

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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SECOND APPEAL No.345 of 2010

JUDGMENT:-

This appeal under Section 100 of the Code of Civil Procedure, 1908 ('the Code', for brevity) by the unsuccessful second defendant is directed against the decree and judgment dated 04.08.2009 in A.S.No.55 of 2007 passed by the learned III Additional Chief Judge, City Civil Court at Hyderabad. The learned Additional Chief Judge, while dismissing the said first appeal, had confirmed the decree and judgment dated 10.10.2006 of the learned III Additional Rent Controller-cum-XV Junior Civil Judge, City Civil Court, Hyderabad, passed in O.S.No.2945 of 1990 filed by the sole plaintiff for declaration that the plaintiff is entitled to a 1/8th share in the land admeasuring 950 square yards bearing municipal number 3-4-159 at Lingampalli of Hyderabad, morefully described in the schedule annexed to the plaint, and partition of the said property into eight equal and equitable parts and allotment one such 1/8th share to the plaintiff and to put him in separate and exclusive possession of the same and for costs.

2. I have heard the submissions of the learned senior counsel for the appellant/second defendant and the learned counsel for the first respondent/sole plaintiff, the third respondent and the respondents 2, 4, 5, 6 and 7. I have perused the material record. The parties in this second appeal shall herein after be referred to as the plaintiff and the defendants as arrayed in the suit.

3. At the time of admission of this second appeal, this Court had taken note of the substantial questions of law mentioned in ground no.2 of the memorandum of grounds of appeal as the substantial questions of law involved in this second appeal. The said substantial questions of law read as under:-

1. **Whether the judgment of the Appellate Court is not vitiated on failure to follow the mandatory requirement under Order 41 Rule 31 of**

the Civil Procedure Code. The Lower Appellate Court being a fact finding Court is under obligation to discuss the entire material on record, documentary as well as the oral evidence same has not been done.

2. **Whether the Courts below are right in comparing the signatures and finding that not taking merely on ground that surname is not mentioned signed on each page except at the end of the will disputed the signatures of the executants when the appellant proved the will by following all the ingredients of the Will under Section 68 and 73 of the Evidence Act, more so it is registered.**
3. **Whether the Courts below are right in decreeing when the plaintiff has not approached the Court with clean hands as he depend upon a forged will.**
4. **Whether the Courts below are right in decreeing the suit when the plaintiff has not challenged the will executed in favour of appellant i.e. defendant No.2 knowing fully well at the time of filing of suit as earlier suit filed by Appellant for injunction.**
5. **Whether the Courts below are right in not taking into consideration when the same will was held by appellate court in AS No.139/1990 on the file of the Additional Chief Judge (Temporary) Civil Court as genuine.**

(Reproduced verbatim)

4. Before taking up the substantial questions of law for determination, it is necessary to refer to the pleadings and the facts that lead to filing of this second appeal by the second defendant.

5.1 To begin with, the case of the plaintiff, in brief, is as follows:

The plaintiff and the defendants 1 to 4 are brothers; and the defendants 5 to 7 are their sisters. The father of the said parties by name Sreedhar Rao Ganga Khedkar died on 08.10.1983. His wife had died on 14.12.1980. Apart from the plaintiff and the said defendants, there are no other legal heirs for Sreedhar Rao Ganga Khedkar. The marriages of the defendants 5 to 7 were performed and they are living with their respective husbands. Late Sreedhar Rao Ganga Khedkar had retired in the year

