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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 07.11.2025

Judgment delivered on: 09.01.2026

\+ RSA 42/2021

SHRI SATYA NARAIN, SINCE DECEASED THROUGH LRS .....Appellant

Through: Mr. Anil K. Khaware with Mr. Yogendra Kumar and Mr. Manoj Ram, Advocates.

versus

CHAIRMAN DELHI DEVELOPMENT AUTHORITY THROUGH ITS CHAIRMAN & ANR. .....Respondents

Through: Ms. Chand Chopra, Ms. Anshika Prakash, Advocates.

\+ RSA 67/2021

CHAIRMAN, DELHI DEVELOPMENT AUTHORITY .....Appellant

Through: Ms. Chand Chopra, Ms. Anshika Prakash, Advocates.

versus

SH. SATYA NARAIN (SINCE DECEASED) THR LRS AND ANR .....Respondents

Through: Mr. Anil K. Khaware with Mr. Yogendra Kumar and Mr. Manoj Ram, Advocates for R-1.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present cross-appeals, the contesting parties– Satya Narain (through his legal representatives) and the Delhi Development Authority (‘DDA’) – have challenged/sought modification of judgment dated 24.12.2020 passed by the Additional

District Judge-07, Central District, Tis Hazari Courts, Delhi in RCA No.03/2019, by which the learned first appellate court was pleased to remand the matter for consideration by the learned trial court. The rival parties have asserted their title and possession over the suit land; and have sought protection against dispossession from the suit land at the hands of the opposing party.

SUBMISSIONS ON BEHALF OF THE APPELLANT– SATYA NARAIN IN RSA 42/2021

2. On behalf of the appellant – Satya Narain, it is submitted that the suit for permanent and mandatory injunction was instituted before this court, being Suit No.1332/1991, in which an interim order of injunction was granted and a Local Commissioner was appointed, who recorded in his report that the appellant was in possession of the property, being land ad-measuring about 1 *bigha* 18 *biswa* situate in Khasra No.67 of Patti Hamid Sarai, Mauza Hauz Rani, Begum Pur, Malviya Nagar, New Delhi ('suit land'); whereafter a *status-quo* order was passed in relation to the suit land on 30.04.1991.

3. It is urged that upon transfer of the suit to the Tis Hazari Courts in view of the enhancement of pecuniary jurisdiction of this court, the suit was renumbered as CS No.66/2014; and after a full-dressed trial, where both parties led evidence and were heard on the issues framed, the learned trial has purported to 'decree' the suit on 11.01.2019, while also allowing a contempt petition filed under Order XXXIX Rule 2A CPC, holding the DDA guilty of demolishing the existing structure on the suit land despite an injunction order.

4. It is contended that by judgment dated 24.12.2020 passed in RCA No. 03/2019, the learned first appellate court has gravely erred in setting-aside the well-reasoned judgment and decree dated 11.01.2019 passed by the learned trial court; and has incorrectly remanded the matter to the learned trial court for fresh adjudication, thereby unsettling factual findings after a trial spanning almost 30 years.

5. The appellant submits, that remand of the case amounts to permitting the respondent-DDA to fill-up "gaping holes" in its case at the first appellate stage, which is contrary to settled principles governing the scope of a first appeal and of remand under the CPC.

6. The appellant emphasises that the suit land is 'non-evacuee' property, the title whereof vested in the predecessor-in-interest of the appellant; and the appellant acquired title to the suit land through a registered sale deed dated 27/28.08.1958, whereafter the appellant has remained in continuous and unfettered possession of the suit land for about 40 years. To support this submission, the appellant has placed reliance on the revenue records, being the *jamabandi* (Annexure A-34 to the Second Appeal paper-book) and other documents, to assert that the suit land was never under acquisition; and the DDA had itself categorically declared that the land in question was not acquired nor transferred to it under the land acquisition notification of 1982, with Annexure-C to that notification specifically clarifying that the suit land was not transferred *to the DDA*.

