

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1057 of 2000

IN

First Appeal No. 46 of 78

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1. Sumitra Devi, widow of late Shatrughan Sharma
 2. Rang Nath Sharma
 3. Bankatesh Sharma
 4. Upendra Sharma, all sons of late Shatrughan Sharma, All residents of village- Taret, Police Station, Naubatpur, District- Patna, at present Hulaschak, Police Station- Phulwari, District, Patna
- ..Defendants 2 to 5-Appellants-Appellants

Versus

- 1(a) Jaleshwar Sharma
 - 1(b) Upendra Shamra
 - 1(c) Judagi Sharma All sons of late Raghunath Singh
 - 1(d) Smt. Chandravati Devi, D/o late Raghunath Singh and wife of Tarkeshwar Sharma, all residents of Village Hulaschak, P.S. Janipur, District, Patna
 - 2(a) Vijay Narain
 - 2(b) Ajay Sharma
 - 2(c) Maror Jha Devi
 - 2(d) Vidyawati Devi Both 2(a) and 2(b) are sons and 2(c) and 2(d) are daughters of late Inderdeo Singh, resident of village –Hulaschak, P.S. Janipur, Distt.- Patna
 - 3(i) Chandra Bhusan Ajad
 - 3(ii) Shashi Bhusan Ajad
 - 3(iii) Uday Narayan
- All sons of respondent no.3 late Kapildeo Singh, all residents of village Hulaschack, P.S. Janipur, District, Pant
- 3(iv) Srimati Urmial Devi, D/o respondent no.3, late Kapildeo Singh and wife of Ramesh Kumar, resident of Chowtaki Tanrailla, P.S. Naubatpur, District- Patna
 4. Vindhyachal Sharma @ Ladoo Sharma, son of Kamla Singh, resident of village – Hulaschak, Police Station- Phulwari, District, Patna.

....Plaintiffs- Respondents 1st set- Respondents 1st Set

5. Bachia Devi, daughter of late Shatrughatn Sharma (Defendant no.1), resident of village- Taret, Police Station- Naubatpur, District- Patna and wife of Anirudh Sharma, resident of village- Dehara, Police Station- Naubatpur, District, Patna
6. Manju Kumari, daughter of late Shatrughatn Sharma, resident of village- Taret, Police Station- Naubatpur, District- Patna and wife of Krishna Murari Sharma, resident of village- Simara, Police Station- Phulwari, District- Patna

...Defendants- Respondents 2nd set- Respondents 2nd set.

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Appearance :

For the Appellants : Mr. Sunil Kumar, Advocate

For the Respondents : None

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and

HONOURABLE DR. JUSTICE RAVI RANJAN
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE DR. RAVI RANJAN)

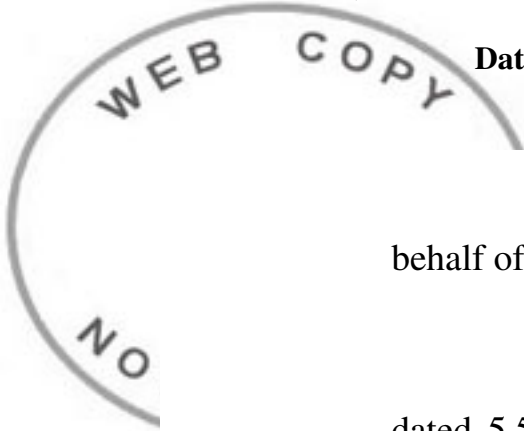
Date: 20 -05-2015

I have heard the appellants. No one has appeared on behalf of the respondents.

This appeal has been preferred against the judgment dated 5.5.2000 passed in F.A. No.46/1978 by a Single Bench of this Court affirming the judgment and decree dated 2.12.1977 passed in Title Suit No.175/1972, 16/1975 by the Additional Subordinate Judge III, Patna.

