
(2014) 107 ALR 43 : (2015) 126 RD 41

Allahabad High Court

Case No: Second Appeal No. 1026 of 2014

Bhoora

APPELLANT

Vs

Kamlesh Sharma

RESPONDENT

Date of Decision: Sept. 15, 2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 41 Rule 31, 100

Citation: (2014) 107 ALR 43 : (2015) 126 RD 41

Hon'ble Judges: Anil Kumar, J

Bench: Single Bench

Advocate: Syed Wajid Ali, Advocate for the Appellant; Vidya Bhushan Srivastava, Advocate for the Respondent

Judgement

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Anil Kumar, J.

Heard Shri Syed Wajid Ali, learned Counsel for the appellant, Shri P.N. Saxena, Senior Advocate assisted by Shri Vidya

Bhushan Srivastava, Advocate and perused the record. Facts in brief of the present case are that initially plaintiff-respondents filed a suit for

specific performance registered as Original Suit No. 34 of 2007 on the ground that a registered agreement to sale dated 12.1.2004 was entered

into between the deceased appellant No. 1 and the plaintiffs/respondents wherein it is postulated that the plaintiffs/respondents will get the sale-

deed executed from vendor upto 30.5.2004. In case they failed to get the sale-deed executed, the amount of earnest money would be forfeited.

The said consideration was fixed for Rs. 2.45 lakh, out of which, the plaintiffs/respondents had paid Rs. 50,000/- to the vendor and rest of the

amount was agreed to be paid at the time of execution of the sale-deed. In addition to the said matter, the Suit No. 67 of 2007 has also been filed

by the defendants/appellants.

2. As controversy involved in both suits is based on same facts so Trial Court clubbed Suit Nos. 34 of 2007 and 67 of 2007 heard together and

decided by judgment and decree dated 30.8.2013 by which the suit of the plaintiff/respondent (Original Suit No. 34 of 2007) decreed for refund

of the money with 18% from 12.1.2004 till payment and the Suit No. 67 of 2007 filed by the Bhoora (now deceased) has been dismissed.

3. Thereafter, Civil Appeal No. 76 of 2013 has been filed against the judgment and decree of the Trial Court dated 30.8.2013 passed in Original

Suit No. 34 of 2007 and Civil Appeal No. 83 of 2013 filed challenging the judgment and decree dated 30.8.2013 passed in Suit No. 67 of 2007.

4. Appellate Court clubbed both the appeals and by judgment and decree dated 16.8.2014 passed by Additional District Judge, Court No. 2,

Rampur, allowed the Civil Appeal No. 76 of 2013 and dismissed the Civil Appeal No. 83 of 2013.

5. Accordingly, the defendants/appellants filed the present second appeal challenging the impugned judgment and decree dated 16.8.2014 in Civil

Appeal No. 76 of 2013 passed by" Additional District Judge, Court No. 2, Rampur arising out of the judgment and decree dated 30.8.2013

passed in Original Suit No. 34 of 2007 by Additional Civil Judge (S.D.), Rampur.

6. In addition to substantial question of law which has been formulated by the defendants/appellants in the memo. of appeal, the following

substantial question of law is also framed as per the provisions as provided under sub-section (4) of section 100, C.P.C., "whether it is not

mandatory on the part of the Appellate Court to frame the point of determination as per the provisions as provided under Order XLI, Rule 31,

C.P.C.?

7. With the consent of learned Counsel for the parties who are present today, present appeal is being heard and decided on the question of law as

framed above in view of the provisions as provided under sub-section (5) of section 100, C.P.C. at this stage.

8. After hearing learned Counsel for the appellant and going through the record, the admitted position which emerge out is to the effect that while

passing the judgment and decree dated 16.8.2014, the Appellate Court has not framed the point of determination as provided under Order XLI,

Rule 31, C.P.C. the said exercise is mandatory on the part of the Appellate Court as per judgment given by Hon"ble the Apex Court in the case of

Union of India (UOI) and Another Vs. Ranchod and Others, has held as under:

Section 54 of the Act, insofar as relevant for the purposes of the present appeals, says that subject to the provisions of the Code of Civil

Procedure, 1908, applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in

force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award of the Court.

Order XLI, C.P.C. deals with appeals from original decrees. Order XLI, Rule 31 lays down that the judgment of the Appellate Court shall be in

writing and shall state (a) the points for determination, (b) the decision thereon, (c) the reasons for the decision, and (d) where the decree appealed

from is reversed or varied, the relief to which the appellant is entitled. This provision has come up for consideration in innumerable occasions and

its meaning and scope has been explained. It is not necessary for us to refer to various decisions but we will refer to one of the recent judgments

given in G. Amalorpavam and Others Vs. R.C. Diocese of Madurai and Others, , wherein this Court observed as under:

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 higher 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 having 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 appraisal 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.

9. In *Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury*, , an observation was made that it is not the duty of the Appellate Court

when it agrees with the view of the Trial Court on the evidence either to restate the effect of the evidence or to reiterate the reasons given by the

Trial Court. Expression of general agreement with reasons given by the Court decision of which is under appeal would ordinarily suffice.

