IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 17TH DAY OF OCTOBER 2023 / 25TH ASWINA, 1945

RSA NO. 132 OF 2022

AGAINST THE JUDGMENT AND DECREE DATED 08.01.2021 IN AS 25/2018 OF SUB COURT,KOCHI IN OS 465/2015 OF PRINCIPAL MUNSIFF COURT, KOCHI

APPELLANT/APPELLANT/DEFENDANT:

ANTONY FREDERIC BAIJU
AGED 46 YEARS
S/O. PETER, BUSINESS,
R/O VALIYAPARAMBIL HOUSE,
CHELLANAM P.O., KOCHI-8.

BY ADVS.
K.N.CHANDRABABU
T.G.KALADHARAN
T.KRISHNANUNNI (SR.)(K/280/1973)

RESPONDENT/RESPONDENT/PLAINTIFF:

TITUS SHAIJU,
AGED 51 YEARS
S/O. PETER, PRIVATE SERVICE,
R/O. H.NO. 4/352, VALIYAPARAMBIL HOUSE,
CHELLANAM P.O, KOCHI 8.

BY ADV G.KRISHNAKUMAR

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 27.09.2023, THE COURT ON 17.10.2023 DELIVERED THE FOLLOWING:

"C.R"

A. BADHARUDEEN, J.

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R.S.A No.132 of 2022

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Dated this the 17th day of October, 2023

O R D E R

This Regular Second Appeal arises out of decree and judgment in A.S.No.25/2018 dated 08.01.2021 on the files of the Sub Court, Kochi, which emerged from decree and judgment in O.S.No.465/2015 dated 31.01.2018 on the files of the Munsiff Court, Kochi.

2. Heard the learned Senior Advocate Sri T.Krishananunni appearing for the defendant and Advocate Sri G.Krishnakumar, appearing for the respondent, on admission.

3. Perused the judgments under challenge and the available materials.

4. The parties in this appeal will be referred hereafter as `plaintiff' and `defendant' relegating their status before the trial court.

5. Plaintiff's case in nutshell is as under:

According to the plaintiff the plaint A schedule property having an extent of 2.33 Ares along with one shop room numbered as 4/351 and a shop room with residential portion numbered as 4/352 were given in favour of the plaintiff by his father, Sri Peter, as per settlement deed No.1512/2012. It was contended that father obtained property having an extent of 10.53 Ares as per partition deed No.777/1963 and he constructed the above shop room and building. Thereafter, the father divided the property among the plaintiff, defendant, their mother and brother Saju. The western portion to an extent of 3.44 Ares was given to Saju. Eastern portion with residential building to an extent of 2.43 Ares was given to the mother. The remaining property on the eastern portion was divided into two. Out of which, the southern portion having

an extent of 2.33 Ares was given to the defendant and the northern portion of the plaint A schedule was given to the plaintiff. The further contention was that thereafter the plaintiff obtained title over plaint A schedule property on the basis of settlement deed No.1512/2012. The defendant, who opposed the said allotment and execution of settlement deed in favour of the plaintiff, filed O.S.No.133/2015 to cancel the title deed of the plaintiff. Plaint B schedule item is building No.4/351, which was given by the father to the defendant as a licensee and the said licence continued even after execution of the settlement deed in favour of the plaintiff. Thereafter, the plaintiff terminated the licence by issuing notice. Since the defendant failed to vacate the building, the present Suit was filed seeking fixation of the southern boundary of A schedule with that of the defendant; for mandatory injunction directing the defendant to vacate the B schedule building and also claiming Rs.1,000/- per month as damages for use and occupation of the same by the defendant.

6. The defendant opposed the contention raised by the plaintiff and contended that the Suit was one filed to counterblast O.S.133/2015 filed by the defendant to cancel the title deed of the plaintiff and other deeds executed by the father. According to the defendant, the plaintiff managed to execute settlement deed in his favour grabbing property earmarked for the defendant. It was contended that plaint A schedule was assigned to the defendant by the father and also he had been using the same for about 20 years. Accordingly, defendant prayed for dismissal of the suit.

7. The trial court tried the matter.

8. PW1 and PW2 examined and Exts.A1 to A3 were marked on the side of the plaintiff. One witness examined as DW1 on the part of the defendant. Ext.C1 series also marked. The trial court addressed the issues and decreed the suit as under:

> *"1. Southern boundary of Plaint A schedule is fixed as noted in Ext.C1(a), which shall form part of the decree.*
>
> *2. By a mandatory injunction, defendant is directed to vacate Plaint B schedule room within two months, failing which, plaintiff may obtain*

vacant possession through the process of the court.