7. It is further submitted, that in the teeth of the injunction/*status-quo* orders dated 26.04.1991 and 30.04.1991 passed by this court in Suit No.1332/1991, the appellant was dispossessed from the suit land on

18.05.1999, which action was *ex-facie* illegal and without authority of law. It is urged that no citizen can be deprived of land except by due process of law, upon acquisition and payment of compensation; but in the present case there was no acquisition and no compensation was paid, and yet the DDA went ahead and demolished the construction that was standing on the suit land and has dispossessed the appellant, in contempt of subsisting injunction orders.

8. The appellant stresses, that on appreciation of oral and documentary evidence, the learned trial court had returned clear findings establishing (i) that the appellant was in possession of the suit land; (ii) that the appellant was owner of the suit land, with the title being registered in the appellant's favour; (iii) that there was no acquisition nor payment of any compensation in respect of the suit land; (iv) that the appellant had been wrongfully dispossessed on 18.05.1999; and (v) that the suit land did not form part of the land transferred *to the DDA* under the 1982 notification, as clarified by Annexure-C to that notification. It is contended, that in these circumstances, the learned first appellate court could not have ignored the cogent evidence on record; nor could it have substituted such evidence with surmises and conjectures or travelled beyond the pleadings by allowing the respondent to set-up a new case; nor could the learned first appellate court have directed the parties to lead any particular evidence, while deciding the first appeal.

9. It is also submitted that the learned first appellate court's approach of remanding the matter after long-drawn litigation is akin to putting the clock back and is contrary to the ratio of binding precedents governing first appeals.

10. Based on his contentions, appellant – Satya Narain has proposed the following questions of law as set-out in para 13 of the memo of appeal in RSA No.42/2021 :

> *"13. That the Substantial question of law framed in the present appeal is as under:-*
>
> *A. Whether the first appellate court could return a finding directing recording of further evidence when parties to the lis on their own and after full dress trial has opted to close the trial?*
>
> *B. Whether the first appellate court is entitled to record a finding that even after full dress trial spanning to 25 years, the trial court should seek further evidence before arriving at judgment, when none of the parties were seeking it?*
>
> *C. Whether first appellate court can direct filling up gaping holes in the case of the respondent. If so, whether the same is against the established procedure of law?*
>
> *D. Whether a suit for declaration for title shall be mandatory for seeking injunction even when the plaintiff/appellant is a registered title owner?*
>
> *E. Whether on the premise that after raising of dispute regarding title in written statement it is mandatory on the part of the plaintiff to seek amendment in the suit? Isn't it against the settled procedure of law?*
>
> *F. Whether the ld ADJ has unsettled the finding of the ld Civil Judge without any rhyme and reason and remanded the matter for fresh adjudication and the same is against the prescription of law?*
>
> *G. Whether the Ld. appellate (sic, court) could encroach upon the domain of parties, who have lead their evidence as per their own list of witness and still at the appellate stage, whether it is available to the Ld. ADJ to direct the parties to lead a particular set of evidence?*
>
> *H. Whether the Ld appellate court could act as a prosecutor to direct the parties to lead particular set of evidence?*
>
> *I. Whether the principles of settled possession is wrongfully sought to be tinkered with by the ld. appellate court?*
>
> *J. Whether it is a settled proposition of law that no one can be evicted from their possession without taking recourse to due process of law? If that is so, the ld ADJ by way of the impugned judgment and decree has ignored the principles of settled possession enunciated by hon'ble Supreme Court and having been swayed by surmises that goes to the extent of seeking eviction of the appellant without notice?*

K. Whether the Ld. first appellate court can ignore the cogent evidence on record and replace the said cogent evidence with assumption, surmises and conjectures? Whether the lower appellate court can travel beyond the evidence on record and set out a new case?

L. Whether the ld first appellate court has ignored the ratio laid down in Rame Gowda (D) by LRs Vs M Veradapa Naidu(D) by LRs ad Another AIR 2004 Supreme Court 4609 pronounced by hon'ble Supreme Court wherein Supreme Court has held that to seek eviction from the possession due process of law need to be followed. Can the ratio laid down be ignored and a new finding based on conjecture replace the ratio laid down.

M. Whether the first appellate court has gone beyond the record which is not permissible in the appellate court and on the basis of trial court record only the decision could be arrived at?"

11. In support of his submissions, the appellant has placed reliance on various decisions[1] in which it has *inter-alia* been held that ejectment from possession must follow due process of law.

