



2026:AHC:42083

**HIGH COURT OF JUDICATURE AT ALLAHABAD
SECOND APPEAL No. - 777 of 1981**

Shri Devi Dayal

.....Appellant(s)

Versus

Nagar Mahapalika Kanpur

.....Respondent(s)

Counsel for Appellant(s)	: P.d.kaushik, R.c.sinha, Yadvesh Yadav
Counsel for Respondent(s)	: Lalji Sinha, Ramesh Upadhyay, Shashi Shekhar Mishra

AFR
Reserved on 18.2.2026
Delivered on 25.2.2026

Court No. - 32

HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. This is a plaintiffs's Second Appeal, filed against the judgment dated 29.5.1976, whereby a suit filed by him was dismissed and appeal thereof was also rejected by the First Appellate Court by a judgment dated 18.12.1980.

2. The plaintiffs/appellant has filed a Suit bearing No.2154 of 1971, for permanent injunction against the defendants nos. 1 and 2 (Respondent nos.1 and 2) restraining them from cutting down the crops and also from disturbing his possession over the disputed plots.

3. The appellant/plaintiff has set up a case that he was a tenant in the agricultural plots (plots in suit) of Nagar Mahapalika, Kanpur (defendant no.1), the owner.

4. Later on, admittedly, suit land was transferred to Kanpur Development Authority. Plaintiff's claim was basically based on an averment that suit land was orally given to him as a tenant by Defendant No.1 for agriculture and his possession continued thereafter for many years and he paid Lagan also, and receipts thereof were issued, though admittedly except receipts, plaintiffs has not brought on record any document, such as lease (Patta) that he was the tenant of agricultural plots.

5. Per contra, the defendants have mentioned in their Written Statement that plaintiff was a licensee for one fasli year and subsequently he was in possession of land in suit as trespasser. Para 14 of Written Statement being relevant is mentioned hereinafter:

14. That the plaintiff is a trespasser and is not entitled to claim any injunction. The plaintiff has no right to claim any interest over the land in dispute. The suit is barred by section 41 of the Specific relief Act.

6. The learned Trial Court framed 9 issues and issue no.2 being most relevant is mentioned hereinafter:-

" Whether the plaintiff is the tenant of the plots in suit as alleged by him or whether the plaintiff is licensee as alleged by the Nagar Palika in paragraph no. 14 of Written Statement"

7. Learned Trial Court vide judgment dated 29.5.1976 dismissed the suit with a cost and returned a finding that plaintiffs came into possession in the disputed plots with permission of defendant no.1, for only one year, therefore, plaintiffs' was a licensee of the defendant no.1 and not a tenant.

8. The plaintiffs/appellant being aggrieved by the judgment dated judgment dated 29.5.1976 filed a First Appeal before Second Additional Civil Judge, Kanpur bearing No.275 of 1976, which was dismissed vide judgment dated 18.12.1980 and finding returned by learned Trial Court that plaintiffs/appellants were tenant of defendant was upheld. It was also specifically held that plaintiffs/appellant does not claim himself to be Sirdar, Bhumidhar or Asami, though it was noted that in some of the revenue records in regard to some portion of the land in suit, plaintiffs' were shown as Asami though admittedly it was not the case of the appellant.

9. The best case would be that defendant has given his land in suit as a licensee in the year 1372 Fasli for cultivation for only one year, though a finding returned that plaintiffs could be an Asami of defendant for one year, but even said rights were not continued. Otherwise, the First Appellate Court was of the view that such observation would not be sufficient to prove that plaintiffs became Asami and finally First Appellate Court has declared that plaintiffs' were neither tenant nor Asami of the land in suit and plaintiffs' possession of disputed land would only be of a trespasser.

10. The judgment dated 18.12.1980 passed by the First Appellate Court is under challenge by way of present Second Appeal Second, filed in the year 1981, i.e., pending for last 45 years.

11. A co-ordinate Bench of this Court has admitted, the present Second Appeal vide an order dated 9.9.1981 on substantial questions of law as formulated in paragraph nos.1 and 2 of the Appendix annexed to the memo of appeal.

12. In above background, Court perused the appendix of Appeal and substantial questions of law framed at Serial Nos.1 and 2 are reproduced hereinafter:

"SUBSTANTIAL QUESTIONS OF LAW

1. Because admittedly the plaintiff was asami and the learned courts below have committed material illegality on the face of the record in not decreeing the suit even after recording the finding that the plaintiff had been conferred asami rights over the plots in dispute by the defendants themselves.

2. Because the plaintiff's suit should have been decreed on the admissions made by the defendants themselves and the defendants were stopped from challenging the tenancy rights of the plaintiff on the facts and circumstances of the present case."

13. Court finds that the word used in the above referred questions of law are not in proper format, since it starts with the word 'Because' whereas it ought to have started with 'Whether'.