3. Defendant is directed to pay the Plaintiff an amount of Rs.1000/- (Rupees One Thousand only) per month as damages for use and occupation from the date of suit, till realisation.

4. Defendant is restrained by a permanent prohibitory injunction from trespassing into Plaint `A' schedule property and from committing any waste therein."

9. On appeal, the learned Sub Judge confirmed the said finding.

10. While pressing for admission of this matter, the learned Senior Counsel Sri T.Krishnanunni submitted that in this case the trial court as well as the appellate court went wrong in fixing the southern boundary of plaint A schedule property, as noted in Ext.C1(a) plan and also in granting mandatory injunction directing the appellant/defendant to vacate plaint B schedule shop room. According to the learned counsel for the defendant, the trial court as well as the appellate court granted reliefs mainly holding that the defendant has been possessing the building as a licensee. However, the said finding is incorrect, since the specific contention

raised by the defendant before the trial court was that there was no licence arrangement between the plaintiff and the defendant and according to the defendant, Sri Peter, the father of the plaintiff and the defendant, who was the original owner of the plaint schedule items, meant the plaint A schedule property as one for the defendant and has been possessing and enjoying plaint B schedule shop for more than 20 years. According to the learned counsel for the defendant, in the present case, the plaintiff should have filed a suit for recovery of possession or eviction and the relief of mandatory injunction is not the proper remedy to get possession of plaint B schedule based on the settlement deed, relied upon by the plaintiff to canvass title upon plaint A schedule.

11. Refuting this contention, the learned counsel for the respondent/plaintiff submitted that originally 10.53 Ares of property was obtained by Peter as per partition deed No.777/1963. Thereafter, he constructed a residential building and 2 shop rooms therein. While so, as per settlement deed No.1512/2012 of Kochi

S.R.O, executed by Peter in favour of the plaintiff, marked as Ext.A1, the plaint A schedule item was given in the name of the plaintiff and accordingly all rights Peter had, in respect of the plaint schedule items were transferred in the name of the plaintiff.

12. It is argued by the learned counsel for the plaintiff further that, before execution of Ext.A1, Peter, the father, permitted the defendant to possess the building as a licensee and he continued possession after the execution of Ext.A1 also, as a licensee, as permitted by the plaintiff. Thereafter, as per Ext.A3 notice dated 10.09.2015, the plaintiff terminated the licence and sought vacation of the shop room. Since the defendant hesitated to heed the demand of the plaintiff, the present suit was filed and in such a case, the plaintiff could very well succeed since mandatory injunction is the relief available to the plaintiff to get vacant possession of the building which is illegally possessed by the defendant even after termination of the licence. Accordingly, it is submitted that no legal question involved in this matter to be

formulated to admit the Second Appeal and the same deserves dismissal without admission.

13. In view of the rival arguments, it is necessary to advert to the matter in issue with a view to find out whether any substantial question of law involved herein to admit this appeal.

14. Adverting to the matter in controversy, the case of the plaintiff is that the father of the plaintiff had given possession of the plaint B schedule item to the defendant as a licensee and later the father executed Ext.A1 in the year 2012, and given ownership over the same to the plaintiff. Thereafter, plaintiff permitted to continue the said licence. Accordingly, the defendant had been continuing possession over `B' schedule as a licensee. While so, the licence was terminated by issuing Ext.A3 notice dated 10.09.2015 and sought vacant possession of B schedule. Since the said demand was refused, the present Suit was filed. But the contention of the defendant is that there is no licence arrangement in between the plaintiff and the defendant. His contentions in the

written statement are multi-fold. According to the defendant, plaint A schedule is the area earmarked for the defendant by the father and thereby the defendant deemed to have claimed title over plaint A schedule item. At the same time, he would contend that he has been possessing plaint B schedule room for the last 20 years. Anyhow, no specific pleading raised to claim adverse possession, with the essentials to perfect possessory title. No doubt, in order to perfect possessory title by adverse possession, the essentials to be pleaded and, proved are; `*nec vi*', `*nec clam*' and `*nec precario*', ie. without force, without secrecy and without permission. According to the learned counsel for the defendant, a defendant in a Suit can have contra pleadings. This legal position is not in dispute. The further case of the defendant is that plaintiff obtained settlement deed executed by the father in his favour in relation to plaint A schedule property and plaint B schedule room therein by playing fraud. However, the written statement filed by the defendant doesn't say what is the nature of possession otherwise than that of a licensee if he is not