12. On the foregoing premises, the appellant-Satya Narain prays that the present RSA 42/2021 be allowed; that judgment and decree dated 24.12.2020 passed by the learned first appellate court in RCA No. 3/2019 be set-aside, and that judgment and decree dated 11.01.2019 passed by the learned trial court in Suit No.66/2014 (new No. 94582/2016) be restored.

SUBMISSIONS ON BEHALF OF THE APPELLANT - DDA

IN RSA 67/2021

13. In the connected appeal, bearing RSA No. 67 of 2021, the appellant-DDA has assailed the same judgment dated 24.12.2020

[1] Nathu Ram vs. DDA (RSA 64/2020, Delhi High Court, para 31);
Nazir Mohamed vs. J. Kamala & Ors., (2020) 19 SCC 57 (paras 30, 31, 32, 33, 35, 37, 51, 57, 59);
Santosh Hazari vs. Purushottam Tiwari, (2001) 3 SCC 179;
Hero Vinoth vs. Seshammal, (2006) 5 SCC 545; and
Rame Gowda (D) by LRs vs. M. Varadappa Naidu (D) by LRs &Anr., AIR 2004 SC 4609

passed in RCA No.03/2019. The appellant-DDA has submitted that though the learned first appellate court has allowed its appeal and has set-aside the learned trial court's judgment dated 11.01.2019, the learned first appellate court has erred in remanding the matter to the learned trial court for deciding Issues Nos. 1 to 3 afresh, even though there was sufficient evidence already on record and despite DDA not having prayed for remand.

14. It is contended, that by *suo-motu* directing remand of the case, without answering the reference in the appeal and without adjudicating the appeal on merits, the learned first appellate court has effectively rendered the first appeal an illusory remedy, inasmuch as the learned first appellate court ought to have itself rendered findings on Issues Nos. 1 to 4 framed by the learned trial court. It has been pointed-out on behalf of the DDA that they had not challenged the learned trial court's judgment on the ground of deletion of Issue No.1; and therefore, their grievance in the present second appeal is confined to the direction for remand passed by the learned first appellate court, for which they have sought modification of the impugned judgment, so that the suit be dismissed and DDA's rights over the suit land be upheld.

15. The DDA has set-out a detailed list of dates, to demonstrate that the suit land forms part of land that was acquired under the Resettlement of Displaced Persons (Land Acquisition) Act, 1948, pursuant to Notification No. F.1.17/2/48-LSG-II dated 13.09.1948; and that, under a subsequent notification dated 02.09.1982, the land was transferred to the DDA under a package of Rs.30 crores, and physical possession of the land was handed-over to the DDA in 1986; and the respondent was

shown as an encroacher in the possession report. Relying on certain photographs and its earlier written submissions, the DDA has disputed the respondent's case that there was construction on the suit land prior to 1960; and it has been contended on behalf of the DDA, that as on 17.07.1990, there was no construction on the suit land and that structures were raised thereupon only in or around September 1990.

16. In this context, the DDA has made reference to earlier proceedings, including proceedings in W.P.(C) No.1981/1990, to show that in those proceedings an interim order was passed on 06.07.1990 directing that the respondents shall not be dispossessed and that the construction on the land shall not be demolished, which was later modified to an order of *status-quo* on 13.11.1990. It is pointed-out that the writ petition was subsequently withdrawn by the appellant-Satya Narain, with liberty to file a civil suit. It is also pointed-out that by order dated 26.04.1991 passed in Suit No.1332/1991, this court had appointed a Local Commissioner and had directed maintenance of *status-quo;* and by order dated 30.04.1991, this court had reiterated that *status-quo* be maintained, while observing that evidence would be required to establish title to the suit land.

17. The DDA has also drawn attention to the contempt petition filed against them on 26.05.1999, alleging that some construction on the suit land was demolished by the DDA on 18.05.1999, to show that by judgment dated 11.01.2019 in CS No. 66/2014 (renumbered as CS 94282/2016), the learned trial court has subsequently struck-off Issues Nos. 1 and 4; has treated Issues No. 2 and 3 as infructuous; and has only decided the application under Order XXXIX Rules 2A CPC,

allowing the contempt petition against the DDA. It is submitted that by judgment dated 24.12.2020, the learned first appellate court has set-aside the learned trial court's judgment but has committed error in remainding the matter to the learned trial court for decision on Issues No. 1 to 3, and, also directing restoration of *status-quo ante* as on 30.04.1991 in the connected MCA No.01/2019 (new M. No.60661/2016).