At the outset, it was vehemently argued on behalf of the appellants that the judgment delivered by the learned Single Judge cannot be sustained in law in view of non-compliance of the provisions contained in Rule 31 of Order XLI of the Code of Civil Procedure (hereinafter referred to be as the “CPC”) and, thus, is liable to be set aside on that ground alone.

Learned counsel appearing for the appellants submitted that Rule 31 Order XLI of the C.P.C. provides 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. It





has been contended that it was mandatory for the first appellate court to frame points for determination and, thereafter, to take a decision on each point on appreciation of pleadings and evidences led by the respective parties. It has thus been urged that such procedure not having been adopted by the first appellate court, the impugned judgment is clearly in violation of the specific provisions of law. Learned counsel for the appellants has placed reliance upon several decisions of the Apex Court on the aforesaid issue.

In Nicholas v. Menezes versus Joseph M. Menezes and others (2009)4 Supreme Court Cases 791, the Apex Court has held that the High Court must consider the evidence on record, oral and documentary and also the questions of law raised before it and at the same time it has to consider the reasons given by the trial court against which the first appeal was filed and, thereafter, should dispose of the same after passing a speaking and reasoned order in accordance with law. However, in that case, the first appeal was dismissed by a learned Single Judge of the High Court without calling for the records and proceedings and without appreciating the pleadings and evidence etc. which is not the fact in the present case.

In Municipal Committee, Hoshiarpur Versus Punjab State Electricity Board And Others (2010) 13 Supreme



Court Cases 216, legal issue involved was with regard to second appeal filed under Section 100 and the powers of High Court to determine the issue under Section 103 of the CPC. The Apex Court, while holding that the second appeal lies only after substantial question of law and it is necessary to frame the substantial question of law before the second appeal is decided, has also held as under:-

“28. If a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the finding is rendered infirm in the eye of the law. If the findings of the Court are based on no evidence or evidence which is thoroughly unreliable or evidence that suffers from the vice of procedural irregularity or the findings are such that no reasonable person would have arrived at those findings, then the findings may be said to be perverse. Further if the findings are either ipse dixit of the Court or based on conjecture and surmises, the judgment suffers from the additional infirmity of non-application of mind and thus, stands vitiated. (Vide *Bharatha Matha V. R. Vijaya Renganathan* (2010) 11 SCC 483 : AIR 2010 SC 2685.”

In **H. Siddiqui (Dead) by lrs. Versus a. Ramalingam (2011) 4 Supreme Court Cases 240**, the Apex Court has held that Order 41 Rule 31 of the CPC provides guidelines for the appellate court as to how the court has to proceed and decide



the case. Thus, it should appear from the judgment of the appellate court that it has properly appreciated the facts/evidence, applied its mind and decided the case considering the materials on record. It would amount to substantial compliance with the said provisions if the appellate court's judgment is based on the independent assessment of the relevant evidence on all important aspects of the matter and the findings of the appellate court are well founded and quite convincing. The court should independently consider the relevant points which arise for adjudication and the bearing of the evidence on those points and it should not record mere general expression of concurrence with the trial court judgment.

On the other hand, the Apex Court in **Jagdish Singh Versus Madhuri Devi (2008) 10 Supreme Court Cases 497** has held that though the High Court while exercising power as the first appellate court should consider not only questions of law but also the question of fact, however, the appellate court is expected, nay bound, to bear in mind a finding recorded by the trial court on oral evidence. The first appellate court should not forget that the trial court had an advantage and opportunity of seeing the demeanour of witnesses and, therefore, the trial court's conclusion should not normally be disturbed.



The appellants have also placed reliance upon a judgment dated 26.06.2013 of a Division Bench of this Court rendered in L.P.A. No.611 of 1997 in this regard. However, in that case the Court has come to the conclusion from a bare perusal of the judgment that neither any issue was framed nor the first appeal has been decided after considering the pleadings and evidence with respect to the issues involved in the first appeal.

