

Neutral Citation No. - 2024:AHC-LKO:76729

Court No. - 4

Case :- SECOND APPEAL No. - 133 of 2020

Appellant :- Sunil @ Ram Asre

Respondent :- Mithai Lal And Ors.

Counsel for Appellant :- Rajesh Kumar

Counsel for Respondent :- Surya Kumar

Hon'ble Rajnish Kumar,J.

1. Heard, Sri Rajesh Kumar, learned counsel for the appellant and Sri Surya Kumar, learned counsel for the respondent.

2. This Second Appeal has been filed challenging the judgment and decree dated 20.02.2019 passed in Regular Suit No.534/1988;Bhojai (Dead) Mithai Lal and others versus Sunil @ Ram Asre by Civil Judge, Junior Division, Tanda, Ambedkar Nagar and judgment and decree dated 10.11.2020 passed in Civil Appeal No.27/2019;Sunil @ Ram Asre versus Mithai Lal and others by the Additional District Judge, Court No.1,Ambedkar Nagar.

3. The following substantial question of law has been formulated by this Court in this appeal:-

"(i) Whether judgment passed by the first appellate court is in violation of the provision of Order XLI Rule 31 C.P.C.? If so, it's effect."

4. Learned counsel for the appellant submits that the defendant-appellant purchased the land in dispute from the plaintiff-respondent in consideration of Rs.3500/- in 1980. Thereafter he

constructed four rooms on the same between April 1980 to July 1980. Subsequently, he made further construction of Kitchen, Bathroom, Toilet etc. However, on account of consolidation proceedings, the sale deed could not be got executed from the plaintiff-respondent. Thereafter the plaintiff-respondent had not executed the sale deed and filed a suit for possession. The plaintiff-respondent, in his evidence, admitted the possession of the defendant-appellant on the land in dispute and the construction made by the defendant-appellant but without considering the pleadings, evidence and material on record, the suit was decreed. Hence, the civil appeal was filed by the defendant-appellant. The lower appellate court, without considering the pleadings of the parties, evidence and material on record dismissed the appeal and confirmed the judgment and decree passed by the trial court without following the provisions of Order 41 Rule 31 of Civil Procedure Code(hereinafter referred to as C.P.C.) without formulating the points for determination and recording the reasons thereon. Thus, the judgment and decree passed by the lower appellate court is not sustainable in the eyes of law and liable to be set aside and the lower appellate court may be directed to reconsider the appeal and pass a fresh order in accordance with law.

5. Per contra, learned counsel for the plaintiff-respondent submits that the plaintiff-respondent is a poor agriculturist. The defendant-appellant, who is a doctor, had made a request to the plaintiff-respondent for opening a shop on the land in dispute for his profession, therefore the plaintiff-respondent permitted him on some portion of Gata No.77 with the condition that within 6

months he would make some alternative arrangement and shift to that place and he will vacate the said portion and hand over to him. After six months, when the plaintiff-respondent requested the defendant-appellant to vacate the premises, he had not vacated the same for a long time, therefore, the plaintiff-respondent filed suit for possession before the trial court. Before the trial court, the defendant-appellant admitted that the land in dispute is of the plaintiff-respondent and that no sale deed of the same has been executed. The learned trial court, after considering the pleadings of the parties, evidence and material on record and taking into consideration Section 54 of the Transfer of Properties Act 1882, in which the transfer of any immovable property over and above Rs.100 can be made only through a registered instrument, allowed and decreed the suit in accordance with law. The defendant-appellant had filed civil appeal before the lower appellate court. The lower appellate court also after considering the pleadings, evidence and material on record dismissed the appeal with a reasoned and speaking order. Therefore, merely because the points for determination have not been formulated, it cannot be said to be vitiated because the lower appellate court has considered the whole pleadings, evidence and material on record and passed the order recording the reasons. Thus, the substantial question of law formulated in this appeal does not arise. The appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed with cost.