18. In the above backdrop, the DDA has proposed the following questions of law as set-out in para 13 of the memo of appeal in RSA No.67/2021:

> *"A. Whether the First Appellate Court could have directed the trial court by way of remand order to decide issue no.1 and 4 which were deleted by the court while deciding the case?*
>
> *B. Whether the appellate court failed to examine these to answer the reference under the appeal?*
>
> *C. Whether the courts below failed to consider section 90 and 91 of Evidence act in the facts and circumstances of the case?*
>
> *D. Whether the appellate court was right in returning a finding directing recording of further evidence when parties to the lis on their own and after full dress trial has opted to close the Trial?*
>
> *E. Whether inspite of plaintiff admitting that the suit land was an acquired land belonging to the appellant in the plaint, the trial court was justified in remanding the matter for fresh trial?*
>
> *F. Whether the Ld. ADJ has field (sic) to decide the appeal on merits, grounds and pleadings thus rendering the remedy of first appeal illusionary?*
>
> *G. Whether by remanding the matter and leaving the appeal undecided asking for suit court to decide on issue no.1 and 4 the appellate court has committed grave illegality, more particularly*

when no prayer for declaration was prayed in the suit and the plaintiff has not made any amendment to the suit?

H. Whether the First Appellate Court has gone beyond the record which is not permissible in the Appellate Court and on the basis of Trial Court record only the decision could be arrived at?

I. Any other question of law which this Hon'ble Court deems fit?"

19. On the questions of law proposed by them, the DDA has submitted the following:

19.1. *Firstly*, that under Order XLI Rules 23 and 23A CPC, a first appellate court may exercise power to remand a suit *only* where the suit has been disposed-of on a preliminary point or where retrial is necessary; but where there is sufficient evidence on record, the learned first appellate court is obliged by Order XLI Rule 24 CPC to finally decide the matter rather than adopting the "soft course" of remand. In this context, the DDA has placed reliance on ***Sirajudheen vs. Zeenath & Ors***.[2], to contend, that having itself recorded that both parties had led adequate evidence on Issue No. 1, and having noted the material relied upon by the DDA to establish its ownership, the learned first appellate court has acted in contravention of the statutory mandate by then remanding the matter, instead of deciding the issue on merits itself.

19.2. *Secondly*, as regards Issue No. 4 (bar to the suit under section 53B the Delhi Development Act, 1957), the DDA has urged that

[2] 2023 SCC OnLine SC 196

the learned first appellate court has merely reproduced the learned trial court's observations on this point but has failed to return its own findings on the correctness of striking-off that issue, thereby ignoring and leaving undecided a substantial defence which goes to the root of maintainability of the suit. The DDA has therefore prayed, that this court should modify the findings of the learned first appellate court, by adjudicating Issue No. 4 in its favour and holding that the suit is not maintainable.

19.3. *Thirdly*, the DDA has also submitted that the learned first appellate court has erred in failing to address whether a suit for permanent/prohibitory injunction could have been decreed essentially on findings recorded in a contempt petition, or in an interlocutory proceedings under Order XXXIX Rule 2A CPC, without a proper adjudication of the title to the suit land in the main suit. It has been argued, that an application under Order XXXIX Rule 2A CPC is not a substitute for a trial on 'title'; and that the learned trial court's approach of effectively decreeing the suit on the strength of its findings in a contempt application, is contrary to law.

19.4. *Fourthly*, the DDA has urged that the suit, filed as one for permanent injunction *simplicitor*, is not maintainable when the plaintiff's title has been seriously disputed by the DDA, and when no declaration of title was sought under section 34 of the Specific Relief Act 1963, and the plaintiff had also not sought the relief of possession. In support of this submission, the DDA has been placed reliance on ***Anathula Sudhakar vs. P. Buchi***

Reddy & Ors.[3], where the Supreme Court has held that in cases of serious dispute regarding title, a plaintiff must sue for declaration of title along with consequential relief, and that an injunction suit alone is not maintainable.

