Mahesh Prasad Vs Hira Devi Shiksha Samiti and Others

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: Aug. 19, 2009

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 41 Rule 33, 100

Citation: (2010) 3 AWC 2668

Hon'ble Judges: Anil Kumar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Anil Kumar, J.
Heard Sri M.A. Khan, senior advocate assisted by Sri Mohinuddin Khan, learned Counsel for the appellant and Sri Ravi

Shanker Tewari, learned Counsel for the respondents.

2. This is the defendants second appeal by which he has challenged the Judgment and decree dated 20.2.2008, passed by Additional District

Judge, Court No. 1, Lucknow and judgment and decree dated 9.8.1999, passed by Civil Judge (Junior Division), Lucknow.

3. Facts giving arise to the dispute are that the plaintiff Hira Devi Shiksha Samiti through its President, Sri Radhey Shyam Gupta had purchased a

plot No. 663 situated at Abadi Mohalla Itaunja, Pargana Mahona, Tehsil Malihabad, district Lucknow through a registered sale deed executed on

1.9.1977 by Sri Bhanu Pratap Singh, the authorized agent of Rani Damyanti Kaur, the owner in possession of the said plot for use by Hira Devi

Shiksha Samiti Girls School, Itaunja and after purchasing and taking possession of the said plot, the plaintiff started digging foundations for erecting

boundary of the plot purchased on 5.9.1977 also trying to interfere with the possession of the plaintiff from using the land, as such the plaintiff

having no other option but to file a suit for permanent injunction.

4. The defendant No. 2 (Mahesh Prasad) in the said suit filed his written statement, inter alia, stating therein that Rani Damyanti Kaur was not the

owner of the alleged property suit and Bhanu Pratap Singh was not the mukhtar of Smt. Rani Damyanti Kaur and the plaintiff had no right to

purchase it and the title in the property alleged to be subject-matter of the suit never passed to the plaintiff through the alleged fictitious sale deed

and the plaintiff is not the owner of the alleged property in suit, not in possession of it and thus has no right to file the suit.

5. On the basis of the pleadings by the parties learned trial court had framed the following issues:

1. Whether the plaintiff is entitled to recover Rs. 500 from defendants?

2. Whether the plaintiff has been the owner in possession of property consisting in plot No. 665 and so he is entitled to obtain the relief on

permanent injunction?

6. Thereafter, taking into consideration the pleadings, evidence led by the parties and after hearing them the trial court by means of judgment and

decree dated 19.8.1999 allowed the suit of the plaintiff thereby restraining the respondents from interfering in the peaceful possession over the

property in question.

7. Aggrieved by the said judgment and decree passed by the trial court in Regular Suit No. 58 of 1972. The appellant (Mahesh Prasai) had filed

an Appeal No. 217/99 in the court of Additional District Judg;, Court No. 1, Lucknow and the same was also dismissed by means of judgment

and decree dated 20.2.2008.

8. Present second appeal has been filed by the appellant/defendant before this Court aggrieved by the above said judgments and decree passed by

the courts below.

9. Learned Counsel for the appellant/defendant has raised a number of substantial question of law but the following substantial question of law

were pressed:

(a) Whether the respondent No. 1 having failed to prove its possession that the property in dispute purchased under registered sale deed dated

1.9.1977 executed by Bhanu Pratap Singh, the so called attorney of Rani Damyanti Kaur, the courts below were justified in law in decreeing the

suit.

(b) Whether it was not incumbent upon the respondent No. 1 to prove the vendor"s title and having failed to do so, the courts below were justified

in law in decreeing the suit, merely on surmises and conjectures.

(d) Whether the judgment passed by the lower appellate court is vitiated for non-compliance of the provisions of Order XLI, Rule 33 of the Code

of Civil Procedure.

10. A perusal of the judgment passed by the courts below clearly shows that Lalla Singh, the predecessor in interest/transferor of Rani Damyanti

Kaur got entire memja of Itaunja irrespective of nature and character of the land by way of partition which has taken place amongst co-sharers of

Lalla Singh and the factum of partition was duly proved in the present case, thereafter, the land in question was transferred by Lalla Singh in favour

of Smt. Rani Damyanti Kaur. Smt. Rani Damyanti Kaur through power-of-attorney holder Bhanu Pratap Singh vide registered sale deed dated

1.9.1997 has sold the property in question in favour of the plaintiff/respondent.