the owner of the property. In this matter, as could be borne out from the judgments of the lower courts, the defendant herein filed O.S.No.133/2015 before the Additional Munsiff Court, Kochi, to cancel the title deed of the plaintiff and other connected deeds, but he failed to succeed. The trial court observed that practically there was no challenge to Ext.A1 on the ground of fraud in the written statement. As far as the challenge against Ext.A1 is concerned, the same is not a subject matter of the Suit. In the written statement filed by the defendant, it has been contended that the plaintiff obtained Ext.A1 title deed in his name by committing fraud.

15. Going by the narration in the written statement, it could be gathered that the defendant raised contention that the plaint schedule items were assigned by his father for running his business, since he could not help in financial terms at any stage. It is surprising to note that as per Ext.A1, the title of plaint A & B schedule items was transferred in the name of the plaintiff and the contention raised by the defendant to the effect that he had

obtained ownership over the same is not at all proved. If so, the defendant has no title over the plaint schedule items. Even though it has been pleaded in the written statement that the defendant had been possessing the plaint schedule items for more than 20 years, plea of adverse possession is not at all specifically pleaded and hence even remotely claim for adverse possession could not be found.

16. While deciding the authenticity of Ext.A1 settlement deed and title over plaint A and B schedule properties, PW2's evidence was given much emphasis by the trial court as well as the appellate court. On scrutiny of the evidence of PW2, the courts below found that the intention of the father of the plaintiff was to give north-western portion of his property to the elder son and south-western plot including the residential building to the wife, north-eastern portion to the plaintiff and south-eastern portion to the younger son, the defendant. In order to fulfill the said intention, he had executed will deed No.121/2012, marked as Ext.A2 and settlement

deed No.1421/2012 (the same was not produced before the court) on the same day. In this matter, the plaintiff asserts title and raised a contention that the defendant is only a licensee in occupation of the plaint B schedule item and therefore on termination of the licence, there is legal obligation on the part of the defendant to vacate the building, otherwise the remedy of the plaintiff is to file a suit for mandatory injunction.

17. Whereas, the learned Senior Counsel Sri T.Krishnanunni, appearing for the defendant/appellant submitted that since the occupation of the plaint schedule items by the defendant is not as a licensee, a suit for recovery of possession or eviction should have been filed and suit for mandatory injunction for the said relief is quite insufficient, as I have already pointed out. But the learned Senior Counsel miserably failed to point out the nature of possession of the defendant where there is no specific pleadings to claim adverse possession, and in a case where the title claimed by the defendant over plaint A schedule allegedly

earmarked for the defendant, is not established at all.

18. Law regarding the proper relief to be canvassed by a licensor to get possession of a licenced premise from the licensee is no more *res integra*. In the decision reported in [2005 KHC 1436], ***Joseph Severance v. Benny Mathew***, the Apex Court held that *the correct position in law is that the licensee may be the actual occupant but the licensor is the person having control or possession of the property through his licensee even after the termination of the licence. The licensee may have to continue to be in occupation of the premises for sometime to wind up the business, if any. In such a case the licensee cannot be treated as a trespasser. It would depend upon the facts of the particular case. But there may be cases where after termination or revocation of the licence the licensor does not take prompt action to evict the licensee from the premises. In such an event the ex-licensee may be treated as a trespasser and the licensor will have to sue for recovery of possession. There can be no doubt that there is a need*

for the licensor to be vigilant. A licensee's occupation does not become hostile possession or the possession of a trespasser the moment the licence comes to an end. The licensor has to file the suit with promptitude and if it is shown that within reasonable time a suit for mandatory injunction has been filed with a prayer to direct the licensee to vacate the premises, the suit will be maintainable.

