

Mohan Singh and ors. Vs. Ishar Singh (Deceased by L.Rs.) and ors.

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Court : Punjab and Haryana

Decided On : May-14-2004

Reported in : AIR2005P& H79

Judge : M.M. Kumar, J.

Acts : [Succession Act, 1925](#) - Sections 63

Appeal No. : Second Appeal No. 2955 of 1984

Appellant : Mohan Singh and ors.

Respondent : ishar Singh (Deceased by L.Rs.) and ors.

Advocate for Def. : Sandeep Bansal, Adv. (for Nos. 1, 2, 3 and 5),; M.S. Rahi, Adv. (for No. 4) and;

Advocate for Pet/Ap. : Sarwan Singh, Sr. Counsel,; A.S. Parmar and; N.S. Rapri

Disposition : Appeal dismissed

Judgement :

M.M. Kumar, J.

1. This is defendants appeal filed under Section 100 of the Code of Civil Procedure, 1908 (for brevity 'the Code') challenging concurrent findings of facts recorded by both the Courts below. It has been concurrently found by both the

Courts below that ownership of the suit land was divided between the parties by family partition Ex. DW 4/A executed on 25-6-1962 although trial Court had declined to accept the document for want of registration. It was further held that the Will propounded by defendant-appellant No. 5, Shri Dhanbir Singh was not genuine and the same was surrounded by suspicious circumstances. Both the Courts have found that it was not validly executed by the testator Smt. Rajo in favour of defendant-appellant Dhanbir Singh. The sale deed Ex. DW 10/A dated 7-3-1977 executed by the deceased mother of the plaintiff-respondent and defendant-appellant No. 5, Smt. Rajo through her purported attorney, defendant-appellant No. 5 in favour of defendant-appellant Nos. 1 to 4 was not a bona fide transfer for valuable consideration. Accordingly it has been held that no protection as contemplated by Section 41 of the Transfer of Property Act, 1882 (for brevity 'the 1882 Act') could be accorded to them. Feeling aggrieved, the defendant-appellants have approached this Court.

2. Data Ram who was the owner of the suit land died in January, 1962. He was survived by his widow Rajo and six sons namely Ishar Singh, Harcharan Singh, Gurdial Singh, Niranjan Singh and Kishan Singh who are plaintiff-respondents Nos. 1 to 5 and 6th son Dhanbir Singh who is defendant-appellant No. 5 in the instant appeal. All the six brothers along with their mother inherited the estate of Data Ram in equal share to the extent of 1/7th share each after his death. Smt. Rajo also died on 27-6-1978 when she was at a very advanced age. A dispute has arisen with regard to 1/7th share of the joint land held by Rajo after the death of Data Ram.

3. The plaintiff-respondent Nos. 1 to 5 filed a civil suit claiming joint possession of 5/6th share out of 1/7th share held by Rajo in the total joint land. At the centre of the controversy is the registered Will dated 14-12-1967 alleged to have been executed by Rajo in favour of defendant-appellant No. 5 on account of the services rendered and by virtue of love and affection for him. Another dispute is with regard to various sale deeds executed by Smt. Rajo personally or through her son Dhanbir Singh, defendant-appellant No. 5 who acted as her attorney. It is claimed that the sale deeds were not binding on them. The sale deed Ex. DW 10/A executed by defendant-respondent No. 5 in favour of his own sons i. e. defendant-

