

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

SECOND APPEAL NO.193 OF 2012

JUDGMENT:

The defendant No.1 in O.S.No.209 of 2001 on the file of the Additional Senior Civil Judge, Eluru and appellant in A.S.No.55 of 2006 on the file of V Additional District Judge, Eluru preferred this appeal under Section 100 of Code of Civil Procedure (for short, hereinafter, referred to as "C.P.C." challenging the preliminary decree dated 23.01.2006 passed by the trial Court and affirmed by the first appellate Court on 27.06.2011.

For the sake of convenience, the parties to the appeal will be referred hereinafter throughout the judgment as arrayed before the trial Court.

The plaintiff and defendant Nos.1 to 3 are the sister and brothers and they are the children of Sri K.Sriramamurthy, who died on 17.05.2000. Smt.K.Lakshmi is the mother of both plaintiff and defendant Nos.1 to 3, predeceased their father on 16.10.1998. During the lifetime of the father of the plaintiff and defendant Nos.1 to 3, he acquired extensive properties both in his name and in the name of his wife Smt.K.Lakshmi and defendant Nos.1 to 3 at various places. Thus, plaint 'A' schedule property is the property of K.Sriramamurthy, who enjoyed rent from all the tenants in occupation of the plaint 'A' schedule property. With the earnings of K.Sriramamurthy, father of defendant Nos.1 to 3, they established business. During lifetime of Sri K.Sriramamurthy, he acquired properties in the name of his sons and died intestate.

After death of Sri K.Sriramamurthy, defendant Nos.1 to 3 have been receiving and enjoying the rent derived from the

property and also enjoying usufruct from the coconut garden. Some of the properties were purchased in the name of K.Lakshmi, mother of the plaintiff and defendant Nos.1 to 3. Plaint 'B' schedule property was registered in the name of K.Lakshmi, mother of the plaintiff and defendant Nos.1 to 3 and she constructed a shopping complex at Ramachandraraopet, Eluru, in which one shop room was bequeathed to the plaintiff by her mother during her lifetime by executing a Will. Thus, the plaintiff became the absolute owner of the one shop in the shopping complex as legatee under the Will on the death of her mother K.Lakshmi.

The defendant Nos.1 to 3, who are enjoying rent from 'B' schedule property have not been paying anything to the plaintiff though she is entitled to 1/4th share in the entire property of her mother and father.

It is further contended that gold ornaments of plaintiff were pledged in Andhra Bank in the name of the plaintiff's mother K.Lakshmi and on 28.12.1998 the plaintiff discharged the loan, but the defendant Nos.1 to 3 have not been co-operating with her to get back her gold ornaments from the bank. The defendant Nos.1 to 3 have been insisting the plaintiff not to press her claim for partition and only then they would co-operate with her to get back gold ornaments. Since the plaintiff refused for such proposal, defendant Nos.1 to 3 proclaimed that they would create false documents to deprive the plaintiff to claim her share in the property.

Defendant Nos.18 and 19 purchased certain items of property from defendant Nos.1 to 3 in collusion, those sale deeds are fraudulent, sham and nominal and not binding on the plaintiff.

During pendency of the suit, defendant No.20 purchased item No.2 of 'B' schedule property from the defendant Nos.1 to 3 and the same is also not binding on the plaintiff as it is hit by the doctrine of lis pendens.

As the defendant Nos.1 to 3 did not co-operate for partition of the property, she got issued a legal notice, for which contextious reply was issued by the defendant Nos.1 to 3 stating that on 09.07.1998 their mother executed unregistered Will bequeathing all her property to her sons i.e. defendant No.s1 to 3. The said Will is a fabricated document and it was brought into existence to deprive the plaintiff to claim her legitimate share. The "Will" was pressed into service by the defendant Nos.1 to 3 is false in view of the declaration to the bank stating that K.Lakshmi, mother of the plaintiff and defendant Nos.1 to 3 died intestate and on the strength of the same the Will can be disbelieved. Therefore, the plaintiff sought for partition of the schedule property into four shares and to allot one such share to her.