11. In view of the above said categorical finding of facts which has been given by the courts below that Lalla Singh had lawfully transferred the land

in question in favour of Smt. Rani Damyanti Kaur and subsequent transfer in favour of the plaintiff-society by Rani Damyanti Kaur is therefore valid

one and since the transfer of the property vide sale deed dated 1.9.1997, plaintiff-society is in possession of the property in question.

12. The arguments advanced by the learned Counsel for the appellant in support of the first two substantial question of law have got no force

accordingly the same are rejected.

13. The next submission made by the learned Counsel for the appellant that the judgment passed by the appellate court is vitiated for non-

compliance of the provisions of Order XLI. Rule 31, C.P.C.

14. In the case of G. Amalorpavam and Others Vs. R.C. Diocese of Madurai and Others, the Hon''ble Supreme Court has held that:

The question whether in a particular case there has been substantial compliance with the provisions of Order XLI, Rule 31, C.P.C. has to be

determined on the nature of the judgment delivered in each case. Non-compliance with the provisions may not vitiate the judgment and make it

wholly void, and may be ignored if there has been substantial compliance with it and the second appellate court is in a position to ascertain the

findings of the lower appellate court. It is no doubt desirable that the appellate court should comply with all the requirements of Order XLI. Rule

31, C.P.C. But if it is possible to make out from the Judgment that there is substantial compliance with the said requirements and that justice has

not thereby suffered, that would be sufficient. Where the appellate court has considered the entire evidence on record and discussed the same in

detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate court there is

substantial compliance with the provisions of Order XLI, Rule 31, C.P.C. and the Judgment is not in any manner vitiated by the absence of a point

of determination. Where there is an honest endeavour on the part of the lower appellate court to consider the controversy between the parties and

there is proper appraisement of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on

both sides is clearly manifest by the perusal of the judgment of the lower appellate court, it would be a valid judgment even though it does not

contain the points for determination. The object of the rule in making it incumbent upon the appellate court to frame points for determination and to

cite reasons for the decision is to focus attention of the Court on the rival contentions which arise for determination and also to provide litigant

parties opportunity in understanding the ground upon which the decision is founded with a view to enable them to know the basis of the decision

and if so considered appropriate and so advised to avail the remedy of second appeal conferred by Section 100, C.P.C.

15. As such the submission made in this regard by the learned Counsel for the petitioner has got no force and the same is accordingly rejected.

16. Learned Counsel for the plaintiffs/respondents has submitted that findings recorded by the courts below cannot be set aside on flimsy

arguments advanced on behalf of the appellants and without there being any question of law. In the instant case, arguments of the counsel for the

appellants are factual in nature and by no stretch of imagination can constitute substantial questions of law. Reappraisal of evidence is not

permissible. Interference of the facts from recital or content of the document or after shifting oral evidence does not leave any scope of reappraisal

in exercise of Jurisdiction u/s 100, C.P.C.

17. The Apex Court depreciated the liberal construction and generous application of provisions of Section 100, C.P.C. Hon"ble Supreme Court

was of the view that only because there is another view possible on appreciation of evidence that cannot be sufficient for interference u/s 100,

C.P.C.

18. In the case of Veerayee Ammal Vs. Seeni Ammal, the Hon"ble Supreme Court has held as under:

We have noticed with distress that despite amendment, the provisions of Section 100 of the Code have been liberally construed and generously

applied by some Judges of the High Courts with the result that objective intended to be achieved by the amendment of Section 100 appears to

have been frustrated. Even before the amendment of Section 100 of the Code, the concurrent finding of facts could not be disturbed in the second

appeal.

19. In the case of Santosh Hazari v. Purshottam Tiwari 2001 (92) RD 336 : 2001 (1) AWC 824 , Hon"ble Supreme Court had held that a point

of law which admits of no two opinions may be 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. If will, therefore, depend on the facts and circumstances

of the each case whether a question of law is substantial one and involved in the case or not? The same view has been expressed by the Apex

Court in the case of Govindaraju v. Mariamma, 2005 (99) RD 731 : 2005 (1) AWC 787 .

20. For the afore-going reasons, the judgments under challenge cannot be interfered.

Accordingly, the second appeal lacks merit and is dismissed.