1955 as the Deputy Secretary [Revenue], Government of Hyderabad. He had purchased 1300 square yards of land at Lingampally and had constructed a house over 500 square yards of the said site after obtaining permission from the municipality in the year 1948-49. That house was assigned the house number 3-4-159. He had stayed in that house along with his family. The defendants 5 to 7 had also stayed along with him till their respective marriages. The plaintiff and the defendants 1 to 4 had continued as members of a Hindu undivided joint family even after the death of their father Sreedhar Rao Ganga Khedkar. The plaintiff schedule property was not partitioned. The plaintiff was in Government service of the Forest Department of the State of Andhra Pradesh and, therefore, used to stay away from Hyderabad on account of his employment. However, his family used to stay in the suit house. The suit house is a joint family property and is not partitioned among the brothers and sisters. Late Sreedhar Rao Ganga Khedkar had sold, to the 1st defendant through a registered sale deed in the year 1972, an area of 187 square yards of open land out of the total area of 1300 square yards purchased by him. Similarly, he had sold an area of 160 square metres out of the total area of 1300 square yards of land to the 3rd defendant through sale deed executed in April, 1973. The defendants 1 and 3, having purchased the respective extents of land from their father, had constructed their respective houses over their respective sites. The last rites of the father-Sreedhar Rao Ganga Khedkar were performed by the plaintiff and the defendants 1 to 4. Sreedhar Rao Ganga Khedkar was bedridden for some time before his death and he did not bequeath the suit schedule property exclusively to the second defendant. Though Sreedhar Rao Ganga Khedkar had executed his last and final Will dated 03.10.1983, the plaintiff is not claiming any right based on the said Will as the said Will is not in his custody; and, the plaintiff is claiming a share in the suit schedule property as per the Hindu Succession Act. The second defendant had filed O.S.No.3113 of 1983 on the file of the VI Assistant Judge, City Civil Court, Hyderabad against the plaintiff and the defendants 1 and 2 alleging that the father-Sreedhar Rao Ganga Khedkar had executed a Will Deed dated 29.09.1981 and that the said Will deed was registered on 28.04.1983. That suit was dismissed holding that the said Will was not proved. The second defendant is having an ill intention to grab the entire suit house and deprive the other co-owners of their legitimate shares. After the dismissal of the said suit, this present suit is filed for a declaration that the plaintiff is entitled to seek partition and for allotment of a 1/8th share in the suit schedule property.

5.2 The defendants 1,6 and 7 had remained *ex parte*.

5.3 The defence of the 2nd defendant, in brief, is as follows:-

Late Sreedhar Rao Ganga Khedkar bequeathed and devised the North-Western portion of the suit house in favour of the second defendant through a Will Deed dated 29.09.1981, which was registered on 28.04.1983. The defendants 5 to 7 who are the daughters of Late Sreedhar Rao Ganga Khedkar are not necessary and proper parties to the suit. The property admeasuring 1400 square yards which was purchased by Sreedhar Rao Ganga Khedkar is his self-acquired property. He had constructed a house on the said site and stayed in that house along with his family members for some time. The suit property is not a joint family property; but, it is the self- acquired property of late Sreedhar Rao Ganga Khedkar. As per the Will Deed dated 29.09.1981, which was registered on 28.04.1983, the said testator had bequeathed and devised the suit property to the 2nd defendant by allotting portion 'A' of the plan annexed to the said Will Deed. Therefore, the question of partition of the suit house does not arise. This defendant is in possession and enjoyment of the said portion 'A' of the suit house as absolute and exclusive owner. The 4th defendant was allotted portion 'B' of the suit house as per the above said Will Deed and the said defendant is also in possession and enjoyment of that portion of the suit house ever since the death of Sreedhar Rao Ganga Khedkar as absolute and exclusive owner. Late Sreedhar Rao Ganga Khedkar had thus bequeathed the suit house to the defendants 2 and 4 as per his Will Deed dated 29.09.1981, which was registered on 28.04.1983. The testator had provided substantial funds to the defendants 1 and 3 for construction of the houses by them on the open pieces of land conveyed by him under registered sale deeds to them without consideration. Late Sreedhar Rao Ganga Khedkar had executed his last and final Will Deed dated 03.10.1983 is false and denied. Late Sreedhar Rao Ganga Khedkar was admitted in Kachiguda Nursing Home on 19.09.1983 by the second defendant and since then and till his death on 05.10.1983, he was under treatment in the said nursing home. He was not in a sound and disposing state of mind during the period of treatment and was unconscious for one week prior to his death. Therefore, it is impossible for him to sign and execute the Will Deed dated 03.10.1983. He had already executed a Will

deed on 29.09.1981, which was registered on 28.04.1983. Therefore, the alleged Will dated 03.10.1983 is false, bogus, fabricated and forged and the parties are not bound by the same. The plaintiff has no right to claim a share in the suit schedule property. In the suit O.S.No.3113 of 1983 filed by this defendant, the Court did not give any finding on the Will as the said suit was filed only for a perpetual injunction. After the dismissal of the said suit, this defendant had filed A.S.No.139 of 1990 on the file of the Court of the learned Additional Chief Judge, City Civil Court, Hyderabad. The plaintiff, the defendants 1 and 3 and 5 to 7 are not entitled to claim any right, title and interest in the suit property. The suit is filed in collusion with the third defendant who is litigating with the second defendant since a long time. The claim of joint possession is denied. The suit is liable to be dismissed.