The defendant No.1 filed written statement admitting the relationship between the plaintiff and defendant Nos.1 to 3 while denying the material allegations of the plaint, interalia contending that the plaint 'B' schedule property is the Sridhana property of their mother K.Lakshmi and not acquired by their father K.Sriramamurthy on her name. Smt.K.Lakshmi, mother of the plaintiff and defendant Nos.1 to 3, during her lifetime executed an unregistered Will, in sound state of mind, on 09.07.1998 bequeathing all her property in favour of the defendant Nos.1 to 3, consequent upon her death on 16.10.1998, the defendant Nos.1 to 3 became absolute owners of the property being legatees under the

Will. After the death of their mother, the shops were mutated in the name of defendant Nos.1 to 3 separately and they have been paying property tax to the Municipality. In the Will dated 09.07.1998, their mother did not disturb her previous Will of the Year 1994, by which the plaintiff was given a shop room. Hence, the plaintiff is not entitled to claim any share in the item Nos.1 to 3 of plaint 'B' schedule property.

Defendant No.1 further contended that the defendants sold certain items of property to defendant Nos.18 and 19 for valuable consideration and they are binding on the plaintiff.

Defendant No.1 further contended that the properties of their father K.Sriramamurthy were confiscated by the Government on corruption charges and there were no properties left with him. Hence, the plaintiff is not entitled to claim any share in the property of her mother and the defendant Nos.1 to 3 have no objection for equal division of item No.4 of plaint 'A' schedule, which is fixed deposit, with the plaintiff. Coconut garden was bequeathed to the defendants by their mother K.Lakshmi, therefore, the plaintiff is not entitled to claim any share in the coconut garden.

Defendant No.1 further contended that at the time of marriage of plaintiff in 1982 huge amount was given to her and when she and her husband constructing a house at Gavaravaram, defendant Nos.1 to 3 helped them financially and morally. Despite receiving financial help, the plaintiff resorted to the present litigation for wrongful gain and prayed for dismissal of the suit.

Defendant No.2 filed written statement raising identical contentions as raised by the defendant No.1. Defendant No.2

specifically contended that the properties stood in the name of defendant Nos.1 to 3 are their self acquired properties and the plaintiff cannot claim any share in the said property and that by the time of defendants signed the sworn declaration, the Will dated 09.07.1998 executed by their mother Lakshmi was not traced and moreover that sworn declaration was got prepared by the husband of the plaintiff, but with an evil intention to grab the property of the defendant Nos.1 to 3, the plaintiff filed the present suit for partition. Defendant No.2 expressed his willingness for partition of item No.4 of plaint 'A' schedule property and prayed for dismissal of the suit.

Defendant No.3 filed a memo adopting the written statement filed by the defendant No.2.

Defendant No.4 filed written statement contending that Smt.K.Lakshmi, mother of the plaintiff and defendant No.1 to 3 let out the property, and after her death by virtue of the Will produced by the defendant Nos.1 to 3, he is continuing in possession of the property, therefore he is not concerned with the dispute.

Defendant No.17 filed written statement contending that he has no concern with the disputes between the plaintiff and defendant Nos.1 to 3 and the deposits lying with bank would be paid to the rightful owner as ordered by the Court. He further contended that the mother of the plaintiff availed a gold loan after pledging 123 grams of gold ornaments and the said loan was discharged on 28.12.1998 and defendant No.17 has no objection to deliver the ornaments to the rightful owner as ordered by the Court and prayed to dismiss the suit against defendant No.17.

Defendant No.19 filed a written statement and defendant No.18 filed a memo adopting the same. They purchased the item No.3 of plaint 'B' schedule property on 11.01.2001 under registered sale deed from defendant Nos.1 to 3 and they became absolute owners enjoying possession of the properties and the transaction is true and genuine. Further, it is contended that the defendant Nos.1 to 3 acquired rights under a Will dated 09.07.1998 executed by K.Lakshmi and they became rightful owners from whom the defendant No.19 purchased the property, consequently, their rights cannot be disturbed and prayed to dismiss the suit.