6. Having considered the submissions of learned counsel for the parties, I have perused the records.

7. The plaintiff-respondent filed a suit for possession alleging therein that he and his ancestors were permanent resident of Mauja Bairampur, Pargana & Tehsil Tanda, District Faizabad. He is recorded bhumidhar of Gata No. 77, having an area of 11 biswa, 12 dhur on the constructed road from Akbarpur to Iltifatganj on the western side. He made certain constructions on the northern and southern portion of the land in dispute, which has been shown from the alphabets a,b,c,d in the site plan appended to the plaint. The defendant-appellant, who claims himself to be a doctor, requested to the plaintiff-respondent for use of the portion of the said land of the plaintiff-respondent for his profession in June 1985. The plaintiff-respondent had permitted the defendant-appellant in the said portion with the condition that the defendant-appellant would make alternative arrangement within six months and vacate the premises and hand over the possession to the plaintiff-respondent. Otherwise the defendant-appellant had no concern with the property in dispute and possession thereon. He is residing in the property in dispute since June 1985 with the permission of the plaintiff-respondent and claiming title over it and not vacating and handing over the possession to the plaintiff-respondent, therefore after expiry of the period of permission granted to him, his status is of encroacher. Therefore he may be directed to vacate the premises and hand over the possession of the property in dispute to the plaintiff-respondent and in case he does not remove his possession, the plaintiff-respondent may be granted liberty to get it vacated on the expense of the defendant-appellant.

8.The defendant-appellant filed written statement denying the averments made in the plaint. It was stated that he has no knowledge of the situation of Gata No.77 and he has also no knowledge as to on which land number the construction has been made. Initially, the plea was taken that the defendant-appellant has made construction on the land lying vacant with the intention that he would purchase it from the owner, whosoever may be. However, after about 18 years of filing of the written statement, amendment was made in the written statement taking a plea that the land in dispute was purchased by the defendant-appellant from the plaintiff-respondent in the year 1980 in a consideration of Rs.3500 and thereafter the construction had been made thereon. It was further alleged that on account of consolidation proceedings in the year 1980, sale deed could not be executed. It was also alleged that certain other persons have also made construction on the land in dispute after making payment to Bhojai i.e. the predecessor-in-interest of the plaintiff- respondents.

9. After exchange of pleadings, 8 issues were framed. Thereafter oral evidence of Raj Kumari wife of Bhojai was recorded as P.W.1 because Bhojai had died and the parties were substituted. Budhiram was examined as P.W.2. Certain documentary evidences were also filed i.e. copies of Khatauni Gata No.77, final map, khatuani,Khasra and questionnare from the office of Settlement Officer,Consolidation, Faizabad. The defendant-appellant Sunil Kumar got himself examined as D.W.1, Ram Surat as D.W.2 and Mahendra Kumar as D.W.3. He filed copy of the parivar register, copy of the electricity bill, list of guests at the time of inauguration,

receipt of electricity connection and receipt of electricity bill voucher, details of electricity bill, dis-connection slip, meter sealing etc.

10. After affording opportunity of hearing to the parties and considering the pleadings of the parties, evidence and material on record, the trial court came to the conclusion that the defendant-appellant has admitted in his cross-examination that the property in dispute is of Bhojai and it was purchased from him orally but even if it has been purchased orally in consideration of Rs.3500/-, he does not get title over it and from the documentary evidence produced by the defendant-appellant his title could not be said to have been proved and the suit can be decreed. Being aggrieved, the defendant-appellant filed civil appeal.

11. The lower appellate court considered the pleadings, evidence and material on record recorded its conclusions from paragraph 11 onwards. The lower appellate court, after recording the pleadings of the parties and the issues framed by the trial court recorded a finding that the burden of proving issue nos.1 and 2 is on the plaintiff-respondent and the remaining issues is on the defendant-appellant. Thereafter the lower appellate court recorded the arguments of the parties and considered the pleadings, evidence and material on record and recorded that Raj Kumari,P.W.1, who appeared as legal representative of the plaintiff, after his death, has fully supported the averments made in the plaint and thereafter considered her evidence and evidence of P.W.2. The lower appellate court, thereafter considered the evidence of the defence witnesses. The lower appellate court recorded a categorical finding

that the defence witnesses could not prove the sale of the property in dispute by Bhojai to the defendant-appellant. It has also been recorded that D.W.2 and D.W.3 admitted in their cross-examination that the defendant-appellant had made possession on the property in dispute with the consent of Bhojai i.e. predecessor-in-interest of the plaintiff-respondents. The lower appellate court, after considering the documentary evidence placed on record by the defendant-appellant, has also recorded a categorical finding that merely by recording name in the Nagar Panchayat and electricity bills etc., the defendant-appellant could not become the owner of the property in dispute.