On the basis of the discussions made above, the question which falls for consideration would be as to whether, in order to ensure compliance of the guidelines provided under Rule 31 of Order XLI of C.P.C., it would be mandatory to record the points for determination in appeal in a separate paragraph and, thereafter, deal with it and whether in the absence of such, even though all the issues involved have been dealt with properly after appreciation of materials on record, the judgment delivered would have to held to be non-substantial in the eyes of law?

In my considered view, after in depth analysis of the decisions rendered by the Apex Court, one will have to come to irresistible conclusion that indicating points by recording in a separate paragraph, thereafter, dealing with it would always be a better course to be adopted by a court of law, however, even if that has not been done but the findings have been recorded after



considering all the issues on the basis of independent assessment of the pleadings and evidence and other materials available on record would also be sufficient compliance of the mandate contained in Rule 31 Order XLI of the CPC. The Apex Court in **H. Siddiqui (Dead) by lrs (Supra)** has held that it is mandatory for the appellate court to independently assess the evidence led by the parties on the issues involved in the case and, on the basis of the appreciation on materials available on record, it should record its finding. Merely communicating the points involved in a separate paragraph itself would not be sufficient compliance of the said provision rather the sufficient compliance would be appreciation of all the issues involved and answering the same by recording the finding after independently assessing the materials on record. Thus, in order to reach to a conclusion as to whether the First Appellate Court has followed the guidelines provided in Rule 31 Order XLI of the CPC or not, one would have to evaluate the judgment on the basis of the yardstick set up by the Apex Court in its various decisions discussed above. The same cannot be thrown away only on the point that it has not separately jotted down the points or issues involved in one of the paragraphs.

In the aforesaid backdrop I would now proceed to consider appeal in hand.

The facts necessary for consideration of this appeal are narrated as under:-

Title Suit No.175/16 of 1972-75 for specific performance of contract for sale of the properties described in Schedule I of the plaint and, in alternative, for recovery of a sum of Rs.9,200/-, being the part of the consideration money for the contract of sale, was filed by the plaintiffs respondents. The plaintiffs claimed that defendant no.1, being the owner of the land described in schedule I of the plaint which he had inherited from his maternal uncle Aklu Singh and since he was in necessity of money for the marriage of his daughter and also to purchase of land at village Tarait, had approached them for sale of the suit land. The sale was settled for a consideration of Rs.33,000/- and a deed of agreement for sale was executed on 9.5.71 which has been brought on record as Exhibit 4. It was agreed that out of the aforesaid consideration money, a sum of Rs.9200/- was paid by the plaintiffs in cash to defendant no.1 and a sum of Rs.4,000/- was left out with defendant for redeeming the two deeds and the balance amount of consideration money of Rs.19,800/- was to be paid at the time of execution of sale deed. It was settled that the sale deed would be executed by 30th of Baisakh 1972, however, even though the plaintiffs repeatedly requested the defendant to take the balance of



consideration money and to execute the sale deed and for this they also gave a registered notice to the defendant through their Advocate but no heed was paid by him as he wanted to avoid the matter and gave wrong reply by making false allegations. It has been falsely alleged by the defendant in the reply that he was a Sadhu Bairagi and had caused his civil death and had already surrendered his estate in favour of his son and wife who were in possession over the suit lands. Plaintiffs have further stated that they have learnt that defendant no.1 had got filed a title suit by his wife and son in which he had become defendant along with his father seeking declaration that defendant no. 1 has renounced the world and committed civil death only in order to avoid the aforesaid agreement for sale. Plaintiffs have stated that the alleged deed of surrender in favour of the wife and son is a false and collusive document to avoid the execution and registration of the sale deed. The plaintiffs have stated that they are always ready and willing to perform their part of contract and pay the balance amount but in view of the failure on the part of the defendants to perform their part of the contract, necessity of filing of suit has arisen.