19. Much earlier before ***Joseph Severance v. Benny Mathew*** (*supra*), the Apex Court considered a suit of this nature reported in [AIR 1985 SC 857], ***Sant Lal Jain v. Avtar Singh***, where the plaintiff raised a contention that he had taken the plaint schedule building on lease under a lease deed. Later the plaintiff became the owner. Thereafter the defendant in the suit took the same from the plaintiff on licence for one year. When the defendant failed to vacate the shed construction in the building, the licence was terminated and a suit for mandatory injunction for directing him to vacate the premises was filed. While considering

the nature of relief entitled, in para.7 of the judgment the Apex Court held that *in the present case it has not been shown to us that the defendant had come to the court with the suit for mandatory injunction after any considerable delay which will disentitle him to the discretionary relief. Even if there was some delay, we think that in a case of this kind attempt should be made to avoid multiplicity of suits and the licensor should not be driven to file another round of suit with all the attendant delay, trouble and expense. The suit is in effect one for possession though couched in the form of a suit for mandatory injunction as what would be given to the plaintiff in case he succeeds is possession of the property to which he may be found to be entitled. Therefore, we are of the opinion that the defendant should not be denied relief merely because he had couched the plaint in the form of a suit for mandatory injunction.*

20. It was held further in para.8 that *the respondent was a licensee, and he must be deemed to be always a licensee. It is not*

open to him, during the subsistence of the licence or in the suit for recovery of possession of the property instituted after the revocation of the licence to set up title to the property in himself or anyone else. It is his plain duty to surrender possession of the property as a licensee and seek his remedy separately in case he has acquired title to the property subsequently through some other person. He need not do so if he has acquired title to the property from the licensor or from some one else lawfully claiming under him, in which case there would be clear merger. The respondent has not surrendered possession of the property to the defendant even after the termination of the licence and the institution of the suit. The defendant is, therefore, entitled to recover possession of the property. We accordingly allow the appeal with costs throughout and direct the respondent to deliver possession of the property to the defendant forthwith failing which it will be open to the defendant to execute the decree and obtain possession.

21. Banking on the ratio in ***Sant Lal Jain v. Avtar Singh***'s

case (*supra)*, even if the plaintiff had come with a Suit of a mandatory injunction after long delay which would disentitle him to the discretionary relief, in such event also, attempt should be made to avoid multiplicity of suits and the licensor should not be driven to file another round of litigation with all the attendant delay, trouble and expenses.

22. While searching further, in the decision reported in [2014 KHC 4211 : 2014 (11) SCC 664 : AIR 2014 SC 2863], ***Gowri v. Shanthi & anr.***, the Apex Court held in paragraph 15 that *once it is found that the plaintiff is the absolute owner of the property, the possession of the part of this property with the respondents has to be permissive, as rightly found by the Trial Court. It is not their case that they were inducted as tenants or in any other capacity which would confer upon them any right to stay therein. On the contrary, the case put up by them was that they are entitled to inherit one – third share each in the said property by virtue of succession which is found to be a baseless scheme. On*

these facts, we are of the opinion that the trial court was right in passing the decree of mandatory injunction in a suit which was filed by Jagadambal. The lis was between Jagadambal and the respondents.

23. Going by the decisions referred above, it has to be held that on revocation or termination of licence, the licensee may continue to be in occupation of the premises for some time for certain purposes. In such cases, the licensee cannot be treated as a trespasser and it would depend upon the facts of each case. At the same time, there may be cases, where after termination or revocation of licence, the licensor does not take prompt action to evict the licensee from the premises for a pretty long time, in such cases, the licensee, becomes ex-licensee and to be treated as a trespasser and the licensor can sue for recovery of possession. But when the licensee's occupation does not become hostile possession or that of the possession of the trespasser, the moment licence comes to an end, in such cases the licensor has to file a suit with

promptitude and if it is shown that within reasonable time a suit for mandatory injunction has been filed with a prayer to direct the licensee to vacate the premises, the said suit will be maintainable.

24. The legal position otherwise as could be gathered from the decisions in [1969 KLT 811], ***Rajappan v. Veeraraghava Iyer***; [1990 (1) KLT 98], ***Ayissa Umma v. Ami***; [1988 KHC 622 : 1988(2) KLT 995 : 1988(2) KLJ 643], ***Sreedharan Erady v. Sreedharan***; [2021 KHC 342 : 2021 (4) KLT 76 : 2021 (3) KLJ 513 : ILR 2021 (3) Ker.559], ***Aravindan P.M v. K.P.Udayakumar***; [2014(2) KHC 612 : 2014(3) KLJ 71 : ILR 2014(3) Ker.239], ***Abraham Mathew & Ors. v. Mariamma Yohannan***, is that licensee has an obligation to vacate the property on revocation of the licence and if the licensee fails to perform that obligation, the licensor can seek the relief of mandatory injunction to prevent the said breach of obligation and compel vacation of the property.