5.4 The third defendant had filed a written statement supporting the claim of the plaintiff. The fourth defendant had filed a memo adopting the written statement of the third defendant. The fifth defendant had not filed any written statement.

5.5 Basing on the above pleadings, the trial Court had framed the following issues for trial:-

1. **Whether the suit house is a joint family property of the plaintiff and the defendants and if they are co-owners of the same?**
2. **Whether the father of the plaintiff and the defendants made an agreement during his life time in the year 1970 in respect of the suit house?**
3. **Whether the will dated 29.09.1981 relied on by D2 is true, valid and binding on the plaintiff and D1, D3 and D4 and if acted upon?**
4. **Whether the will dated 03.10.1983 alleged to have executed by Late Sreedhar Rao Ganga Khedkar referred to by the plaintiff and D3 is true and valid?**
5. **Whether the suit as framed, without seeking the declaration of status of the suit house and its possession is maintainable?**

6. **Whether the Court fee paid is correct and if the suit should have been valued under Section 34(1) of the A.P.Court Fee and Suit Valuation Act?**
7. **To what relief?**

(Reproduced verbatim)

5.6 At trial, PWs 1 and 2 were examined and exhibits A1 to A9 were marked on the side of the plaintiff. DWs 1 to 6 were examined and exhibits B1 to B56 were marked on the side of the 2nd defendant.

5.7 As already noted, the trial Court had decreed the suit and granted a preliminary decree in favour of the plaintiff declaring that the he is entitled to a 1/8th share in the suit property; and, the first appeal preferred by the second defendant was dismissed. Therefore, the second defendant is before this Court.

6. The first substantial question of law is now taken up. According to the appellant/2nd defendant, the decree and judgment of the Court below are vitiated for failure to follow the mandatory requirement of Order XLI Rule 31 of the Code.

6.1 The learned counsel for the second defendant had contended as follows:

The Court of first appeal is the final Court of fact. It is under an obligation to discuss the entire material on record and also the documentary and oral evidence before arriving at a just decision in the first appeal. However, the Court below did not advert to the entire material on record and had failed to follow the mandatory requirement of Order XLI Rule 31 of the Code. A perusal of the judgment of the Court below would show that the Court below had framed only one point as follows:-

Whether the suit schedule property is joint family property and whether the plaintiff is entitled for partition and separate possession of his share in the property as prayed for?

Though the plaintiff had relied upon one Will and the second defendant had relied upon another Will of the Father, no point for determination was framed by the Court below as to the truth, validity and genuineness of the said Wills that were relied upon by the parties. Though the judgment of the Court below runs into 15 pages and 14 paragraphs, a perusal of the said judgement would show that upto page 12 and paragraph 8, the Court below had dealt with the pleadings, the issues framed by the trial court and the grounds of appeal. In paragraph 9, the Court below had mentioned the citations relied upon by the learned counsel for the appellant/2nd defendant. In paragraph 11, the admitted facts and the disputed facts were stated. Finally after referring to a few observations in the judgment of the trial Court on the said Will, the Court below had held that the trial Court is right in rejecting exhibits B9 and B10 Wills on which the second defendant had relied upon. Not even a general concurrence was expressed on material aspects after advertng to the evidence of the witnesses examined to prove the Will. Thus, while dealing with the Will relied upon by the second defendant, which is a registered holograph will, the Court below did not advert to the pleadings which are relevant and the oral evidence that was adduced by both the sides for proving or disproving the said Will. There is no independent application of mind by the Court below though it is a final Court of facts. No points for determination were framed and no decision was rendered thereon with reasons for the decision. The first appellate Court did not address itself to the dispute though it is its duty to discuss the entire evidence afresh and take note of the features noticed by the trial Court and then come to its own findings with independent reasons. The judgment of the Court below is not a judgment within the meaning of Order XLI Rule 31 of the Code and the judgment impugned is no judgment in the eye of the law. The first appeal is a continuation of the suit and the right of appeal is conferred by the statute. The first appeal is a valuable right and the Court below, therefore, ought to have framed the points for adjudication and ought to have followed the mandatory procedure contemplated under Order XLI Rule 31 of the Code. For non consideration of the relevant points which arose for adjudication, for non consideration of material evidence, for not assessing the evidence independently, for not giving reasons on the decision on each point independently to that of the trial Court, for non application of mind and for non adherence to the requirement of the statutory provision, the judgment impugned is vitiated and is liable to be set aside on this ground alone.