respondent Nos. 1 to 4 is also subject matter of challenge on the ground that the same is fraudulent. It was alleged that the Will Ex. D.1 dated 15-12-1967 was result of fraud, misrepresentation, undue influence and coercion as Rajo (the testator) was 95 years old. She was alleged to be incapable of understanding anything good or bad. The stand of the defendant-respondent No. 5 Dhanbir Singh was that there was a family partition Ex. DW4/A which was reduced to writing on 25-6-1962 duly attested by plaintiff-respondent Nos. 1 to 5 besides defendant-respondent No. 6 as well as deceased Smt. Rajo. It was alleged that the deed dated 25-6-1962 was in possession of the plaintiff-respondent and the factum of partition was accepted by all of them in the mutation proceedings before the Assistant Collector, 1st Grade, Dasuya. The other legal objections raised were that no particulars of any fraud, misrepresentation, undue influence or coercion allegedly practised by the defendant-respondent No. 5 were disclosed by the plaintiff-respondent. The suit was alleged to be time-barred assertion that Rajo separated from the plaintiff-respondents in the year 1962. Another allegation was that plaintiff-respondents Nos. 1 to 5 were gainfully employed and were living separately since the time of their father. After the death of Data Ram, defendant-respondent No. 5 was left with Rajo his mother and is claimed to have served her. The registered Will Ex. D. 1 dated 14-12-1967 is claimed to have been executed in favour of defendant-appellant No. 5 on account of love and affection and due to the services rendered. The testator Rajo is alleged to have bequeathed her whole property in favour of defendant-appellant No. 5. The sale deeds executed by defendant-appellant No. 5 on the basis of power of attorney dated 6-2-1969 were also defended by denying the allegation that Rajo was mentally infirm or had lost her mental faculties. The sale of the land made by Rajo was necessitated as cash amount was required in connection with the marriage of her father's sister's son and daughter.

4. The sale deed executed in favour of defendant-appellant Nos. 1 to 4 and some others executed by Rajo in their favour were defended by pleading that Smt. Rajo was in exclusive possession of the land transferred in their favour. They claimed protection of Section 41 of the 1882 Act pleading that they were bona fide purchasers for valuable consideration. Similar written statements were filed by other vendees defending their sale deeds and seeking the protection of Section 41

of the 1882 Act.

5. The trial Court after a detailed examination of evidence concluded, that the Will Ex. D. 1 was not executed by its testator Smt. Rajo as it was surrounded by a numerous suspicious circumstances. The sale deeds Ex. DW 10/A dated 7-3-1977 executed in favour of defendant-appellant Nos. 1 to 4 who are the sons of defendant-appellant No. 5 have been found to be without consideration. It has been further held that they were not bona fide transferees for valuable consideration and therefore they were not entitled to the protection provided by Section 41 of the 1882 Act.

6. The aforementioned findings recorded by the Civil Judge have been affirmed when the defendant-appellants filed their first appeal under Section 96 of the Code. The learned District Judge, Hoshiarpur found that the relationship between the plaintiff-respondents 1 to 5 and Rajo, the testator, their mother was cordial despite the fact that they were in Government service and the plaintiff-respondents have been found to be visiting their village on holidays and during leave period. Even one of the plaintiff-respondents has built his house in the village. The testimony of the brother of Data Ram namely Jiwan Singh DW 12 has also been relied upon to arrive at the aforementioned conclusion. On the basis of the aforementioned findings, the District Judge has found that non-mentioning of even the names of the plaintiff-respondents and depriving them of any share coupled with other facts would be a suspicious circumstance. The views of the learned District Judge read as under :

'It is well settled that if the testator discards her own kith and kin for no obvious reason in the Will, it by self becomes a suspicious circumstance which calls for an explanation from the propounder. A bare reading of Will Ex. D. 1 would show that not to speak of any reason given by Smt. Rajo of denying any share to the plaintiffs in her property, the Will does not even refer to their names at all. It even does not mention if Smt. Rajo had any other son apart from defendant-appellant. The explanation of defendant-appellant Dhanbir Singh that since the plaintiffs were away and he was alone with her in the village, she was to bestow the property on him alone is not acceptable on the face of it when it is admitted by his own witness

DW 5 Ujagar Singh that Kishan Singh, one of the plaintiffs resides in the same village. He is employed as a teacher.'

7. Another suspicious circumstance which had led the learned District Judge to affirm the finding¹ is active participation of defendant-respondent No. 5 in the execution of the Will. He¹ is found to have attested the Will. Defendant-appellant No. 5 is found to have procured the marginal witnesses of the Will namely Jagdish Mitter and Khan Chand who were his close associates and did not have any relationship with Rajo, the testator. Discussing the relationship between defendant-appellant No. 5 and the 1 marginal witnesses, the learned District Judge has referred to various other transactions which amply demonstrate their association. Their association has been proved despite the fact that any association was completely denied by defendant-appellant No. 5. Holding that defendant-appellant No. 5 lacks bona fide and has told a lie, the learned District Judge has observed as under :

'... the marginal witnesses Jagdish Mitter and Khan Chand were not independent witnesses on whom Smt. Rajo could rely but rather were the henchmen of Dhanbir Singh-appellant. It is no doubt true that when Will is proved to have been executed by the testator from the testimony of the marginal witnesses or the scribe, normally its due execution is accepted. However, if the marginal witnesses are not found to be independent and have bias in favour of the propounder, the genuineness of the execution of the Will becomes suspicious.'