20. Based upon the aforesaid, the DDA has further contended that injunctions are in the nature of preventive relief and cannot be used to convert a bare injunction suit into a vehicle for deciding title or granting declaratory relief, in the absence of appropriate pleadings and prayers. Consequently, it has been argued that the proper course for the learned first appellate court was to dismiss the suit as not maintainable for failure to seek appropriate relief, rather than remanding the matter to the learned trial court.

21. The DDA has accordingly prayed that RSA No.67 of 2021 be allowed; and it has been further argued, that in exercise of powers under section 100 CPC and Order XLI Rule 24 CPC, this court should decide Issues Nos. 1 to 4 framed by the learned trial court *vidé* order dated 02.04.2009; and should modify judgment dated 24.12.2020 to the extent of holding that only the DDA has rights over the suit land and that the respondents have no right, title or interest therein. The DDA has further prayed that the connected appeal filed by the respondents, *i.e.*, RSA No. 42 of 2021, be dismissed with costs, as being devoid of merit.

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[3] (2008) 4 SCC 594

DISCUSSION & CONCLUSIONS

22. The court has heard Mr. Anil K. Khaware, learned counsel appearing for the appellant; as well as Ms. Chand Chopra, learned counsel appearing for the DDA on framing of substantial questions of law in the present second appeals.

23. Upon hearing learned counsel for the parties, and after considering the proposed questions of law set-out in the two memos of appeal, in the opinion of this court, the proposed questions of law cited by the two appellants may be summarised by way of the following *four* substantial questions of law :

    23.1. Whether the first appellate court was empowered to remand the matter and direct the learned trial court to decide the issues framed by the latter, based on the evidence adduced by the parties; or based on any further evidence that the parties may choose to lead.

    23.2. Whether it was necessary for Satya Narain to seek a declaration of 'title' before seeking the relief of mandatory injunction, since the DDA had raised a doubt over his title.

    23.3. Whether the suit could have been decided based on the principle of 'settled possession' without deciding whether or not the possession was lawful, based on evidence adduced by the parties before the learned trial court.

    23.4. Whether it was incumbent upon the learned first appellate court to decide the disputes between the parties itself, instead of remanding the matter to the learned trial court, even though the

learned trial court had not returned any finding nor determined any of the issues framed before it.

24. Before addressing the aforesaid substantial questions of law, it is noticed that *vidé* order dated 02.04.2009, the learned trial court had framed the following 05 issues:

> *"1. Whether the plaintiff is owner of the suit property? OPP*
>
> *2. Whether the defendant can be restrained from dispossessing the plaintiff? OPP*
>
> *3. Whether the defendant can be restrained from demolishing constructed portion over the suit land? OPP*
>
> *4. Whether the suit is not maintainable and is barred U/s 3 (sic, 53B) of DD Act? OPP*
>
> *5. Relief.*"

But subsequently, *vide* judgement dated 11.01.2019, the learned trial court struck-off Issues Nos. 1 and 4, and further held that Issues Nos. 2 and 3 were infructuous. The suit has accordingly been decided based *only* on the learned trial court's decision on the contempt application filed under Order XXXIX Rule 2A CPC.

25. In these circumstances, the learned first appellate court has disposed-of the first appeal with the following observations:

> *"This Court is of the considered view that Ld. Trial Court ought not to have deleted/strike down issue no. 1. Considering the entire facts and circumstances of the case, the Issue no.1 was important and relevant in this case and more particularly, in view of the Order dated 30.04.1991 passed by Hon'ble High Court before transferring the matter to Ld. Trial Court. The Order dated 30.04.1991 passed by Hon'ble High Court in the suit has clearly held that there is a need of evidence to establish the title and both the plaintiff and defendant no.2 will lead the evidence to establish the title. The plaintiff has led its independent evidence and he has relied upon the documents, as mentioned in the testimonies of PW-1 to PW-4. The defendant no.2 has also relied upon the documents, as mentioned in the testimony of DW-1. The Ld. Trial Court, even after*

striking the issue no.1, has given certain stray observation regarding the ownership of the Plaintiff and this Court is of the considered view that Ld. Trial Court has not adopted the correct procedure. This Court is of the considered opinion that in fact, no appreciation has been done by the Ld. Trial Court with respect to the documents, as relied upon by defendant no.2 and also on the entire documents, as relied upon by the plaintiffs. The defendant No.2 has placed on record various documents to show their claim, but the said documents were not appreciated by the Ld. Trial Court. The Ld. Trial Court ought to have decided issue no.1 i.e. whether the plaintiff was the owner of the property and in the said issue, the Ld. Trial Court ought to have considered and appreciated the entire documents, as relied upon by both the parties but the Ld. Trial Court has failed to do so."