14. Sri R.C.Sinha, learned counsel for the appellants submitted that though above referred substantial questions of law are not happily worded, still it can be reformulated.

15. None appears on behalf of contesting respondents, therefore, Court proceeds to consider as to whether above referred substantial questions of law are in fact substantial questions of law or not.

16. Before I proceed to consider above referred issue, I take note of a judgment passed by Supreme Court in the case of **Chandrabhan (deceased) through Lrs. And others Vs. Saraswati & ors, 2022 SCC OnLine SC 1273**, wherein law in regard to what would be the substantial question of law for purpose of a Second Appeal was discussed and relevant part of it is reproduced hereinafter:

" 31. 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, insofar as the rights of the parties before it are concerned. 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 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 circumstances 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 [Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179] .)

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

32.1. 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.

32.2. 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. 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.

32.3. 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.

33. In this case, it cannot be said that the first appellate court acted on no evidence. The respondents in their second appeal before the High Court did not advert to any material evidence that had been ignored by the first appellate court. The respondents also could not show that any wrong inference had been drawn by the first appellate court from proved facts by applying the law erroneously."

17. Original records of this case are before this Court.

18. In the plaint filed by the plaintiffs/appellants, he has claimed himself to be tenant of 'land in suit' and that Nagar Mahapalika Kanpur was owner and that it was let to plaintiff for agricultural purpose for yearly Lagan basis.

19. Plaintiff has not placed their case by virtue of letting and payment of Lagan, he became Asami of land in suit.

20. In the aforesaid circumstances, Court takes note of Written Statement filed on behalf of Nagar Mahapalika, Kanpur Nagar i.e. defendant no.1 wherein it was categorically denied that plaintiffs were tenant of said defendant and in the additional plea it was also stated that suit land was acquired for development scheme of Kanpur Nagar as per land acquisition award dated 20.4.1946, as such right title and interest of the land in suit exclusively vests with defendant.

21. The defendant has given land in suit as a licensee in 1372 Fasli for cultivation for only one year, for which plaintiff/appellant has paid rent, but plaintiff was subsequently in possession of land in suit in an illegal manner as trespasser.

22. Defendant has not accepted that plaintiffs were Asami in Written Statement.

23. Learned Trial Court has dismissed the suit by returning a specific finding that plaintiffs were licensee of defendants for one fasli year and thereafter his status was of a trespasser liable to be evicted.

24. Aforesaid findings were upheld by First Appellate Court, though an issue of Asami was considered, though said issue was beyond pleadings that plaintiff was Asami only for Fasli Year 1372 and subsequent nature of possession was only trespasser.

25. After taking note of aforesaid concurrent findings returned by learned Trial Court and the First Appellate Court, questions of law formulated by the appellants and admitted by this Court could not be considered as substantial questions of law, since plaintiff has never declared himself to be an Asami. His case was that he

was a tenant and has never disputed ownership of defendants, therefore, it was not a case of admission of defendants that plaintiff was a Asami.

26. It was an observation of First Appellate Court only on basis that defendant has let out land in suit to plaintiff for a short period of 1372 Fasli and not thereafter. Otherwise also, plaintiff has not placed on record any document which could be considered as a lease, therefore, only on basis of Lagan receipts, plaintiff cannot be considered to be a tenant. Their possession at best can be termed as licensee for a particular period and thereafter his possession was as a trespasser, therefore, Court finds that above referred two questions of law are not substantial questions of law.

27. It was not a case of admission by defendant that plaintiff was a Asami. It is also well settled that no evidence could be led beyond pleadings. (See **Srinivas Raghwendrarao Desai (Dead) By Lrs. Vs. V. Kumar Vamanrao @ Alok and Ors. 2024 INSC 165**). Otherwise also, admission if any at behest of defendant is not an 'admission' as required under Order 12 Rule 6 Code of Civil Procedure, 1908 as it should be clear, unambiguous, unequivocal and unconditional, which is not the case in hand and First Appellate Court has dealt with the issue in detail and there is no illegality that a finding was returned that plaintiff was a licensee only.

28. Court also examined above referred questions of law at the anvil of **Chandrabhan** (Supra) and finds that above referred two questions of law are not substantial questions of law, which could be considered in present second appeals.

29. Court also takes note of a judgment passed by Supreme Court in the case of **Rabindranath Panigrahi Vs. Surendra Sahu, 2025 INSC 333**, and is of view that in the facts and circumstances of present case, no circumstances exist to overturn concurrent findings returned by learned Trial Court as well as by First Appellate Court (also see **Murthy & Ors. Vs. C. Saradambal & Ors, (2022) 3 SCC 209** and **Hero Vinoth (Minor) Vs. Sheshammal, 2006 (5) SCC 545**).

30. Present Second Appeal is accordingly **dismissed**. Interim order, if any, stands vacated.

(Saurabh Shyam Shamshery,J.)

February 25, 2026

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