is S. 100, Civil P.C., which says that save as is otherwise expressly provided, there is a right of appeal from all decrees of appellate Courts subordinate to a High Court and goes on to specify the grounds on which such appeals will lie. A right so given can never be held to have been taken away by implication or by analogies drawn from other provisions or by any alleged illogical reasoning of the Legislature. The right of appeal is regulated

(1) 1976 P.L.R. 726.

(2) A.I.R. 1945 Lahore 127.

Ganpat v. Ram Devi etc. (Sandhawalia, J.)

in the Punjab by the Punjab Courts Act, 1918. Section 41 of that Act says that an appeal shall lie to the High Court in every decree passed in appeal by a Court subordinate to the High Court on grounds similar to those stated in Section 100, Civil P.C. It will be noted that the language of Section 41, Punjab Courts Act, in conceding the right of appeal is more emphatic even than that employed in Section 100, Civil P.C."

It deserves highlighting that the afore-quoted ratio is in no way weakened or affected by certain observations in the *Union of India v. Mohindra Supply Co.*, (3), which might have cast a cloud on an altogether different point which was also before the Full Bench. Indeed, in the said Supreme Court case there is the following brief observation by Their Lordships regarding the scope of section 4 of the Civil Procedure Code, which also goes in aid of the proposition canvassed on behalf of the appellants :—

"There is in the Arbitration Act no provision similar to section 4 of the Code of Civil Procedure which preserves powers reserved to courts under special statutes."

(17) For reasons of geographical contiguity we would now first notice the view expressed in *Kewal Ram v. Bhagwan Dass*, (4), wherein it was held that section 115 of the Civil Procedure Code had in no way overridden or repealed the revisional powers conferred under para 35 of the Himachal Pradesh (Courts) Order, 1948 on the well-recognised principle of *generalia specialibus non derogant*. The aforesaid view was relied upon in the later decision in *Rewa Shankar and another v. Narasinghji Maharaj and others*, (5), wherein it was specifically held that section 100 of the Code does not in any way override the special powers conferred in para 32 of Himachal Pradesh Courts Order, 1948. The aforesaid judgments have apparently held the field so far and no contrary view in the said Court could be brought to our notice.

(18) The Himachal view has then been accepted in another jurisdiction in *Chunilal Keshavji and others v. Manodara Karamshi Jaga*, (6), where the reasoning of *Kewal Ram's case* (4) (supra) was

(3) A.I.R. 1962 S.C. 256.

(4) A.I.R. 1951 H.P. 61.

(5) A.I.R. 1957 H.P. 16.

(6) A.I.R. 1953 Kuteh 25.

accepted and it was held that second appeals to the Judicial Commissioner's Court in Kutch were governed by section 32 of the Kutch Courts Order, 1948 and not by section 100 of the Code. In a subsequent judgment reported as *Lalji Ganpat and others v. Liladhar Devji*, (7), an identical conclusion was arrived at independently.

(19) A Division Bench in *Bhaiya Mohammed Azim Khan and others v. Raja Mumtaz Ali Khan*, (8), in a similar situation has taken the view that section 12 of the Oudh Courts Act, 1925 overrides the general provisions of section 109, Civil Procedure Code, and therefore an appeal from a judgment of a Single Bench lies to a Bench of the Chief Court.

(20) In the Full Bench judgment reported as *H. R. Patel v. Mrs. C. G. Venkatalakshamma and another*, (9), it has again been held that the provisions of section 98(2) of the Civil Procedure Code do not in any way limit or affect the provisions of section 15(3) of the Mysore Chief Court Act, which is a special and local law of Mysore.

(21) Again Govindan Nair J., speaking for the Division Bench in *G. Sankaran Nair v. Krishna Pillai Krishna Pillai Kaippally Madathil and another*, (10) has held that in the event of a conflict betwixt the provisions of order 21, rule 46-1 of the Code and sections 21 to 23 of the Kerala Small Cause Courts Act, the latter would prevail and the order passed against a garnishes would, therefore, not be appealable but would be only revisable.

(22) Chief Justice Bhagwati (as his Lordship then was) speaking for a Full Bench of seven Judges in *Shushila Kesarbhai and others v. Bai Lilawati and others*, (11) has after an exhaustive discussion concluded that the special provisions of clause 36 of the Letters Patent (providing for the procedure to be adopted by the High Court in case of equal division of opinion between Judges hearing a first appeal from a decision of the Subordinate Court)

(7) A.I.R. 1953 Kutch 24.

(8) A.I.R. 1932 Oudh 163.

(9) A.I.R. 1955 Mysore 65.

(10) A.I.R. 1962 Kerala 233.

(11) A.I.R. 1975 Gujarat 39.

Ganpat v. Ram Devi etc. (Sandhwalia, J.)

would override the general provisions of section 98 of the Civil Procedure Code.

(23) From the aforesaid discussion it is thus evident that on principle on the specific language of the statutory provisions involved, and the overwhelming weight of authority, it must be held that the provisions of section 41 of the Punjab Courts Act are in no way affected or curtailed by the amended section 100 of the Code of Civil Procedure. Therefore, in the jurisdiction, to which the Punjab Courts Act extends the admission and adjudication of second appeals would be governed by section 41 of the Act to the exclusion of the general provisions of section 100 of the Code. The answer to the first question is, therefore, returned in the negative.

(24) Though we have arrived at the aforesaid inevitable conclusion in view of the existing statutory provisions, we are of the view that in the interests of the uniformity of law on the point, the corresponding provisions of section 41 now might as well be in line with the amended provisions of section 100. It would be obviously wasteful for us to elaborate our reasons, therefore, because this matter has been exhaustively considered and illuminatingly presented by the Law Commission in its fifty-fourth Report. A reference to pages 74 to 93 of the said report is indeed instructive on the point and we entirely agree with the same. Reference may also be made to the statements of objects and reasons for the Code of Civil Procedure (Amendment) Bill, 1974 and the notes to clause 39 thereof pertaining to the amendment of section 100 of the Code. This matter was again considered by the Parliamentary Select Committee and it was thereafter that the amendment to section 100 was passed by Parliament and the present section 100 was enacted. It deserves recalling that earlier the provisions of the unamended section 100 and section 41 of the Punjab Courts Act were virtually in *pari materia* and there appears hardly any reason why it should not continue to be so. We are, therefore, of the view that the matter deserves the consideration of both the State Governments of Punjab and Haryana for such legislative action as they may deem necessary. In the alternative it is also for the Central Government to consider whether the amended section 100 may not hold unrivalled sway all over the country irrespective of any existing local or special statutes to the contrary. Copies of this judgment be forwarded to the three Governments for their consideration.

(25) Adverting now to question No. 2, it is obvious that the phrase 'substantial question of law' has been introduced by the amending Act, 1976 in section 100 of the Code. As we have held above, the provisions of this section are now excluded by virtue of the special provision of section 41 of the Punjab Courts Act. Within this jurisdiction, therefore, this question becomes entirely academic in nature. It is the settled practice of the superior Courts not to examine and decide issues which do not directly affect the rights of the litigants before them. We, therefore, decline to go into this question.

(26) The case shall now go back to the learned Single Judge for disposal on merits.

S. C. Mital, J.—I agree.

R. N. Mittal, J.—I also agree.

N. K. S.