"The Ld. Trial Court has gone into the question of settled possession. This Court is of the considered view, the said aspect has also not been considered by Ld. Trial Court in the correct perspective in the light of judgment of Rame Gowda (D) by LRs Vs. M. Varadappa Naidu (D) by LRs and Anr. Appeal (civil) 7662 of 1997 DOJ 15.12.2003 of Hon'ble Apex Court, as relied upon by Ld. Trial Court. The Ld. Trial Court has failed to consider, how the plaintiff was in settled possession. The settled possession is not a magic word. There are various ingredients of settled possession and the same are also mentioned in the Judgment of Apex Court passed in Rame Gowda (supra). The Ld. Trial Court has failed to consider the said ingredients, even in the light of the said Judgment. The settled possession has to be considered on the basis of evidence led by the parties and appreciation of those evidences but this Court is of considered view that the same has not been done by Ld. Trial Court."

"In view of the observation made, this Court is of the considered view that issues no. 1 to 3, which were originally framed by the Ld. Trial Court, were required to be dealt by the Ld. Trial Court. In view of the same, the impugned judgment and decree passed dated 11.01.2019 is required to be set aside and the matter is required to be remanded back to the Ld. Trial Court."

(emphasis supplied)

26. In light of the above position, the aforementioned substantial questions of law are answered hereinafter.

Substantial Question of Law No. 1

27. This question relates to the contention that the learned first appellate court *had no power* to remand the matter and ask the parties to lead "further evidence" or "a particular set of evidence", since neither of the parties had asked for adducing additional evidence. This proposition appears to be belied on a plain reading of Order XLI Rule 27(1)(b) of the CPC, which provision reads as under:

> "***27. Production of additional evidence in Appellate Court.***—*(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if —*
> *(a)* *xxxx*
> *(aa)* *xxxx*
> *(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.*
> *(2)* *xxxx* "
>
> (emphasis supplied)

28. Furthermore, Order XLI Rules 23 and 23A CPC specifically empower the first appellate court to remand a case, while also directing the trial court what issue(s) shall be tried in the case so remanded. These provisions read thus:

> ***23. Remand of case by Appellate Court.***—*Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if*

> *any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.*
>
> ***23A. Remand in other cases.***—*Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23.*

(emphasis supplied)

29. The scheme of the aforesaid statutory provisions, therefore, expressly provides that the appellate court may - *on its own* - require the production of any document or witness to enable the court to pronounce judgment or for any other substantial cause.

30. In the opinion of this court, the very purpose of Order XLI Rule 27 CPC is to empower the first appellate court to examine, *if in order to pronounce judgment* on the dispute between the parties, *or for any substantial cause*, which would imply a cause to advance the ends of justice, the appellate court may require additional evidence to be adduced by way of any document or any witness.

31. Order XLI Rule 23A CPC further provides, that in a case where the trial court has disposed-of a case *otherwise* than on a preliminary point, and the first appellate court considers it appropriate to reverse the judgment, and also considers it necessary that a re-trial be conducted, the first appellate court has the same powers as under Order XLI Rule 23, *viz*., the power to remand the case and *"further direct what issue or issues shall be tried in the case so remanded"*.

32. To be sure, the provision in Order XLI Rule 23 CPC that *"the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand"* does not limit or

restrict the recording of any additional evidence by the trial court. All that Rule 23 says is, that subject to all just exceptions, the evidence recorded during the original trial is not to be discarded.

33. At this point it must be observed that though the repeated refrain of both sides is that the learned first appellate court could not have directed the recording of what the parties have termed variously as "further evidence", "particular set of evidence", or "travel beyond the evidence on record", that submission is not borne-out by the contents of the judgment passed by the learned first appellate court. Nowhere in its judgment has the learned first appellate court directed either of the parties to lead *further* evidence. On point of law however, that submission is in any case belied by a plain reading of the statutory provisions mentioned above.