25. Therefore, the parameters to devise the proper remedy

of the licensor to get vacant possession of the licenced premises to be summarised as under:

(1) Generally, on expiry or termination of licence, the licensee has a legal obligation to vacate the licenced premises and on failure to do so, the licensor could very well institute a Suit for mandatory injunction to seek possession of the licensed premises.

(2) In a case, where the licensee slept over his right to file a Suit for mandatory injunction for a pretty long period, after expiry or termination of the licence and the licensee, stepped into the status of a `trespasser', in such cases, suits for recovery of possession, can be filed following the ratio in ***Joseph Severance v. Benny Mathew*** (*supra*). But in such cases also, if the relief asked is for mandatory injunction, couched in the form of recovery of possession, the relief for possession should not be refused, as held in ***Sant Lal Jain v. Avtar Singh***'s case (*supra)*, so as to put the plaintiff with hazards and turmoil of a second round of litigation.

26. Viewing the facts of this case, in this matter, the plaintiff got title over the plaint schedule items on the basis of Ext.A1 settlement deed dated 19.03.2012. The case of the plaintiff is that after the execution of Ext.A1, the defendant, who has been in possession of B schedule item on the basis of permission granted by the father, was allowed to continue in possession of B schedule with permission of the plaintiff. Later, as on 10.09.2015, Ext.A3 notice was issued and the licence was terminated. After termination of the licence, the present suit was filed on 30.10.2015, without any delay. It is relevant to hold that even though the defendant was given possession of B schedule by the father with permission, continuance of the same till the date of Ext.A3 by the defendant to be held as one with permission and his status is not that of a trespasser so that the plaintiff could succeed in a suit filed seeking mandatory injunction.

27. Even otherwise, by following the ratio in ***Sant Lal Jain v. Avtar Singh***'s case (*supra)*, the relief of mandatory injunction

could not be denied in a Suit filed for mandatory injunction, couched in the form of recovery of possession, in order to avoid multiplicity of suits and to avoid the licensor to be driven to file another suit.

28. In view of the above legal position, I do not think that the argument advanced by the learned counsel for the defendant/appellant raising the contention to the effect that instead of mandatory injunction, a suit for eviction or recovery, ought to have been filed, would succeed. In fact, no substantial question of law in the given facts of the case to be formulated to admit the Second Appeal.

29. To sum up, grant of relief of fixation of boundary and other reliefs by the trial court and the appellate court is perfectly justified and the said verdicts do not require any interference. In fact, no substantial question of law to be formulated in this case to

admit and maintain the Second Appeal.

30. In order to admit and maintain the Second Appeal, substantial question of law necessarily to be formulated by the High Court within the mandate of Order XLII Rule 2 Read with Section 100 of C.P.C.

31. In this case, the learned counsel for the defendant failed to raise any substantial question of law warranting admission of the Second Appeal. Order XLII Rule 2 provides thus:

> ***"2. Power of Court to direct that the appeal be heard on the question formulated by it.-****At the time of making an order under rule 11 of Order XLI for the hearing of a second appeal, the Court shall formulate the substantial question of law as required by section 100, and in doing so, the Court may direct that the second appeal be heard on the question so formulated and it shall not be open to the defendant to urge any other ground in the appeal without the leave of the Court, given in accordance with the provision of section 100."*

32. Section 100 of the C.P.C. provides that, (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. Proviso says 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.

33. In the decision in [2020 KHC 6507 : AIR 2020 SC 4321 : 2020 (10) SCALE 168], ***Nazir Mohamed v. J. Kamala and Others*** reported in the Apex Court held that:

> *The condition precedent for entertaining and deciding a second appeal being the existence of a substantial question of law, whenever a question is framed by the High Court, the High Court will have to show that the question is one of law and not just a question of facts, it also has to show that the question is a substantial question of law. In* ***Kondiba Dagadu Kadam v. Savitribai Sopan Gujar, [(1999) 3 SCC 722]****, the Apex Court held that:*
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> *"After the amendment a second appeal can be filed only if a substantial question of law is involved in the case. The memorandum of appeal must precisely state the substantial question of law involved and the High Court is obliged to satisfy itself regarding the existence of such a question. If satisfied, the High Court has to formulate the substantial question of law involved in the case. The appeal is required to be heard on the question so formulated. However, the respondent at the time of the hearing of the appeal has a right to argue that the case in the court did not involve any substantial question of law. The proviso to the section acknowledges the powers of the High Court to hear the appeal on a substantial point of law, though not formulated by it with the object of ensuring that no injustice is done to the litigant where such a question was not formulated*

at the time of admission either by mistake or by inadvertence."