8. On the basis of the aforementioned evidence and the detailed discussion of the oral account which led to the dictation, preparation, attestation, registration and other formalities of the Will, the learned District Judge recorded the following categorical finding :

'The discrepant testimony of all these witnesses would only show that Dhanbir Singh, in fact was shadow behind the scene of the execution of the Will and he had collected these two persons of his own choice and they were under his own influence. Yet another admission on the part of Khan Chand PW-3 would show that the contents of the Will were not read over to Smt. Rajo before the Sub-Registrar when he stated that it was Dhanbir Singh (defendant-appellant) who had

told the Sub-Registrar that Smt. Rajo presented before him and executed the Will. The presence of Dhanbir Singh has been marked on the endorsement of the Sub-Registrar.'

9. The learned District Judge has also found that the recitals in the Will Ex. DI with regard to bequeathing of her property by the testator rendered it discrepant when it declared that the property was bequeathed to defendant-appellant No. 5 on account of services rendered. It has been found that the testator Rajo used to look after herself by meeting all the expenses from her own income which might have been derived by her from the sale consideration of the land sold. Moreover, plaintiff-respondent Nos. 1 to 5 were also visiting Smt. Rajo during her life time which would indicate that she had equal love and affection for them. On the basis of the aforementioned findings, even the registration of the Will has been found to be inconsequential. The testimony of Khan Chand DW-3 and Jagdish Mitter DW-2 have been seriously doubted. The statement of Khan Chand DW-3 is found to have cast serious doubt when he stated to the effect that defendant-appellant told the sub-Registrar that the Will was being made by Rajo.

10. The learned District Judge, however, found that the document dated 30-6-1962 Ex DW4/A recited the family partition after the death of Data Ram in January, 1962. The parties have been continuing in their exclusive possession under the family settlement and have acted upon it. The views of the learned District Judge read as under :

'The facts discussed above would show that the parties had long partitioned their shares after the demise of Data Ram and they are continuing in exclusive possession of their shares under the family settlement which was brought into writing vide deed Ex. D4/A. The evidence on the record further shows that it was for the first time that the parties partitioned their joint holdings on 25-6-1962 vide Ex. DW4/B. Rather, they had brought into writing the extent of their exclusive shares vide this document and they even made transfers out of their respective shares and even Smt. Rajo alienated part of the land out of her share vide sale deed which has been upheld by the trial Court. It is, thus, proved that the Joint ownership was since divided by the family partition and the finding of the trial

Court on the issue No. 2 being against the facts and circumstances of the case are hereby reversed and this issue is decided in favour of the defendant-appellant. As a corollary to this finding and on the basis of the finding on the Will, it is clear that the plaintiffs and the defendant-appellant have in their possession separate shares of which they are exclusive owners and the plaintiffs and defendant-appellant Dhanbir Singh are entitled to joint possession only to the estate left by Smt. Rajo.'

11. It has thus become clear that the only dispute between defendant-appellant No. 5 and plaintiff-respondent Nos. 1 to 5 is with regard to 1/7th share of Rajo who had died on 27-6-1978 and the sale deeds executed by her through her attorney defendant-appellant No. 5 in favour of defendant-appellant Nos. 1 to 4 who are his sons. Both the Courts below have found that the sale deed Ex. DW 10/A was without any consideration. The learned District Judge has found that sale deed is suspicious because the vendees were the sons of the attorney defendant-appellant No. 5 who executed the sale deed. The views of the learned District Judge read as under :