Defendant Nos.5 to 8, 10 to 16 and 20 remained exparte and the suit against the 9th defendant was dismissed for default.

Based on the above pleadings, the trial court framed the following four issues for trial:

- (1) Whether father and mother of plaintiff and defendants 1 to 3 died intestate?***
- (2) Whether Will dated 09.07.1998 is true, valid and last Will?***
- (3) Whether plaint 'A' and 'B' schedule including bank deposit liable to partition into four equal shares and plaintiff is entitle for one share out of four shares and for separate possession?***
- (4) Whether defendants are liable to render accounts?***
- (5) Whether defendants are liable to deposit the monthly rents into Court?***
- (6) To what relief?***

During trial, on behalf of the plaintiff P.Ws.1 to 3 were examined and marked Exs.A.1 to A.8. On behalf of the defendants, D.Ws.1 to 6 were examined and marked Exs.B.1 to B.3.

Upon hearing argument of both the counsel, the trial Court partly decreed the suit and passed a preliminary decree in favour of the plaintiff and against the defendants for partition of plaint 'A' and 'B' schedule property including bank deposits into four equal shares and for allotment of one such share to the plaintiff while each of the defendant Nos.1 to 3 are entitled for 1/4th share each and after dividing the properties by metes and bounds the defendant Nos.1 to 3 shall put the plaintiff in possession of her 1/4th share.

Aggrieved by the preliminary decree and judgment of the trial Court, the 1st defendant before the trial Court preferred Appeal Suit No.55 of 2006 on the file of V Additional District Judge (Fast Track Court) Eluru, which ended in dismissal by judgment dated 27.06.2011 affirming the findings recorded by the trial Court. Thus, both the trial Court and the appellate Court recorded concurrent findings.

Aggrieved by the preliminary decree and judgment passed by the trial Court and affirmed by the first appellate Court, the present appeal is filed raising several contentions.

The main contention of the appellant in memorandum of second appeal is that the trial Court and the 1st appellate Court did not assign any reason to disbelieve Ex.B.1 Will and the same was proved by examining D.Ws.1 to 3 as required under Section 68 of Evidence Act. In the absence of any reason, the findings of the trial Court and affirmed by the first appellate Court cannot be

sustained. It is further contended that the judgment of the first appellate Court is not in consonance with Order XLI Rule 31 of Code of Civil Procedure. On this ground alone the judgment of the first appellate Court is liable to be set aside. The declaration, Ex.A.8 is not proved by adducing satisfactory evidence and therefore, nondisclosure of the Will, Ex.B.1 in Ex.A.8 is not alone a suspicious circumstance to disbelieve the Will and to reject the defence set up by the defendants. Thus, the trial Court and the first appellate Court committed serious errors in decreeing the suit and thereby the preliminary decree passed by the trial Court and affirmed by the first appellate court are liable to be set aside.

The appellant formulated the following substantial questions of law, which are as follows:

- (a) Whether the judgment of the lower appellate Court is not vitiated by not specifically framing the points that arise for determination in the appeal as required by the mandatory provisions of Order 41 Rule 31 of C.P.C. vide “Vedram v. Harishchandra AIR 2005 Allahabad page 3 and 4 vide 1997 (3) ALD page 717 equivalent to 1997 (3) ALT page 266?
- (b) Whether the finding of the Courts below regarding Ex.A.8 the alleged declaration and affidavit, the execution of which was denied by the defendants, when by not examining the advocate who attested the same?
- (c) Whether granting of the decree by the Courts below in respect of 1/4th share of the plaint ‘A’ schedule properties which are acquired by the father of the plaintiff and Defendants 1 to 3 respectively and which are liable to be confiscated under the provisions of Prevention of corruption Act is right and legally justifiable?
- (d) Whether the granting of the decree by the lower appellate Court in respect of 1/4th share of the plaintiff

of plaint 'A' schedule properties is correct in view of its reasoning in para 19 of its judgment?