6.2 On the other hand, the learned counsel for the contesting respondents, while supporting the decree and judgment of the Court below, had contended as follows: “Since the Court below had only confirmed the decree and judgment of the trial Court, the Court below is not required to re-appreciate the evidence or reiterate the reasons given by the trial Court. Expression of agreement generally with the reasons given by the Court, the decision of which is under appeal, would ordinarily suffice. There is no need to mechanically deal with the points. It is not necessary that the first appellate Court should record all the facts in detail in its judgment and it would be sufficient if the Court renders its independent judgment. A reading of the judgment of the Court below in this case reflects application of mind on its part and therefore, the failure to frame points in regard to the genuineness or otherwise of the Wills is only a technical defect and a procedural irregularity which can be cured as the judgment rendered is in substantial compliance of all the other requirements. Mere slight deviation from the procedure is not a ground to hold that the judgment is vitiated. The High Court, while dealing with the second appeal will not generally interfere when concurrent findings are recorded by both the Courts below and when the Courts below have not ignored the material evidence and not drawn wrong inferences from the proved facts. This is not a case involving mis-appreciation of evidence by the Court. This is not a case, which falls under the well recognised exceptions like ignoring material evidence or acting on no evidence or drawing wrong inferences from the proved facts or wrong application of law or casting the burden of proof wrongly on the parties. It cannot be said that the findings of the Court below are not based on facts and evidence. After 1976 amendment to the Code, the scope of Section 100 of the Code has been drastically curtailed and narrowed down. The Second Appeal is devoid of merit and is liable to be dismissed.

6.3 In support of the said contentions, learned counsel for the contesting respondents had placed reliance on the following decisions.

1. **Ayithi Appalanaidu Vs. Petla Papamma**
2. **Margadarshini Educational Society, rep. by its Secretary, Mr. Ravi Anantha, S/o. Sri Krishnamanaidu Vs. P.Subhashan and another**

3. **Gurdev Kaur and others Vs. Kaki and others**
4. **Kashmir Singh Vs. Harnam Singh and another**
5. **Vegesna Ratnamma Vs. Chinta Venateswarlu**

In the decision in **Ayithi Appalanaidu** (1 supra), this Court having referred to the precedents on the subject had held that what is required to be considered is whether the findings of the courts below are based on evidence or whether they are perverse and that if the court finds that the findings of the courts below are perverse, this court can certainly interfere in the second appeal with the findings recorded by the courts below.

Margadarshini Educational Society (2 supra) is relied upon in support of the propositions that in the second appeal the High Court cannot take a different view than the one taken by the appellate court unless the findings are perverse or are based upon no evidence at all and that this court cannot go into question of law and a finding of fact, but at the same time, the facts have to be referred to and the evidence has to be necessarily looked into for the purpose of deciding whether the findings are perverse or based on any evidence.

In **Gurdev Kaur** (3 supra), the general principles in regard to nature and scope of Section 100 of the Code were adverted to and it is held that the scope of interference in a second appeal is limited and did not extend to interference with concurrent findings of fact. In this decision it is held that the High Courts have no jurisdiction to interfere with pure findings of fact and that the High Courts would have jurisdiction to interfere under Section 100 of the Code only in case where any substantial questions of law are involved and those questions have been clearly formulated in the memorandum of appeal. The facts of the case show that the trial court recorded a finding regarding a Will as genuine and valid and the appellate Court by a comprehensive judgment affirmed all the findings of the trial court and dismissed the appeal with costs.