'this sale deed becomes suspicious on the score because the transfer is in the name of the sons of the attorney. It shall not be out of place to mention here that defendant-appellant Dhanbir Singh, who executed this sale deed as an attorney of Smt. Rajo has set up a Will of the entire property of Smt. Rajo in his favour. There was hardly any question of alienating this land in the name of his own sons. In order to make this sale a valid one, there must be some valid reason for Smt. Rajo to have parted this part of her property through this sale deed. The recital in this document would show that no sale consideration was paid before the Sub-Registrar by the vendees and it further mentions that the amount of the sale was already received for household expenses. The vendee defendant-appellant Mohan Singh appeared as DW-18 and stated that he had sent Rs. 50,000 to his father when he had gone to Australia. Defendant Dhanbir Singh does not state if any amount so received from his son Mohan Singh was paid to Smt. Rajo earlier to the sale deed Ex. DW-10/A for household expenses. The defendant Mohan Singh also failed to bring on the record any documentary evidence to show if; any amount was actually sent by him to Dhanbir Singh from Australia much less for payment to Smt. Rajo for her household expenses. It is well settled that an attorney is

appointed for the management of the property. The power of attorney in the name of Dhanbir Singh executed by Smt. Rajo Ex. D2 is dated 6-2-1982. It empowers, no doubt the attorney to make transfer by sale etc. of his property. However, the very nature of the authority vested in the attorney, it has to be exercised only if it was necessary for the purpose of management. The recital in sale deed Ex. DW-10/1 does not meet such requirements of any management of the property of Smt. Rajo by Dhanbir Singh in any manner by executing the sale deed. In the circumstances, there is no convincing evidence to uphold this transfer by Dhanbir Singh, defendant-appellant in favour of his own sons defendant-appellant Nos. 2 to 5.'

12. Shri Sarwan Singh learned Senior counsel for the defendant-appellants has argued that it has been accepted by both the Courts below that defendant-appellant No. 5 used to live with his mother in the village and it was natural for him to be present at the time of execution of the Will Ex. D.I dated 14-12-1967. Learned counsel has argued that a mere participation by the beneficiary in the execution of the Will itself is no ground to discard the Will especially when it is a registered document. In support of his submission, the learned counsel has placed reliance on a judgment of the Supreme Court in the case of Malkani v. Jamadar, AIR 1987 SC 767. Learned counsel has also disputed the fact that the sale deed Ex. DW1/A could be declared invalid on the ground that no consideration was paid. According to the learned counsel the protection of Section 41 of the 1872 Act has been accorded to by all the vendees by both the Courts but defendant-appellant Nos. 1 to 4 who are bona fide purchasers have not been given that protection. Learned counsel maintains once the sale deed has been executed the passing of sale consideration has to be presumed and in the absence of any such evidence such presumption shall be taken to be unrebutted.

13. Shri Sandeep Bansal, learned counsel for plaintiff-respondent Nos. 1 to 4 has argued that the document Ex. D. 1 dated 14-12-1967 cannot be considered to have been validly executed as there are numerous unexplained suspicious circumstances. According to the learned counsel the absence of the names of plaintiff-respondents in the body of the Will especially when there was no finding regarding the allegation about the strained relationship between the testator Rajo

and the plaintiff-appellants. Learned counsel has drawn my attention to the statement made by DW-10 Jiwan Singh who had admitted that Rajo treated all her sons alike and had no grudge or enmity with any one in any way. Learned counsel has also argued that defendant-respondent is one of the attesting witnesses of the Will and his role of procuring the two witnesses namely Jagdish Mittar DW-2 and Khan Chand DW-3 has also created suspicion about his bona fide. Learned counsel maintains that both these witnesses are closely associated with defendant-appellant No. 5 and have been helping each other in various transactions referred to by the learned District Judge in para 15 of the judgment. He has referred to the execution of a surety bond (Tamasak) Ex. DW-1/A executed by Khan Chand for the purposes of raising a loan from the society of which defendant-appellant No. 5 was the treasurer. This document was attested by no one else but Jagdish Mittar DW-2 and duly signed by defendant-appellant No. 5. He has also drawn my attention to the sale deed Ex. DW-10/1 showing transfer of land in favour of defendant-appellant Nos. 1 to 4 who are the sons of defendant-appellant No. 5. This transfer was made by defendant-appellant No. 5 on the basis of power of attorney given by Rajo to him. Learned counsel has maintained that this sale deed is liable to be set aside as has been rightly held by the Courts below. He has emphasised that Jagdish Mittar DW-2 has been a witness on various documents and sale deeds executed by defendant-appellant No. 5 including the sale deed referred to in para 31 of the judgment of the trial Court in favour of one Avinash Chander which is Ex. DX/1. On account of their close relationship the sale deed Ex. DW-10/1 has been rightly set aside by the Courts below. He has also pointed out that no sale consideration was paid before the Sub Registrar which confirms the suspicion that the sale deed was executed by the defendant-appellant No. 5 in favour of the defendant-appellant Nos. 1 to 4.