34. In the present case, for the reasons discussed hereinafter, the learned first appellate court has considered it necessary that the issues framed by the learned trial court were required to be decided on merits, since issues Nos.1 and 4 were struck-off by the learned trial court; and the learned trial court had held that issues Nos.2 and 3 were infructuous, as a result of which the learned trial court *did not decide anything* on merits, based on the evidence led before it. The learned first appellate court has accordingly decided, and correctly so, that evidence needs to considered for parties to prove their rival contentions in relation to the issues framed, for which reason the case has been remanded.

35. The substantial question of law No. 1 is answered accordingly.

Substantial Question of Law No. 2

36. The *second* question of law arises from the contention that there was no credible basis for the learned first appellate court to say that there was a cloud on appellant-Satya Narain's title to the suit land; and that therefore, it was not necessary for Satya Narain to first seek a declaration as to his title before seeking any other relief, such as the relief of mandatory injunction against dispossession by the DDA.

37. The essence of this question of law is that the declaration as to 'title' was not mandatory for seeking injunction, in view of the fact that Satya Narain was the registered title holder of the suit land.

38. However this perspective of the parties is plainly flawed, since in the present case, while on the one hand, Satya Narain has canvassed a registered Sale Deed dated 27/28.08.1958 in his favour in respect of the suit land; on the other hand, the DDA has contended that the suit land was part of land acquired by them *vide* Notification dated 13.09.1948 and subsequent Notification dated 02.09.1982; and that possession of the suit land was also transferred to the DDA. In view of the settled position of law in *Anathula Sudhakar*; and since in the present case there are rival contentions as to title to the suit land, there cannot be any cavil with the proposition that a party claiming relief against dispossession must first seek declaration of its title *before* it can claim any other relief in court. *Anathula Sudhakar* says so in the following extract:

> *"21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:*
>
> *(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession,*

with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in Annaimuthu Thevar [Annaimuthu Thevar v. Alagammal, (2005) 6 SCC 202]). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the

plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

39. It is this very aspect that has been addressed by the learned first appellate court, opining that the question of 'title' would need to be adjudicated based on the evidence led by the parties. Again therefore, this court is of the opinion, that the learned first appellate court has taken the correct view.

40. The substantial question of law No.2 is answered accordingly.

Substantial Question of Law No. 3

41. The *third* question of law is as to whether the learned first appellate court could have ignored the principle of 'settled possession', since Satya Narain contends that he has been in settled possession of the suit land since 1958. However, as correctly observed by the learned first appellate court, the issue of 'settled possession' is also one that can only be examined on the basis of evidence which the parties have led; or, this court would add, on the basis of any further evidence that the parties may choose to adduce in support of their respective contentions on this point.

42. Yet again, therefore, this court is of the opinion, that the learned first appellate court has not committed any error in taking the view that the learned trial court is required to decide the issues framed in the matter, after considering the evidence on record.

43. The substantial question of law No.3 is answered accordingly.

Substantial Question of Law No. 4

44. In light of the above, the contention raised on behalf of the parties that the learned first appellate court ought to have decided the issues framed in the appellate proceedings itself, instead of remanding the matter back for consideration by the learned trial court, fails to impress this court. Evidently, in this case the *essential dispute* between Satya Narain and DDA was *never decided* by the learned trial court on merits, based on evidence. Therefore, one cannot fault the learned first appellate court in having remanded the matter, even if the matter had been pending for 03 decades or so.

45. At the risk of repetition, in the present case, the learned trial court had decided *nothing* since it deemed it appropriate to strike-off Issues Nos.1 and 4; and then proceeded to observe the Issues Nos.2 and 3 were rendered infructuous. The judgment of the learned trial court has accordingly proceeded *only* on its decision on an application under Order XXXIX Rule 2A CPC that was pending before it.

46. The correct perspective therefore is, that the suit has not been decided *on merits at all*, even though it remained pending for 03 decades or so. This is hardly a position that can be countenanced.