- (e) Having admitted in the plaint, that the plaint 'A' schedule properties are the properties of their father which were acquired during his lifetime "with his earnings", whether the plaintiff is entitled to a share in the said properties which are liable to be confiscated?

The first and foremost contention urged before this Court in the memorandum of grounds of appeal is that the first appellate Court did not comply with the requirements of Order XLI Rule 31 CPC and relied on a judgment rendered in in "***Viyyapu Danayya v. Peethala Appa Rao***¹". The other ground regarding proof of Ex.B.1 Will and Ex.A.8 sworn declaration and the source of acquisition of plaint 'A' schedule property by K.Lakshmi, mother of plaintiff and defendant Nos.1 to 3. The substantial questions (b) to (e) (referred supra) are questions of fact, but not substantial questions of law.

At the stage of admission, heard Sri K.V.Subramanya Narasu on behalf of the appellant and defendant Nos.1 to 3 and K.Sita Ram for the plaintiff/respondent No.1 at length and formulated the following substantial questions of law

- (1) Whether the judgment of the first appellate Court is not in consonance with requirement under XLI Rule 31 of C.P.C.

SUBSTANTIAL QUESTION:

The first and foremost contention of the learned counsel for the appellant Sri K.V.Subramanya Narasu is that the 1st appellate Court did not advert to rival contentions and failed to re-appreciate

¹ 1997 (3) ALT 266

the entire evidence based on the contentions raised both in the written statement and argument before the Court and failed to frame appropriate points for determination as required under Order XLI Rule 31 of C.P.C. and failed to record reasons for the points for determination vitiates the entire judgment and decree as it is not in compliance of requirement under Order XLI Rule 31 of C.P.C. and he placed reliance on the judgment of the Apex Court rendered in “**H.Siddiqui (Dead) by LRs. v. R.Ramalingam**”² and “**United Engineers and Contractors v. Secretary to Government of Andhra Pradesh and others**”³

On the strength of the principles laid down in the above judgments, the learned counsel for the appellant Sri K.V.Subramanya Narasu contended that the Judgment of the first appellate Court is contrary to the mandatory requirement under Order XLI Rule 31 of C.P.C. and prayed to set aside the judgment of the first appellate Court and requested to remand the matter to the first appellate Court.

Per contra, Sri K.Sita Ram, learned counsel for the respondent/plaintiff would contend that though appropriate points for determination were not framed by the first appellate Court, the judgment can be sustained when the first appellate Court discussed the relevant contentions with reference to the evidence available on record and here the first appellate Court considered the various contentions with reference to the evidence available on record and law laid down by this Court and decided the appeal in accordance with law and in substantial compliance of Order XLI

² (2011) 4 Supreme Court Cases 240

³ (2014) 16 Supreme Court Cases 109

Rule 31 of C.P.C.. Therefore, on the ground that the first appellate Court failed to frame appropriate points for determination, the decree and judgment of the appellate Court cannot be set aside and he placed reliance a judgment of Division Bench of this Court rendered in “**Gorrella Durga Vara Prasada Rao v. Indukuri Ram Raju and others**”⁴ and also relied on the judgments, which the learned counsel for the appellant relied on. He further contended that in view of the law declared by the Apex Court, the judgment of the first appellate Court needs no interference and prayed for dismissal of the second appeal.

Section 96 and Order XLI of C.P.C. are the relevant provisions in C.P.C. deal with appeals from original decrees.

Order XLI Rule 31 prescribed certain requirements of judgment in the first appeal and the same is extracted hereunder for better appreciation.

Order XLI Rule 31 of C.P.C: 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.

There is State amendment to Order XL1 Rule 31 of C.P.C. and it is as follows:

“31. 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 bear the date on which it is

⁴ 2002 (2) ALT 589 (D.B.)

pronounced and shall be signed by the Judge or the Judges concurring therein:

Provided that, where the Presiding Judge is specially empowered by the High Court to pronounced his judgment 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.”