10. The aforesaid observation in *Girja Nandini Devi (supra)* is often misunderstood and sometimes the Courts while delivering a judgment of

affirmance have adopted a shortcut method of not considering the evidence but merely expressing a general agreement with the reasons given by

the Trial Court. This case was considered in *Santosh Hazari Vs. Purushottam Tiwai (Dead)* by Lrs., , wherein it was observed as below:

The Appellate Court has jurisdiction to reverse or affirm the findings of the Trial Court. First appeal is a valuable right of the parties and unless

restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the Appellate Court must,

therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising alongwith the contentions put

forth, and pressed by the parties for decision of the Appellate Court. The task of an Appellate Court affirming the findings of the Trial Court is an

easier one. The Appellate Court agreeing with the view of the Trial Court need not restate the effect of the evidence or reiterate the reasons given

by the Trial Court; expression of general agreement with reasons given by the Court, decision of which is under appeal, would ordinarily suffice

(see *Girja Nandini Devi v. Bijendra Narain Choudhury*). We would, however, like to sound a note of caution. Expression of general agreement

with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the Appellate Court for shirking the duty

cast on it. While writing a judgment of reversal the Appellate Court must remain conscious of two principles. Firstly, the findings of fact based on

conflicting evidence arrived at by the Trial Court must weigh with the Appellate Court, more so when the findings are based on oral evidence

recorded by the same Presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the Appellate

Court is not competent to reverse a finding of fact arrived at by the Trial Judge. As a matter of law if the appraisal of the evidence by the Trial

Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the Appellate Court is entitled to

interfere with the finding of fact.

There being total non-compliance of the mandatory provisions of Order XLI, Rule 31, C.P.C. we have no option but to set aside the judgment of

the High Court and remand the matter to the High Court for fresh consideration of the appeals.

11. Hon"ble the Apex Court in the case of United Engineers and Contractors Vs. Secretary to Govt. A.P. and Others, has held as under:

This Court has considered the scope of Order XLI, Rule 31, Code of Civil Procedure in H. Siddiqui (dead) by L.Rs. Vs. A. Ramalingam, and

held as under:

The said provisions provide guidelines for the Appellate Court as to how the Court has to proceed and decide the case. The provisions should be

read in such a way as to require that the various particulars mentioned therein should be taken into consideration. Thus, it must be evident from the

judgment of the Appellate Court that the Court has properly appreciated the facts/evidence, applied its mind and decided the case considering the

material on record. It would amount to substantial compliance of the said provisions if the Appellate Court's judgment is based on the independent

assessment of the relevant evidence on all important aspect of the matter and the findings of the Appellate Court are well founded and quite

convincing. It is mandatory for the Appellate Court to independently assess the evidence of the parties and consider the relevant points which arise

for adjudication and the bearing of the evidence on those points. Being the final Court of fact, the first Appellate Court must not record mere

general expression of concurrence with the Trial Court judgment rather it must give reasons for its decision on each point independently to that of

the Trial Court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for

consideration in terms of the said provisions and the Court must proceed in adherence to the requirements of the said statutory provisions. (Vide:

Thakur Sukhpal Singh Vs. Thakur Kalyan Singh, ; Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, ; G. Amalorpavam and Others

Vs. R.C. Diocese of Madurai and Others, ; Shiv Kumar Sharma Vs. Santosh Kumari, and Gannmani Anasuya and Others Vs. Parvatini

Amarendra Chowdhary and Others, .

12. In B.V. Nagesh and Another Vs. H.V. Sreenivasa Murthy, , while dealing with the issue, this Court held as under:

The Appellate Court has jurisdiction to reverse or affirm the findings of the Trial Court. The first appeal is a valuable right of the parties and unless

restricted by law, the whole case therein is open for re-hearing both on questions of fact and law. The judgment of the Appellate Court must,

therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising alongwith the contentions put

forth and pressed by the parties for decision of the Appellate Court. Sitting as a Court of appeal, it was the duty of the High Court to deal with all

the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be

heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by

giving reasons in support of the findings. [Vide: Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., and Madhukar and Others Vs. Sangram

and Others,].

13. Hon"ble the Apex Court in the case of A.M. Sangappa @ Sangappa Vs. Sangondeppa and Another, has held as under:

In a series of decisions, this Court has highlighted how a regular first appeal is to be disposed of, particularly, in the light of Order XLI, Rule 31

Code of Civil Procedure. It mandates that the appellate Court has to frame points for determination, decision thereon, reasons for the decision and

where the decree appealed from is reversed or varied, the relief to which the appellant is entitled. Such recourse has not been followed by the High

Court, while disposing of the regular first appeal.

It is not in dispute that the first appeal is a valuable right of the parties and unless restricted by law, the whole, case is therein open for rehearing

both on questions of fact and law. Accordingly, the judgment of the appellate Court must reflect its conscious application, of mind and record

findings supported by reasons, on all the issues arising alongwith the contentions put forth by both the sides. These principles have been reiterated

in B.V. Nagesh and Another Vs. H.V. Sreenivasa Murthy, .

14. As the Appellate Court without following the procedure required under Order XLI, Rule 31, Code of Civil Procedure passed the judgment

and decree therefore, without entering into the merits, the impugned judgment and order dated 16.8.2014 passed by Additional District Judge,

Court No. 2, Rampur in Civil Appeal No. 76 of 2013 is set aside, the matter is remanded to the Appellate Court to decide the matter in

accordance with law after hearing the parties concerned, expeditiously, say, within a period of one year from the date of receiving a certified copy

of this order.

15. For the said period or till the decision is taken by the Appellate Court, whichever is earlier, parties are directed to maintain status quo in

respect of the land in dispute. With the above observations, the second appeal is allowed.