Two sets of written statements have been filed. One on behalf of defendant no.1 and another on behalf of the defendant nos.2 to 5. In both sets of the written statements almost identical



averments have been made. Defendants have put up a case that deed of agreement for sale is a forged, fabricated and fraudulent document as neither any amount was paid to defendant no.1 nor was the document ever executed by him. They had further put up a case that in fact defendant no.1 did not have any legal right to deal with the property or enter into any contract for sale in respect of the suit lands which belonged to the other defendants. Further, there was no occasion for sale of the suit lands at all at a nominal price of Rs.33,000/-. It has been stated that defendant no.1 surrendered his entire estate including the suit lands in favour of other defendants in January 1971 for which memorandum of Yaddasht (surrender nama) dated 10.1.71 was also executed and since thereafter other defendants became the absolute owner of the suit lands which were blended with the properties and income of the joint family. The defendant no.1 had developed religious feelings and devoted himself in pursuit of God and had renounced the world and caused his civil death. Defendants have further pleaded that daughter of defendant no.1 was still minor and not of marriageable age. He never wanted to purchase any land in his own village also. Therefore, it stands stated that he was not in need of money to sell the suit land and in fact, since defendant no.1 lost his proper power of understanding and worldly transactions and had developed habit

of consuming Ganja and Bhang, the plaintiffs cleverly took his L.T.I. and signature on blank stamp paper under intoxicated conditions and, thereafter, false recitals were written in the deed of agreement for sale.

The trial court after consideration of pleadings of the parties framed following issues:

1. Is the suit as framed maintainable?
2. Have the plaintiffs cause of action for this suit?
3. Is the suit barred under the provisions of Specific Relief Act.
4. Was there any contract of sale in between the plaintiffs and defendant no.1 in respect of the properties in suit as alleged by the plaintiffs?
5. Are the plaintiffs entitled to get a decree for specific performance of contract or in the alternative a decree for Rs.9200/- alleged to be the earnest money for the contract to sales?
6. To what other relief or reliefs, if any, are the plaintiffs entitled?

After appreciation of evidence, pleadings and materials on record including the evidence led by the parties, the trial court came to the conclusion that admittedly the suit property previously belonged to one Aklu Singh, who was the maternal uncle of defendant no.1. After his death, the defendant no.1 being the only legal heir, inherited those properties. It has noticed that admittedly the defendant no.1 was a literate man and that has also been admitted by the father of defendant no.1 in his evidence while



being examined as DW 24. This is also admitted case that defendant no.1 had mortgaged part of the suit lands and borrowed Rs.4,000/- in order to meet the expenses of 'Sradh' of his maternal uncle, Aklu Singh. The trial court has noticed vital lacuna in the case of defendant no.1 by not examining defendant no.1, Satrugan Sharma as a witness in support of the story put forward by the defendants. According to the defendants, defendant no.1 was not traceable as he has renounced the world and has become Sadhu but after analyzing the evidence led on this point such as father of defendant no.1 who has been examined as DW 24 and other materials on record like the fact that defendant no.1 came to court and took steps in the aid of the case of other defendants and had filed written statement on 14.11.74 which is verbatim reproduction of the case made out in the written statement of the other defendants and even though he allegedly executed a surrender deed dated 10.1.71, still defendant no.1 appeared as a defendant in title suit no.32/72 filed in the court of sub-judge II, Patna by his wife and son and had entered into a compromise and, thereafter, on 13.8.75 also, he filed a rejoinder in the present case through Sri Surendra Sharma, Advocate. The trial court has recorded a finding that the aforesaid fact clearly goes to establish that defendant no.1 had not renounced the world and his non-examination for the



purpose of denying the execution of the 'Baibeyana' or his L.T.I. and the writing over it would be fatal to the case of the defendants as he was fit, correct and necessary person to deny the allegation made in the plaint. In view of the averments made in the written statement of the defendants, the trial court has come to the conclusion that there is no room for doubt that the writings and the L.T.I. belonged to none else but of the defendant no.1 Satrugan Sharma as any amount of evidence at variance with the pleadings cannot be accepted.