In **Kashmir Singh** (4 supra), the Supreme Court found fault with the High Court as the second appeal was decided without formulating the substantial questions of law. In this case, the relevant principles relating to Section 100 of the Code are summarised thus:

The principles relating to Section [100](#), relevant for this case, may be summarized thus:

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.

In **Vegesna Ratnamma** (5 supra), a contention was raised before this Court that the appellate Court (the court below) while disposing of the 1st appeal suit had failed to frame appropriate points for consideration and also failed to discuss the evidence adduced by both the parties and that the grounds raised by the appellant in the memorandum of grounds of appeal are not answered by the appellate court and that the appellate court had failed to follow Order XL1 Rule 31 of the Code while rendering the judgment. While dealing with the said contentions this court considered the provision of the above Rule of the Code and also the precedents cited. In this decision this Court held that in the normal course, the judgment of the appellate court should state the points for determination and the decision thereon with reasons for the decision and that the first appellate court has to consider all the disputed questions of fact and law and record its findings thereon. Be it noted, in this cited decision a reference was made to the ratios in the following precedents.

“ In *Girijanandini v. Bijendra Narain* [AIR 1967 SC 1124], the Supreme Court held as follows:

We are unable to hold that the learned Judges of the High Court did not, as is contended before us, consider the evidence. 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.

In *V. Venkataswami v. G. Venkataswami* [AIR 1954 Madras 9], the Madras High Court held as follows:

where the appellate Judge had failed to frame points and discuss each point separately and record the finding separately but had adopted the easier method of stating that he agreed with the conclusions of the Subordinate Judge, that was no doubt not a very satisfactory way but on that ground the High Court would not reverse the decision of the lower appellate Court.

In *Ali Mohamood v. [Special Court under A.P. Land Grabbing \(Prohibition\) Act](#)* [2000(5) ALD 172] a Division Bench of this Court held as follows:

The idea behind Order 41, Rule 31 Code of Civil Procedure is that the Court while passing the judgment shall apply its mind to the evidence made available on record and secondly, whether both the parties did understand on what point they have to submit their case. While in some cases the Courts have held that non-compliance of anyone of the requirements of Order 41 R 31 C.P.C. vitiates the proceedings but in some cases the courts have taken the view that non-compliance of anyone of the requirements of Order 41 Rule 31 C.P.C. does not vitiate the proceedings. The purpose of framing the points for consideration by the lower appellate Court is to clear up the pleading and focus the attention of the Court and of the parties on the specific and rival contentions which arise for determination. Time and again it is said that it is not necessary that the judgment should record all the facts in detail and should deal mechanically with all points. It would be sufficient if the Court renders its independent judgment.

A reading of the judgment of the lower appellate Court reflects application of mind on its part and failure to frame points for consideration at best can be said to be only a technical defect or a procedural irregularity which can be cured if the judgment is in substantial compliance of all other requirements. In other words, it is desirable that the first appellate Court should comply with all the requirements of Order 41 Rule 31 C.P.C. but if there is any slight deviation that itself is not a ground to hold that the judgment is vitiated.”

After taking note of the ratios in the decisions it was held in the cited decision by this Court that it can be concluded that if the judgment reflects the application of mind to the evidence available on record and that if the appellate court discusses various points raised by the parties by answering the rival contentions, it is not necessary that the judgment should record all the facts in detail and should deal mechanically with all points and that it would be sufficient if the court renders its independent judgment on the basis of the material available on record and that if there is slight deviation from the requirement of Rule 31 of Order XLI of the Code that itself is not a

ground to hold that the judgment is vitiated.

There is no dispute with the propositions of law relied upon by the learned counsel for the contesting respondents. It is true that the sustainability or otherwise of the judgment of the court below is to be examined keeping in view the undisputed settled principles of law.