14. Learned counsel has attacked the finding of the learned District Judge upholding the family partition Ex. DW-4/A. According to the learned counsel this finding cannot be sustained as registration of document of family partition was absolutely necessary under Section 17(1)(b) of the Registration Act, 1908. According to the learned counsel the trial Court has specifically found that partition alleged to have been witnessed by Ex. DW-4/A was not implemented and the same has not been proved ;in accordance with law. Learned counsel has placed

reliance on a judgment of the Supreme Court in the case of H. Venkatachala Iyengar v. B.N. Thimmajamma, AIR 1959 SC 443 and two judgments of this Court in the cases of Ganpat v. Siri Chand, 1991 Punj LJ 669 and Avtar Singh v. Mst. Bhagi, 1993 Pun LJ 188.

15. Shri M.S. Rahi, learned counsel has raised an additional argument on behalf of the plaintiff-respondent that once there are concurrent findings of facts recorded by both the Courts below no appeal under Section 100 of the Code would be competent. According to the learned counsel there is no substantive question of law raised in the appeal warranting interference by this Court. In support of his submission, the learned counsel has placed reliance on a judgment of the Supreme Court in the case Santosh Hazari v. Purushottam Tiwari, AIR 2001 SC 965.

16. After hearing the learned counsel for the parties and perusing the record of the Courts below, I am of the considered view that this appeal is without any merit and is liable to be dismissed. It is elementary to observe that onus to prove the testamentary present is on the propounder and the onus becomes heavier if there are suspicious circumstances. The propounder is under a legal obligation to dispel all the suspicious circumstances by adducing convincing and cogent evidence. The Supreme Court in the case of H. Venkatachala Iyengar, (AIR 1959 SC 443) (supra) has held that the propounder must show by satisfactory evidence that the Will was signed by the testator and he was at the relevant time in a sound disposing state of mind; that he understood the nature and effect of disposition and then put the signature on the document of his own free Will. A constitution Bench has reiterated the aforementioned view in the case of Shashi Kumar Banerjee v. Subodh Kumar Banerjee, AIR 1964 SC 529. The observations of their Lordships in this regard read as under (Para 4 of AIR) :

'The onus of proving the Will is on the propounder and in the absence of suspicious Circumstances surrounding the execution of the Will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of

the Court before the Court accepts the Will as genuine. Where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. Even where there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the Court. The suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the Will being unnatural, improbable or unfair in the light of relevant circumstances or there might be other indications in the Will to show that the testator's mind was not free. In such a case the Court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last Will of the testator. If the propounder himself takes part in the execution of the Will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the Court would grant probate, even if the Will might be unnatural and might cutoff wholly or in part near relations.'

17. There are other judgments on the issue that all the doubts are required to be removed by the propounder and he has to explain the suspicious circumstances to the complete satisfaction of the Court. Reference in this regard may be made to the cases of *Indu Bala Bose v. Manindra Chandra Bose*, (1982) 1 SCC 20 : (AIR 1982 SC 133); *Gurdial Kaur v. Kartar Kaur*, (1998) 4 SCC 384 : (AIR 1998 SC 2861) and *Vrindavanibai Sambhaji Mane v. Ram Chandra Vithal Ganeshkar*, (1995) 5 SCC 215 : (AIR 1995 SC 2086), It is appropriate to notice the participation of the propounder in the execution of the Will would give rise to a suspicious circumstance which must be satisfactorily explained by the propounder of the Will. Ordinarily, the active participation of the propounder of the Will in its execution would lead to a suspicious circumstance which in the absence of satisfactory explanation, would be considered as fatal. Reference in this regard may be made to the judgment of the House of Lords in *Fulton v. Andrew*, (1875) and HL 448; *Barry v. Butlin*, (1838) 2 Moo PC 480; *Sarat Kumari Bibi v. Sakhi Chand*, 56 Ind App 62 : (AIR 1929 PC 45) and *Tyrrell v. Painton*, 1894, p. 151. All the aforementioned judgments have been relied upon and followed by the Supreme Court in the case of *Gorantla Thataiah v. Thotakura Venkata Subbaiah*,