On the issue of ownership of the suit land the trial court has come to the conclusion that defendant no.1 was full owner of the property in question being the only heir of his maternal uncle as his father or anybody else could not have inherited the property and, thus, the suit property cannot be held to be a joint co-parcenary family property and it was only the defendant no.1 who was managing the property concerned. It has been recorded in the judgment that story set up by the defendants of the suit property having been thrown in the common stock of the joint family gets defeated by the action of defendant no.1 who has mortgaged part of the suit property for the consideration of Rs.4,000/- in order to meet the expenses of 'Sradh' of his maternal uncle though admittedly, the defendant no.1 was not the karta of



the joint family. That apart, the fact that he had to perform marriage of his daughter and the suit land situated at village 'Hulaschak' was far away and, thus, he wanted to purchase the land at his own village Tarait after alienating the suit land also got established. The trial court has also held that the daughter of defendant no.1, namely, Lalita was of marriageable age at the relevant period and, for her marriage the defendant no.1 needed money as mentioned in the deed of agreement for sale (Exhibit 4).

In the aforesaid background, the trial court has decided all the contentious issues involved in favour of the plaintiffs and has directed the defendants to execute the sale deed in respect of the suit lands on receipt of the balance of the consideration money of Rs.19,800/- and deliver possession of the suit land to the plaintiffs within two months failing which the requisite sale deed would be executed through the agency of the court at the prayer of the plaintiffs.

The aforesaid judgment and decree was challenged in the First Appeal No.46 of 1978 which was heard and dismissed by a learned Single Judge of this Court.

From the perusal of the judgment of the learned Single Judge it appears that he has narrated respective cases of the parties, discussed the issues involved and after appreciating the

materials on record has recorded his findings and dismissed the appeal.

Learned counsel appearing for the appellants has submitted that the lower appellate court did not appreciate all the evidences led by the defendants as his comments on each and every defendant witnesses are not available in the judgment.

Now the question is whether the same was required at all in the fact and circumstances of the case and whether learned Single judge has independently appreciated the materials on record including the evidences which were necessary to be appreciated?

Learned Single Judge has noticed that though the execution of agreement for sale and/or receipt of any amount towards consideration as advance stand denied as forged and fabricated document but at the same time its execution stands admitted in the written statement filed by the defendant no.1 but with allegation that the writing and L.T.I. were taken under intoxicated condition as defendant no.1 became Sadhu and had renounced the world thereby causing his civil death and had also relinquished his interest in the suit property in favour of his wife and son. He has also taken up the issue as to whether daughter of defendant no.1 was of marriageable age or not in the year 1971 and whether he wanted to purchase the land in village 'Tarait' or

not. He has also taken up the issue whether defendant no.1 was competent to enter into such contract or not.

The learned Single Judge has noticed that defendant no.1 after his alleged renouncement of the world, has admittedly executed the surrender nama and appeared in this case and had filed vakalatnama and written statement but, thereafter, he disappeared from the scene and neither got examined himself as a witness nor had contested the suit. It has been recorded that defendant no.1 was the best person to narrate the facts and circumstances under which Exhibit 4 was brought into existence and the case put forward by the defendants that he renounced the world and became sadhu-sanyasi in the month of Aghan, 1970 and also became addict of Ganja and Bhang and had relinquished his interest in the family properties including the suit property. It has further been noticed that he had appeared in Title Suit No.23 of 1972 which was filed by his wife and son in which he was impleaded as defendant along with his father and had entered into a compromise. Thereafter, he also appeared in the present suit and filed his written statement. Defendant no.1 was available till 1975 when on 13.8.1975 he appeared in the present suit through Mr. Surendra Sharma, Advocate and filed rejoinder therein and, thereafter, disappeared.

Thus, in view of the conduct of defendant no.1, who was necessary and material witness to explain as to under what circumstances he put his L.T.I and signature on the agreement, in not presenting himself to be examined as a witness gives a fatal blow to the case of the defendant.