6.4 Now, it is necessary to refer to the following decisions relied upon by the learned counsel for the 2nd defendant/appellant. In the decision in **M/s. United Engineers and Contractors Vs. Secretary to Govt., A.P. and others**, the Supreme Court, had referred to its earlier decision in *H. Siddiqui (dead) by LRs. Vs. A. Ramalingam* (AIR 2011 SC 1492), wherein the Supreme Court has considered the scope of Order XLI Rule 31 of the Code. The relevant ratio in the cited decision is as follows:-

“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 v. Thakur Kalyan Singh & Anr.](#), AIR 1963 SC 146; *Girijanandini Devi & Ors. v. Bijendra Narain Choudhary*, AIR 1967 SC 1124; *G. Amalorpavam & Ors. v. R.C. Diocese of Madurai & Ors.*, (2006) 3 SCC 224; [Shiv Kumar Sharma v. Santosh Kumari](#), (2007) 8 SCC 600; a n d [Gannmani Anasuya & Ors. v. Parvatini Amarendra Chowdhary & Ors.](#), AIR 2007 SC 2380)

[In B.V. Nagesh & Anr. v. H.V. Sreenivasa Murthy, JT](#) (2010) 10 SCC 551, 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 along with 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 Tiwari](#), (2001) 3 SCC 179 and [Madhukar and Others vs. Sangram and Others](#), (2001) 4 SCC 756]"

In the decision in **Madhukar and others Vs. Sangram and others** the Supreme Court, having referred to its earlier decisions and while remanding the case to the High Court for disposal afresh, had held as follows:-

We have carefully perused the judgment and decree of the High Court in the first appeal. We find that substantial documentary evidence had been placed before the trial court including certified copies of certain public records besides copy of the judgment and decree of the earlier suit (O.S. No. 93/71). Oral evidence had also been led by the parties before the trial court, which was noticed and appreciated by the trial court. However, the impugned judgment in the first appeal, is singularly silent of any discussion either of documentary evidence or oral evidence. Not only that, we find that though trial court had dismissed the suit on ground of limitation as also on the ground that the decision in the earlier suit (O.S. No. 93/71) operated as res judicata against defendant No. 1 only the High Court has not even considered, much less discussed, correctness of either of the two grounds on which the trial court had dismissed the suit. Sitting as a Court of first 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 It has failed to discharge the obligation placed on a first appellate court. The judgment under appeal is so cryptic that none of the relevant aspects have even been noticed. The appeal has been decided in a very unsatisfactory manner. 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.

7. I have carefully gone through the pleadings, the evidence, both oral and documentary and also the judgment of the Court below keeping in view the settled propositions of law and also the precedential guidance.

7.1 In view of the substantial question of law under consideration and the contentions of the learned counsel for the parties, it is necessary to refer to the provision of Order XLI Rule 31 of the Code, which reads as under:-

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.

The above provision of law provides guidelines for the appellate Court as to how the Court has to proceed while deciding the first appeal. What requires examination in the instant second appeal is as to whether the judgment of the Court below is vitiated for not following the procedure established by law while disposing of the first appeal. It is also to be examined as to whether there was substantial compliance with the provision of law otherwise. The appeal suit is a continuation of the original suit is not in dispute. The first appellate Court is the last Court of fact, is the settled legal principle. In the instant suit of the plaintiff for partition, the second defendant had placed reliance upon the Will Deed dated 29.09.1981 said to have been executed by the father and which was registered on 28.04.1983. The material record on a perusal would show that the 2nd defendant had brought on record certain evidence in regard to the loss of the original Will and the necessity for filing the copies of the said Will and had also examined one of the attestors and had exhibited the deposition of the other attestor (since died). Therefore, the Court below ought to have framed a point for adjudication as to the truth, validity, genuineness and binding nature of the said Will which was relied upon by the second defendant as the second defendant's entire defence is based upon the said Will and a decision on the truth or otherwise of the said Will was crucial for a just decision in the first appeal. But, the Court below has not framed the relevant points which arose for adjudication.