The State amendment is almost identical to first part of Order XLI Rule 31 of C.P.C., but proviso is added to Rule 31, which enable the Presiding Judge, if specially empowered by the High Court to pronounce his judgment by dictation to a shorthand-writer in open court and the transcript of the judgment so pronounced shall be signed by the Judge. But the proviso to Order XLI Rule 31 of C.P.C. as per Andhra Pradesh is irrelevant for purpose of deciding the real controversy.

In view of the requirement under Order XLI Rule 31 of C.P.C. the first appellate Court Judge has to frame points for determination and record reasons for every conclusion as required by the C.P.C.

Sri K.V.Subramanya Narasu, learned counsel for the appellant, made an attempt to demonstrate that the judgment of the first appellate Court is not in consonance with the requirements as stipulated in Order XLI Rule 31 of C.P.C. and drawn the attention of this Court to Paragraph No.15, where the first appellate Court framed a point for determination and it is as follows:

“Whether the judgment and decree of lower court is contrary to law, weight of evidence probabilities of the case and liable to be set aside or not?”

No doubt, the point for determination framed by the first appellate Court is not based on the grounds urged in the memorandum of grounds of appeal and the first appellate Court being final Court of fact is expected to frame appropriate point for determination at least based on the grounds urged before the Court in the memorandum of grounds of appeal, but instead of advertent to the grounds raised in the memorandum of grounds of appeal, the first appellate Court framed point for determination in a most casual manner. However, the first appellate Court discussed every point that came up for consideration before it by advertent to the evidence available on record without leaving any stone unturned and decided every objection with same seriousness which it deserves, more particularly regarding the Will executed by the mother of the plaintiff and defendant Nos.1 to 3 marked as Ex.B.1 and arrived at a conclusion that the defendant Nos.1 to 3 failed to prove the execution of Will by K.Lakshmi in a sound and disposing state of mind and affirmed the decree passed by the trial Court.

Sri K.V.Subramanya Narasu, learned counsel for the appellant, relied on a judgment of this Court rendered in “**Viyapu Danayya v. Peethala Appa Rao**” (referred supra), but the same was overruled by the Division Bench of this Court in “**Gorrella Durga Vara Prasada Rao v. Indukuri Ram Raju**” (referred supra). Therefore, the law declared by the learned Single Judge of this Court “**Viyapu Danayya v. Peethala Appa Rao**” (referred supra) is no more good law in view of the subsequent judgment of the Division Bench in “**Gorrella Durga Vara Prasada Rao v. Indukuri Ram Raju**” (referred supra), wherein concluded that

even if the point for determination is not framed by the Court, if the Court adverted to all the contentions raised in the grounds of appeal and 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 XLI Rule 31 of C.P.C., but if there is any slight deviation that itself is not a ground to hold that the judgment is vitiated by relying on the judgment rendered in **“Ali Mohammod v. Spl. Court under A.P.Land Grabbing (Prohibition) Act⁵”**

In view of the above said principle declared by the Division Bench of this Court, if the judgment is in substantial compliance of the requirement, though not framed a point for determination, it would not vitiate.

Learned counsel for the appellant drawn the attention of this Court to another judgment rendered in **“H.Siddiqui (Dead) by LRs. v. R.Ramalingam”** (referred supra), wherein it was held that the High Court failed to realise that it was deciding the First Appeal and that it had to be decided strictly in adherence with the provisions contained in Order XLI Rule 31 of the Code of Civil Procedure, 1908.

⁵ 2000 (4) ALT 673 (D.B.)

Order XLI, Rule 31 C.P.C. 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 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: “**Sukhpal Singh v. Kalyan Singh**”⁶ “**Girijanandini Devi and Ors. v. Bijendra Narain Choudhary**”⁷ “**G. Amalorpavam and Ors. v.**

⁶ AIR 1963 SC 146

⁷ AIR 1967 SC 1124

R.C. Diocese of Madurai⁸ “Shiv Kumar Sharma v. Santosh Kumari⁹” ; and “Gannmani Anasuya v. Parvatini Amarendra Chowdhary¹⁰”)

In view of the principle laid down in the above judgments, it is mandatory for the appellate Court to independently assess the evidence of the witnesses and consider the relevant points which arise for adjudication and bearing of the evidence on those points.