AIR 1968 SC 1332. It has been held that those who take benefit under a Will and have been instrumental in preparing or obtaining it, have thrown upon themselves the onus of showing the righteousness of the transaction. There is no unyielding rule of law that when it has been proved that a testator competent in mind has had a will read over to him and has thereupon executed it, all further enquiries are shut out.

18. It may also be pertinent to mention that registration of the Will would be prima facie evidence of genuineness of the Will but that by itself is not sufficient to dispel all suspicions existing regarding the Will without submitting the evidence or registration to a close examination. This principle has been laid down by the Supreme Court In Rani Purnima Devi v. Khagendra Narayan, AIR 1962 SC 567; Gurdial Kaur's case (AIR 1998 SC 2861) (supra) and P.P.K. Gopalan Nambiar v. P.P.K. Balakrishna Nambiar, AIR 1995 SC 1852.

19. It is no doubt true that deprivation of natural heir by the testatrix would not by itself constitute a suspicious circumstance because the very object of the execution of the Will is to interfere with the normal line of succession. Therefore, natural heir would be debarred in every case of Will. The aforementioned principles have been laid down in the judgments of the Supreme Court in the cases of Rabindra Nath Mukherjee v. Panchanan Banerjee, (1995) 4 SCC 459 : (AIR 1995 SC 1684); Vrindavanibai's case (AIR-1995 SC 2086) (supra) and Ramabai Padmakar Patil v. Rukmnibai Vishnu Vekhande, (2003) 8 SCC 537 : (AIR 2003 SC 3109). However, exclusion of other legal heirs from the Will coupled with the findings of facts would become relevant consideration.

20. When the principles enunciated in the aforementioned judgments are applied to the facts of the present case it becomes evident that there are insurmountable difficulties for the defendant-appellants. The suspicious circumstances found by the Courts below that he actively participated in the execution of the Will by becoming attesting witness as well as procuring DW-2 Jagdish Mittar and DW-3 Khan Chand would go a long way to show that the Will cannot be accepted as being free -from suspicious circumstances. It is true that registration is a prima facie evidence of genuineness of the Will but that by itself is not sufficient to dispel

all suspicion existing regarding the Will. The omission to make a mention of the names of plaintiff-respondent Nos. 1 to 5 is not itself a suspicious circumstance but if it is viewed in the light of the fact that defendant-appellant No. 5 had actively participated in the execution of the Will then it assumes a greater significance. Similarly the sale deed Ex. DW-1/A has been held to be executed by the defendant-appellant on behalf of Rajo her mother being her attorney. The sale deed was executed by defendant-respondent No. 5 in favour of his own sons and has been found to be without consideration. These suspicious circumstances have not been dispelled by the defendant-appellants and no evidence has been produced to show that the participation by the defendant-appellant in the execution of the Will or the procurement of the marginal witnesses by him has not affected the mind of the testator or that the testatrix had executed the Will out of her own volition.

21. Moreover, it is equally well settled that in the absence of any substantial question of law, this Court will not re-appreciate evidence and record a conclusion other than the one recorded by the Courts below. The judgment of the Supreme Court in Santosh Hazari's case (AIR 2001 SC 965) (supra) on which reliance has been placed by the counsel for the plaintiff-respondents has interpreted the expression 'substantial question of law'. Placing reliance on the judgment of the Constitution Bench of the Supreme Court in the case of Chuni Lal Mehta and Sons Ltd. v. Century Spinning and ., AIR 1962 SC 1314, their Lordships observed as under (at pp. 968, Para 14 of AIR) :

'A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be 'substantial' a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned. To be a question of law 'involved in the case' there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by Courts of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the

root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity to avoid prolongation in the life of any lis.'

22. For the reasons recorded above, this appeal fails and the same is dismissed.

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