Learned Single Judge has also noticed that earlier case of the defendants was that the defendant no.1 had renounced the world in the year 1960 but subsequently they came up with a case that suit even took place in the year 1970 for the reason that, after the death of his maternal uncle, Aklu Singh, the defendant no.1 had mortgaged part of the suit property in the year 1968 by two registered mortgage deeds in favour of one Ramayan Singh to procure money for performing Shradh of his maternal uncle. In Aghan 1970 he is alleged to have become Sadhu and relinquished his interest in the suit property in favour of defendants but there was no registered deed of such relinquishment and such relinquishment would be of no value. The Exhibit E which is a Sada memorandum (Yadaast) and which is said to have been prepared on 10.1.1971 in respect of aforesaid relinquishment (Bajidawa) was inadmissible in evidence in the opinion of the learned Single Judge. Learned Single Judge has further opined that, with the purpose to avoid the agreement for sale, Exhibit 4, the



defendants firstly came out with a case that some time in 1960 defendant no.1 renounced the world and became Sadhu but when they realized the mistake that defendant no.1 had inherited the suit property only in the year 1968 after the death of his maternal uncle, Aklu Singh and had performed his Shradh by mortgaging part of the suit property, father of the defendant no.1, while disposing as DW 24 changed the earlier stand and deposed that defendant no.1 renounced the world and became Sadhu in Aghar 1970.

Learned Single Judge has also dealt with the issue of requirement of fund for arranging for marriage of daughter of defendant no.1. It has been claimed on behalf of the defendant that the defendant no.1 did not have any marriageable daughter in the year 1971. Upon the aforesaid issue the first appellate Court has come to the conclusion that there is no force in the case set up by the defendants that defendant no.1 had no marriageable daughter in the year 1971 as it has been proved that defendant no.1 had a daughter to be married and for that purpose he was required to arrange fund about one or two years earlier to the marriage as after fixation of her marriage it would have been impossible to arrange such fund in the eleventh hour. Learned Single Judge has also found that it has come on record that subsequently the daughter of

the defendant no.1 was ultimately married in the year 1974.

Thus, in my considered opinion, learned Single Judge has taken up all the issues one by one and has considered the same and, thus, though the issues involved were not categorized or summarized point-wise in a separate paragraph before the findings were recorded but since those have been discussed and considered in detail, there appears to be sufficient compliance of the guidelines provided in Rule 31 of Order XLI of the CPC. In the aforementioned facts and circumstances, there was no requirement for meticulous examination of each and every oral evidence led by the defendants as the pleadings, documentary evidence and oral evidences discusses were of the unimpeachable nature. Thus, the judgment is not liable to be set aside on such ground.

So far the merit of the case is concerned, learned counsel for the appellants has been unable to answer the question as to how it can be justified that a person who had already renounced the world and had become Sadhu and Bairagi but at the same time he can subsequently appear in a title suit and enter into compromise therein and, thereafter, also can appear in the present suit and file written statement but thereafter vanishes from the scene and does not produce himself for examination as a witness though he was the most important material witness on the issue as

to how and under what circumstances Exhibit 4 got executed by him. The foundation having gone away, the entire case put forward by the defendants would fall like a castle of cards. The theory of throwing the property concerned in the common stock of the joint family also gets defeated from the fact that the defendant no.1 had mortgaged part of the suit property in the year 1968 by two registered deeds though admittedly he was not the karta of the joint family. Learned counsel for the appellants miserably failed to answer any of issues involved at the time of hearing.

Aforesaid being the situation, in my considered opinion, the judgment of learned Single Judge cannot be faulted with.

Accordingly, this appeal is dismissed being devoid of any merit, however, there would no order as to costs.

(Dr. Ravi Ranjan, J)

I agree.

(Ramesh Kumar Datta, J)

(Ramesh Kumar Datta, J)

Sanjay-II/- N.A.F.R.

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