12. The lower appellate court, after considering the pleadings, evidence and material on record, has recorded a finding that on the basis of the evidence adduced by the parties, it is apparent that the defendant-appellant had not purchased the property in dispute from the plaintiff-respondent Bhojai orally in the year 1980 or even thereafter. However the defendant-appellant had taken the property in dispute from the plaintiff Bhojai as licensee to run his medical profession. The plaintiff had terminated the license by oral notice after expiry of the period of license and since the same was not vacated, therefore, the suit was filed. The lower appellate court, recording agreement with the findings recorded by the trial court, recorded that the plaintiff-respondent has proved his case. The onus of proof of oral sale deed of the property in dispute was on the defendant-appellant, as he is claiming it, which he has completely failed to discharge and could not prove it. Thus, the status of the defendant-appellant was of only licensee and after

expiry of period of license, that of a encroacher. Therefore the findings recorded by the trial court does not require any interference, accordingly the lower appellate court dismissed the appeal and confirmed the judgment and decree passed by the trial court.

13. Order 41 Rule 31 CPC provides contents, date and signature of judgment. A proviso to Rule 31 has been added by the Allahabad High Court Amendment. The complete provision, as such, is extracted hereinbelow:

"31. Contents, date and signature of judgment: 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 and shall at the time that it is pronounced be signed and dated by the judge or by the Judges concurring therein.

Allahabad;- At the end of the rule, substitute a semi colon for the full stop and add the following:

"Provided that where that presiding Judge pronounces his judgement by dictation to a shorthand writer in open court, the transcript of the judgment so pronounced shall, after such revision as may be deemed necessary, be signed by the Judge and shall bear the date of its pronouncement."

14. According to the aforesaid provision, the judgment is to be in writing and shall state the points for determination, the decision thereon and the reasons for the decision and where the decree appealed from is reversed or varied the relief to which the appellant is entitled. Thus, the reasons for the decision are required to be recorded after framing points for determination. Thus, the appellate court is required to state the points for determination and record its reasons for the decision thereon and it can reverse or vary the decree against which the appeal has been preferred and in such case the relief to which the appellant is entitled, therefore, the

appellate court can not only reverse the findings of the trial court but also take a different view and it can be done after considering the pleadings, evidence and material on record as a trial court and also considering the findings recorded by the trial court and as to whether the same have rightly and in accordance with law been recorded or not after evaluating the pleadings, evidence and material on record as a trial court. It is for the reason that if any plea or evidence has been left to be considered by the trial court, it can appropriately be considered by the first appellate court to avoid injustice to either of the parties. Thus the first appeal is in continuation of trial and if all the issues framed by the trial court are considered by the first appellate court in accordance with law after considering the pleadings, evidence and material on record and dealing them appropriately and no new issue is raised at the appellate stage, this court is of the view that the judgment passed by the first appellate court may not be said to be vitiated and liable to be set aside only on the ground that the points for determination have not been formulated as there would be substantial compliance of Order 41 Rule 31 CPC.

15. The Hon'ble Supreme Court, in the case of ***U. Manjunath Rao v. U. Chandrashekar, (2017) 15 SCC 309***, has held that it is well settled in law that the reason is the life of law. It is that filament that injects soul to the judgment. Absence of analysis not only evinces non-application of mind but mummifies the core spirit of the judgment. The Hon'ble Supreme Court with reference to Rule 31 of Order 41 CPC has held that it is quite clear that the judgment of the appellate court has to state the reasons for the

decision. It has also been held that the appellant could raise issues pertaining to facts and appreciation of evidence and this is indicative of the fact that the first appellate court has a defined role and its judgment should show application of mind and reflect the reasons on the basis of which it agrees with the trial court. There has to be an "expression of opinion" in the proper sense of the said phrase. Needless to say, it is one thing to state that the appeal is without any substance and it is another thing to elucidate, analyze and arrive at the conclusion that the appeal is devoid of merit and the appellate court has to keep in view the language employed in Order 41 Rule 31 CPC.

16. The Hon'ble Supreme Court, in the case of ***G. Amalorpavam and others Versus R.C. Diocese of Madurai and others; (2006) 3 SCC 224***, has held that it is no doubt desirable that the appellate court should comply with all the requirements of Order 41 Rule 31 CPC. 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 and 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 41 Rule 31 CPC and the judgment is not in any manner vitiated by the absence of a point for determination.