7.2 In this back drop it is apt to refer to the findings in the judgment of the Court below on the Will relied upon by the second defendant which are as follows:-

“Coming to the will set up by D-2, admittedly, the original will is not produced into Court and only certified copies marked as Exs.B-9 and B-10 are produced into Court and further as rightly observed by the lower Court there was long gap of more than one year from the date of execution of the alleged will and its registration. Similarly, the lower Court categorically found discrepancy in the signatures available on page 3 with that of the signature available on pages 1 and 2 of Ex.B-9. The lower Court also observed that under Ex.B-9 Will, the major beneficiary is D-2 and D-2 failed to remove the suspicious circumstances surrounding the execution of Exs.B.9 and B-10. I, therefore, see the lower Court rightly rejected Exs.B-9 and B-10 wills on which D-2 relied upon. When the wills of both sides are not proved, then the suit schedule property remains as joint family property and plaintiff becomes entitled to his share in the property along with other shareholders. I see the facts and circumstances of the rulings cited above are not applicable to the facts and circumstances of the case on

hand. I, therefore, see no error committed by the lower Court in disbelieving the wills relied by both sides and in decreeing the suit for partition.”

[Reproduced verbatim]

Except the above recordings, there is nothing else in the judgment of the Court below on the issue concerning the Will. From the above extracted content of the judgment of the Court below, it is evident that the Court below has not at all appreciated the facts and the evidence and had not applied its mind independently and there was no compliance much less substantial compliance of the provision of law. Except adverting to a few above referred observations in the judgment of the trial Court and endorsing them as right, there was no independent assessment of the relevant evidence adduced by the parties on the important aspects of the matter and no findings much less convincing findings supported by reasons are recorded independently. The law mandates the Court below to formulate points which arise for adjudication and give reasons for its decisions on each point independently to that of the trial Court after consideration and discussion of the entire evidence. In the judgment impugned, there is not even a passing reference to the evidence and there was also not even a mere general expression of concurrence with the findings of the trial Court on the points involved. The law is well settled that the first appellate Court must consider and discuss the entire evidence, in detail, and record its reasons for its decision on each point and that such exercise must be done after formulating the relevant points for determination as per the provision of law referred to *supra*. Keeping in view the settled legal position, if the judgment of the Court below is read, it is obvious that the Court below has failed in its duty in deciding the first appeal in accordance with the procedure established by law. Having regard to the reasons this Court finds that the judgment of the Court below is wholly unsatisfactory as the Court below had failed to discharge its duty in accordance with law, while disposing of the first appeal. Though the first appeal is a valuable right of the parties and the whole case thereon is open for re-hearing both on questions of fact and law, the judgment of the Court below which is impugned does not reflect its conscious application of mind. The failure of the Court below to formulate the necessary points for determination and to record findings supported by reasons on all the issues arising for adjudication and it's further failure to advert to the contentions put forward

and pressed by the parties for decision of the first appellate Court certainly vitiates its judgment. Viewed thus, this Court finds that the first substantial question of law merits consideration and that on that ground alone, the first appeal deserves to be allowed and hence, there is no need to go into the other substantial questions of law as the Court below has not proceeded to adjudicate upon the 1st appeal suit strictly in accordance with law and as the judgment of the Court below, which is impugned, is unsustainable in the eye of law. In this second appeal under Section 100 of the Code, considering the narrow scope of the provision, this court has to consider only the substantial questions of law and cannot decide all the issues involved in the *lis*. Hence, it is just and fair to set aside the decree and judgment of the Court below. Since the Court below had totally ignored the evidence and the contentions on the crucial issues involved in the first appeal and had disposed of the first appeal oblivious of the mandatory provisions of law, this Court finds that the in the facts and circumstances of the case, the Second Appeal deserves to be allowed and the judgment and decree of the court below are liable to be set aside and that the first appeal requires to be remitted to the court below for a fresh decision in the first appeal suit strictly in accordance with the procedure established by law and on merits.

8. In the result, the second appeal is allowed and the decree and judgment of the Court below are set aside and the first appeal in A.S.no.55 of 2007 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad is remitted to the said Court for deciding the first appeal afresh and on merits in accordance with the procedure established by law and on merits. Since the appeal suit is a very old suit, the Court below shall decide the first appeal as directed, within one month from the date of receipt of a copy of this judgment. The costs of this appeal shall abide by the result of the first appeal.

Miscellaneous petitions pending, if any, in this appeal shall stand dismissed.

M. Seetharama Murti, J

30th October, 2015

Bvv