

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

SECOND APPEAL NO. 1070 OF 1999

JUDGMENT:

The unsuccessful plaintiff in O.S.No. 103 of 1978 on the file of District Munsif at Salur and the appellant in A.S.No. 15/1990 on the file of Senior Civil Judge at Bobbili, preferred the present Second Appeal under Section 100 of CPC challenging the concurrent findings recorded by both the trial Court and appellate Court in suit and appeal on various grounds.

2. For the sake of convenience, the parties to the appeal are referred to as they ranked in suit, hereinafter, throughout the judgment.

3. Plaintiffs 1 & 2 filed the suit for declaration of title and recovery of possession based on sale deed Ex. A1 and for future profits. Defendants denied the title of the plaintiffs raising several contentions. The trial Court framed as many as 11 issues:

- "(1) Whether the plaintiffs have got the absolute title ever the suit schedule mentioned house property?*
- (2) Whether the defendants 2 to 10 have got any rights in the plaint schedule house property?*
- (3) Whether the sale deed dt. 1.6.1977 is true, valid and binding on the defendants?*
- (4) Whether the 2nd defendant has got any stridhana property?*
- (5) Whether the defendants are mere licenses under 1st defendant and the plaintiffs?*
- (6) Whether the renovation of the license by the plaintiffs through the registered notice is proper?*
- (7) Whether the dispute alleged to have been raised by the plaintiffs is true?*
- (8) Whether the plaintiffs are entitled to get the future mesne profits from the defendants 2 to 10?*
- (9) Whether the defendants 2 to 10 are liable for eviction?*
- (10) Whether the 1st defendant is liable for the suit costs?*
- (11) To what relief?"*

4. To substantiate the case of plaintiffs, on behalf of plaintiffs PWs 1 to 3 were examined and Exs. A1 to A-15 were marked and on behalf of defendants DWs 1 to 4 were examined and no documents were marked.

5. Upon hearing argument of both the counsel, the trial Court dismissed the suit holding that the sale covered under Ex. A1 is not valid and declined to pass decree in favour of the plaintiffs.

6. Aggrieved by the decree and judgment of the trial Court, the plaintiffs preferred A.S.No. 15 of 1990 before the Senior Civil Judge, Bobbili, which ended in dismissal by decree and judgment dated 31.7.1998 confirming the decree and judgment of the trial Court.

7. The present Second Appeal is filed under Section 100 of CPC aggrieved by the concurrent findings recorded by both the trial Court and appellate Court. The following substantial questions of law formulated in the grounds of appeal at para 9(a) and 9(b) in addition to the following substantial question of law raised at the time of admission of the Appeal to be treated as 9(c), which reads as under:

"9 (c). Whether the judgment of the learned Senior Civil Judge is not vitiated for the reason that he did not consider the question whether the plaintiff are entitled to a decree in respect of the share of the first defendant in the suit itself."

In Re :

8. At the time of hearing, Sri K.V. Subrahmanya Narsu, learned counsel appearing for appellants contended that the order of the trial Court is in violation of Order 41 Rule 31 CPC on the sole ground that the order is required to be set aside. In view of specific contention urged before this Court, I would like to take substantial question of law, referred to supra for decision.

Order 41 Rule 31 CPC mandates "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."

9. In the present case, the first appellate Court did not frame point for determination and simply proceeded to extract the allegations made in the plaint, written statement, issues and extracting the cross examination of PW-1 in paragraph 9 and examination of DW-1 in paragraph 10, cross-examination of DW-1 and started deciding issues in paragraph Nos. 11,13,16,17 and recorded a finding. Curiously, in paragraph No. 12, the appellate Court observed that

"this Court agreed that the findings of the lower Court. This court disagreed with the arguments of the appellants/plaintiffs counsel that there is no ancestral nucleus. When there are so many children and wife, it can not be said that D-1's labour along was responsible for the earnings. The plaintiffs are canvassing about the absence of ancestral nucleus only to grab away the property. The plaintiffs who purchased the suit house must be very risk taking. Though they know that D-1 has got so many children who must be supposed to have shares in the joint family property. The family members of D-1 are the correct persons to speak about the existence of gold inherited by D-1....."

10. These observations were made without framing any point for determination and discussing the evidence of both oral and documentary in support of claim of both the parties, therefore, the judgment of the appellate Court is erroneous on the face of it.

11. The first appellate Court should not modify the decree of the trial court by passing cryptic order without taking note of relevant aspects and the appeal has to be heard both on questions of law and on facts by following procedure prescribed under Order 41 Rule 31 CPC as held by the Apex Court in ***Parimal vs. Veena***^[1]. The Supreme Court reiterated the obligation of the appellate court to formulate the points for its consideration and independently weigh the evidence on the issues which arise for adjudication and record reasons for its decision on the said points. But in the present case, the appellate court did not frame any point for determination and no reasons were recorded by the appellate Court to agree with the findings of the trial Court and on this ground alone, the judgment and decree of the appellate Court are liable to be set aside.

12. As the appellate Court failed to comply with the procedure prescribed under Order 41 Rule 31, I find that it is a fit case to remit the matter to the first appellate Court directing the appellate Court to restore the appeal to its original number, frame points for determination as required under Order 41 Rule 31 CPC and record reasons on every point for determination and pronounce judgment strictly adhering to Order 41 Rule 31 CPC. The first appellate Court is directed to issue notice to both the parties fixing date of hearing and hear the appeal and decide the appeal in accordance with law.

13. With the above direction, the Second Appeal is allowed but without costs. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

JUSTICE M.SATYANARAYANA MURTHY,J

Date: 16.08.2016
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^[1] AIR 2011 SC 1150