47. It may be observed, that being conscious of the long pendency of the matter, the learned first appellate court had directed a time-bound disposal of the suit after remand, requesting the learned trial court to decide the matter as expeditiously as possible, and preferably within 09 months of the appearance of the parties before that court.

48. Shorn of all verbiage and needless nuance, in the opinion of this court, the decision of the matter would turn upon whether appellant-Satya

Narain is able to establish title to the suit land *or* whether the appellant-DDA is able to establish acquisition of the suit land, which is nub of the contestation between the parties. This core issue is one that must be decided *first* by the learned trial court, based on evidence that comes before it. Considering that the core issue relates to *title to land*, which is a valuable right that would inure for decades to come, it would be inadvisable for this court to adopt any shortcut by directing the learned first appellate court to decide the issues. It needs no emphasis, that directing the learned first appellate court to decide the issues would also foreclose a valuable right of appeal for the aggrieved party.

49. Before closing, this court would also remind itself, that the remit of this court in a second appeal under section 100 of the CPC, is restricted. In support of that observation it would suffice to cite the Supreme Court in ***Gurdev Kaur & Ors. vs. Kaki & Ors.***[4], and ***Gurnam Singh (Dead) by legal representatives & Ors. vs. Lehna Singh (Dead) by legal representatives*** [5], where the Supreme Court has articulated the scope of such power *inter-alia* in the following extracts:

Gurdev Kaur & Ors. vs. Kaki & Ors.

> ***70.*** *Now, after the 1976 amendment, the scope of Section 100 has been drastically curtailed and narrowed down. The High Courts would have jurisdiction of interfering under Section 100 CPC only in a case where substantial questions of law are involved and those questions have been clearly formulated in the memorandum of appeal. At the time of admission of the second appeal, it is the bounden duty and obligation of the High Court to formulate substantial questions of law and then only the High Court is permitted to proceed with the case to decide those questions of law.*

[4] (2007) 1 SCC 546

[5] (2019) 7 SCC 641

The language used in the amended section specifically incorporates the words as "substantial question of law" which is indicative of the legislative intention. It must be clearly understood that the legislative intention was very clear that legislature never wanted second appeal to become "third trial on facts" or "one more dice in the gamble". The effect of the amendment mainly, according to the amended section, was:

(i) The High Court would be justified in admitting the second appeal only when a substantial question of law is involved;

(ii) The substantial question of law to precisely state such question;

(iii) A duty has been cast on the High Court to formulate substantial question of law before hearing the appeal;

(iv) Another part of the section is that the appeal shall be heard only on that question."

Gurnam Singh (Dead) by legal representatives & Ors. vs. Lehna Singh (Dead) by legal representatives

"19. Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 CPC, is strictly confined to the case involving substantial question of law and while deciding the second appeal under Section 100 CPC, it is not permissible for the High Court to reappreciate the evidence on record and interfere with the findings recorded by the courts below and/or the first appellate court and if the first appellate court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in second appeal. We have noticed and even as repeatedly observed by this Court and even in Narayanan Rajendran v. Lekshmy Sarojini [Narayanan Rajendran v. Lekshmy Sarojini, (2009) 5 SCC 264 : (2009) 2 SCC (Civ) 500], despite the catena of decisions of this Court and even the mandate under Section 100 CPC, the High Courts under Section 100 CPC are disturbing the concurrent findings of facts and/or even the findings recorded by the first appellate court, either without formulating the substantial question of law or on framing erroneous substantial question of law."

(emphasis supplied)

50. As a sequitur to the above, and staying within the confines of its powers under section 100 of the CPC, this court is of the view that the

learned first appellate court was right in remanding the matter to the learned trial court for fresh consideration on the basis of the evidence before it. That being said, this court would also observe, that since the issues that are material to a decision of the case were never addressed or decided by the learned trial court on merits, based on evidence, the parties would also be at liberty, if they so decide, to lead further or additional evidence before the learned trial court, as may be permissible, in accordance with law.

51. Accordingly, the present second appeals are dismissed, upholding judgment dated 24.12.2020 passed by the learned first appellate court.
52. Pending applications, if any, stand disposed-of.
53. Nothing in this order shall amount to this court having expressed any opinion on the merits of the dispute between the parties.

ANUP JAIRAM BHAMBHANI, J.

JANUARY 9, 2026/ds/ss