If the same principle is applied to the present facts of the case, at best, the first appellate Court is required to assess or appreciate the evidence independently without depending upon the discussion in the lower Court judgment.

The Apex Court reiterated the same principle in “**United Engineers and Contractors v. Secretary to Government of Andhra Pradesh**” (referred supra).

In view of the principles laid down in the above judgments, if the first appellate Court did not advert to the evidence and assess or appreciate the same independently with reference to grounds urged before the first appellate Court in the memorandum of grounds of appeal, such judgment is bad in law and liable to be set aside.

In the instant case, the first appellate Court adverted to each and every contention of the parties after re-appreciating the entire evidence on record and arrived at a conclusion, recorded its finding, such judgment cannot be set aside. For failure to strict

⁸ (2006) 3 SCC 224

⁹ (2007) 8 SCC 600

¹⁰ AIR 2007 SC 2380

adherence to Order XLI Rule 31 C.P.C, the judgment of the first appellate Court cannot be set aside.

When a similar question came up for consideration before the Apex Court in “**G.Amalorpavam and Ors. v. R.C.Diocese of Madurai**” (referred supra), the Court held that non-compliance of Order XLI Rule 31 of C.P.C. may be a ground, but when the presiding Judge, who authored the judgment, if appraised the evidence recorded by the trial Court and came to an independent conclusion, such non-compliance does not vitiate the judgment of the appellate Court and that such non-compliance would be a irregularity, but not a illegality.

The Apex Court laid down two guidelines. Firstly, the rule of compliance of Order XLI Rule 31 of C.P.C. is a rule and it is nothing more than a rule of practice and that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge’s notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lie, the appellate Court should not interfere with the finding of the trial Judge on a question of fact. Secondly, while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it. We need only remind the first appellate courts of the additional obligation

cast on them by the scheme of the present Section 100 substituted in the Code. The first appellate court continues, as before, to be a final court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate court is also a final court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate court even on questions of law unless such question of law be a substantial one.

In view of the principle laid down by the Apex Court in the above said judgment, the first appellate Court substantially complied with the requirements of Order XLI Rule 31 C.P.C., hence the judgment of the first appellate Court is not required to be disturbed.

Sri K.V.Subramanya Narasu, learned counsel for the appellant, raised several questions regarding legality of findings on Ex.B.1, Will and declaration marked as Ex.A.8, given by defendant Nos.1 to 3. The trial Court and the first appellate Court accepted the declaration, Ex.A.8 and disbelieved Ex.B.1, unregistered Will allegedly executed by Smt.K.Lakshmi bequeathing her properties in favour of defendant Nos.1 to 3 and it is based on appreciation of evidence, it is purely a question of fact, but the grounds urged in the memorandum of grounds of appeal with regard to the fact findings recorded by both the trial Court and the appellate Court needs no further consideration by this Court as the jurisdiction of this Court is limited to substantial question of law and this Court

cannot disturb the fact findings recorded by the trial Court. Therefore, in view of the law declared by this Court in “**Gorrella Durga Vara Prasada Rao v. Indukuri Ram Raju and others**” (referred supra) and in other judgments the alleged failure of the first appellate Court to pass the judgment inconformity with Order XLI Rule 31 of C.P.C. is not a ground warranting interference of this Court in the second appeal when the first appellate Court substantially complied with the requirements of Order XLI Rule 31 C.P.C. and the other questions are only questions of fact, which this Court cannot disturb by re-appreciating the evidence on record.

In view of my foregoing discussion, I find no ground warranting interference by this Court while exercising limited jurisdiction under Section 100 of C.P.C. Hence, I find that the second appeal is devoid of merits and deserves to be dismissed. Accordingly, the point is held in favour of the respondent No.1 – plaintiff and against the appellant – defendant No.1.

In the result, the second appeal is dismissed without costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:30.09.2016
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