17. The Hon'ble Supreme Court, in a recent judgment and order dated 10th May, 2024 in the case of ***Mrugendra Indravadan***

Mehta and others Versus Ahmadabad Municipal Corporation;
(Civil Appeal Nos.16956-16957 of 2017) 2024 Live Law (SC) 369,
considered the aforesaid judgment and other judgments of Hon'ble Supreme Court and held that the High Court did set out all the issues framed by the trial court in the body of the judgment and was, therefore, fully conscious of all the points that it had to consider in the appeal and no issue was left to be considered while adjudicating the appeal, therefore there is no merit in the contention that impugned judgment is liable to be set aside on this issue. The Relevant paragraphs 27 to 31 are extracted here-in-below:-

"27. This being the legal position vis-à-vis the Act of 1976, it was contended before us by the plaintiffs that the impugned judgment of the High Court is liable to be set aside on the short ground that no points for determination were framed therein, as required by Order 41 Rule 31 CPC. Reliance was placed on Malluru Mallappa (Dead) through Lrs. v. Kuruvathappa⁵, wherein this Court observed that the first appellate Court is required to set out the points for determination, record the decision thereon and give its own reasoning. It was further observed that, even when the said Court affirms the judgment of the Trial Court, it has to comply with the requirements of Order 41 Rule 31 CPC as non-observance thereof would lead to an infirmity in its judgment. However, it may be noted that no absolute proposition was laid down therein to the effect that failure to frame points for determination, in itself, would render the first appellate Court's judgment invalid on that ground.

28. Reference was also made to Santosh Hazari v. Purushottam Tiwari (Deceased) by LRs⁶, wherein this Court held that a first appeal is a valuable right and unless restricted by law, the whole case would be open for rehearing before it, both on questions of fact and law, and, therefore, the judgment of the first appellate Court must reflect conscious application of mind and it must record findings supported by reasons on all the issues arising, along with the contentions put forth and pressed by the parties for decision of the said Court. It was further observed that, while reversing a finding of fact, the first appellate Court must come into close quarters with the reasoning of the Trial Court and then assign its own reasons for arriving at a different finding. This, per this Court, would satisfy the requirement of Order 41 Rule 31 CPC.

29. However, in Laliteshwar Prasad Singh v. S.P. Srivastava (Dead) thru. Lrs.⁷, this Court, while affirming the aforesaid principles, observed that it is well settled that the mere omission to frame the points for determination would not vitiate the judgment of the first

appellate Court, provided that the first appellate Court recorded its reasons based on the evidence adduced by both parties.

30. Thus, even if the first appellate Court does not separately frame the points for determination arising in the first appeal, it would not prove fatal as long as that Court deals with all the issues that actually arise for deliberation in the said appeal. Substantial compliance with the mandate of Order 41 Rule 31 CPC in that regard is sufficient. In this regard, useful reference may be made to *G. Amalorpavam v. R.C. Diocese of Madurai*⁸, wherein this Court held as under:—

'9. The question whether in a particular case there has been substantial compliance with the provisions of Order 41 Rule 31 CPC 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 41 Rule 31 CPC. 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 41 Rule 31 CPC 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 CPC.'

31. As already noted herein-above, the High Court did set out all the issues framed by the Trial Court in the body of the judgment and was, therefore, fully conscious of all the points that it had to consider in the appeal. Further, we do not find that any particular issue that was considered by the Trial Court was left out by the High Court while adjudicating the appeal. In effect, we do not find merit in the contention that the impugned judgment is liable to be set aside on this preliminary ground, warranting reconsideration of the first appeal by the High Court afresh."

18. Adverting to the facts of the present case, as discussed above, the whole pleadings evidence and material on record has been

considered by the lower appellate court and thereafter the judgment and decree has been passed. Thus, this Court is of the view that there is no illegality or error in the impugned judgment and decree passed by the lower appellate court , which may call for any interference by this Court. The aforesaid substantial question of law formulated by this Court is answered accordingly.

19. In view of above, this appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

20. The appeal is, accordingly, **dismissed**. No order as to costs.

Order Date :- 20.11.2024/Akanksha Sri.