"It has been noticed time and again that without insisting for the statement of such a substantial question of law in the memorandum of appeal and formulating the same at the time of admission, the High Courts have been issuing notices and generally deciding the second appeals without adhering to the procedure prescribed under S.100 of the Code of Civil Procedure. It has further been found in a number of cases that no efforts are made to distinguish between a question of law and a substantial question of law. In exercise of the powers under this section the findings of fact of the first appellate court are found to have been disturbed. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in the section must be strictly fulfilled before a second appeal can be maintained and no court has the power to add to or enlarge those grounds. The second appeal cannot be decided on merely equitable grounds. The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under this section. The substantial question of law has to be distinguished from a substantial question of fact."

"If the question of law termed as a substantial question stands already decided by a larger Bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court, its merely wrong application on the facts of the

case would not be termed to be a substantial question of law. Where a point of law has not been pleaded or is found to be arising between the parties in the absence of any factual format, a litigant should not be allowed to raise that question as a substantial question of law in second appeal. The mere appreciation of the facts, the documentary evidence or the meaning of entries and the contents of the document cannot be held to be raising a substantial question of law. But where it is found that the first appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as a substantial question of law. Where the first appellate court is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or of procedure requiring interference in second appeal."

When no substantial question of law is formulated, but a Second Appeal is decided by the High Court, the judgment of the High Court is vitiated in law, as held by this Court in Biswanath Ghosh v. Gobinda Ghose, AIR 2014 SC 152. Formulation of substantial question of law is mandatory and the mere reference to the ground mentioned in Memorandum of Second Appeal can not satisfy the mandate of S. 100 of the CPC.

34. In a latest decision of the Apex Court reported in [2023 (5) KHC 264 : 2023 (5) KLT 74 SC], ***Government of Kerala v. Joseph***, it was held as under:

> *For an appeal to be maintainable under Section 100, Code of Civil Procedure ('CPC', for brevity) it must fulfill certain well – established requirements. The primary and most important of them all is that the appeal should pose a substantial question of law. The sort of question that qualifies this criterion has been time and again reiterated by this Court. We may only refer to* ***Santosh Hazari v. Purushottam Tiwari, [2001 (3) SCC 179]*** *(three – Judge Bench) wherein this Court observed as follows:*
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> *12. The phrase "substantial question of law", as occurring in the amended S.100 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 S.109 of the Code or Art.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.*

35. The legal position is no more *res-integra* on the point that in order to admit and maintain a second appeal under Section

100 of the C.P.C, the Court shall formulate substantial question/s of law, and the said procedure is mandatory. Although the phrase 'substantial question of law' is not defined in the Code, 'substantial 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 S.109 of the Code or Art.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. As such, second appeal cannot be decided on equitable grounds and the conditions mentioned in Section 100 read with Order XLII Rule 2 of the C.P.C. must be complied to admit and maintain a second appeal.

36. In view of the above fact, no substantial question of law

arises in this matter to be decided by admitting this appeal.

In the result, this appeal is found to be meritless and the same is dismissed without being admitted.

Sd/-

(A.BADHARUDEEN, JUDGE)

rtr/

APPENDIX OF RSA 132/2022

PETITIONER'S ANNEXURES

Annexure A1	THE TRUE COPY OF THE MEMO DATED 25.03.2023 REGARDING PRODUCTION OF A SKETCH IN RESPECT OF THE DECREE SCHEDULE PROPERTY FILED BY THE COUNSEL FOR THE JD IN THE EP NO. 27 OF 2021 IN OS NO. 465 OF 2015.
Annexure A1(a)	THE TRUE COPY OF THE SKETCH PRODUCED ALONG WITH THE MEMO SHOWING THE EXACT LOCATION OF DECREE SCHEDULE PROPERTY PRODUCED IN EP NO.27/2021 IN OS NO. 465 OF 2015.
Annexure A2	A TRUE COPY OF THE EA NO.178 OF 2023 IN EP NO. 27 OF 2021 DATED 11.08.2023 FILED BY THE PETITIONER TO ISSUE A DIRECTION TO MEASURE THE PROPERTY ON THE BASIS OF THE RESURVEY RECORDS
Annexure A3	THE CERTIFIED COPY OF THE ORDER DATED 13.09.2023 IN EP NO.27 OF 2021 IN O.S.NO.465/2015 OF MUNSIFF'S COURT, KOCHI.