THE HON'BLE DR JUSTICE SHAMEEM AKTHER

SECOND APPEAL No. 826 OF 2010

JUDGMENT:

1. The Second Appeal is filed by the appellant/defendant against the judgment and decree dated 15.02.2010 in Appeal Suit No.12 of 2009 on the file of the Principal District Judge, Medak at Sanga Reddy, whereby the judgment and decree dated 30.12.2008 in Original Suit No.76 of 2003 on the file of the Senior Civil Judge, Sanga Reddy decreeing the suit filed for declaration of title over the plaint schedule property, recovery of possession thereof and rectification of entries in revenue records, were confirmed.

2. The appellant herein is the defendant, the respondent herein is the plaintiff, in the suit. For better appreciation of facts, the parties are hereinafter referred to, as they are arrayed in the trial court.

3. The Second Appeal was admitted on the following substantial questions of law.

> "a) Whether the judgment and decree of the first appellate court are vitiated due to non-advertence to the questions in controversy in the first appeal and the absence of any decision thereon in the impugned judgment ?
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> b) Whether the property purchased by the predecessors-in-title of the plaintiff and the property sold to the plaintiff are not one and the same ?
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> c) Whether the oral evidence concerning the passing of consideration under Ex.A1 is contrary to the recitals of Ex.A1 and is, hence, inadmissible ?
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> d) Whether the trial and first appellate Courts did not consider and decide any right of the defendant to

the protection of Section 53A of the Transfer of Property Act, 1882, with reference to the possession under Ex.B3 ?

e) To what relief ?"

4. To adjudicate the *lis,* it is necessary to refer to admitted and disputed facts.

(a) Plaintiff filed the suit for declaration of title to the plaint schedule property, recovery of possession thereof and for rectification of entries in the revenue records in respect of the said property, stating as follows.

Plaintiff is the absolute owner and possessor of suit schedule property. Originally, one V.Narayana Rao was the original owner of the plaint schedule property. He sold the plaint schedule property (admeasuring Ac.5.19 guntas) and another extent of Ac.5.19 guntas, to his son-in-law J.V.Lakshman Rao under registered sale deed bearing document No.585 of 1998, dated 23.2.1998. The plaintiff purchased the plaint schedule property under registered sale deed bearing document No.2812 of 1999, dated 12.07.1999 (Ex.A1) from said J.V.Lakshman Rao. The original owner V.Narayana Rao attested the sale document in favour of the plaintiff as attestor. In fact, he arranged the sale transaction in between the plaintiff and her vendor by receiving some consideration from the plaintiff.

Plaintiff purchased the same after satisfying with its location. Before purchase, she verified the sale deeds standing in the name of her vendor J.V.Lakshman Rao and found that southern boundary was described as 'land in sy.no.193'. When she questioned, her vendor and his vendor represented that the southern boundary is shown wrongly by mistake and that there is no survey no.193 on the southern side boundary, and assured that they would get the boundaries of sale deeds in name of her vendor J.V.Lakshman Rao rectified. Plaintiff was in possession and enjoyment of the schedule property from the date of her purchase.

During third week of May, 2002, when her vendor and others caused disturbance to her making false claims, plaintiff filed O.S. No.123 of 2000 on the file of the Principal Junior Civil Judge, Sanga Reddy for perpetual injunction. Thereafter, defendant filed another suit against the plaintiff and another, seeking permanent injunction claiming title over the schedule property by way of registered sale deed executed in her favour by one A.Sathya Prasad, who purchased the same from one K.Sharath Chandra, who purchased it from one G.Satyanarayana, who purchased it from vendor's vendor of plaintiff V.Narayana Rao through his GPA holder and wife Smt.V.Padma by way of registered sale deed dated 25.5.1996. The said G.Satyanarayana applied for sanction of patta in his name and got the unregistered sale deed validated. It is further contention of the defendant that the said G.Satyanarayana also got revenue entries mutated in his name. The learned Principal Junior Civil Judge, Sanga Reddy passed a common order granting injunction in favour of defendant and dismissing petition filed by the plaintiff. The matter was carried by way of appeal and the learned I Additional District Judge, Sanga Reddy by common order in C.M.A. Nos. 18 of 2000, 19 of 2000 and 20 of 2000, observed that as multiple question of title is involved, filing of a comprehensive suit is appropriate, and directed the defendant not to alienate the schedule property to third parties.

Vendor's vendor of plaintiff V.Narayana Rao collusively created several transactions with *mala fide* intention and to deprive the plaintiff's ownership and enjoyment over the schedule property. The unregistered sale deed dated 25.5.1996 was sent, as per the orders in the suit, to find out exact age of the document, to the Forensic Science Laboratory, which sent report stating that there is no mechanism to find out exact date of execution of any document, but the document examined is of subsequent date than as shown on the document. Validation of unregistered sale deed will come into operation only from the date of alleged validation but not before. By the date of mutation in the name of G.Satyanarayana in revenue records, the land stood in the name of vendor of the plaintiff, who already sold the property in favour of the plaintiff. Behind back of the plaintiff, the defendant got validation of unregistered sale deed dated 25.5.1996 and got mutation entries in revenue records. The defendant has no valid and legal title to schedule property. Hence, the suit.

(b) Defendant filed written statement denying material plaint averments and contending that plaintiff is neither owner nor possessor of suit schedule property at any time in any capacity. She has no subsisting title, right or interest. Vendor of plaintiff had no right to alienate the property in favour of anybody. Only to rectify the defects of the sale deed and to support her case, the plaintiff invented the story that her vendor and vendor's vendor represented that by mistake southern boundary in her sale deed was shown wrongly. The plaintiff alleged to have purchased the property which is other than the suit schedule property. The boundaries mentioned in the sale deed and the boundaries mentioned in the suit schedule property are quite contra to each other.

Original Suit No.192 of 2000 filed by the defendant against the plaintiff and another for permanent injunction in respect of Ac.10.38 guntas of land, was decreed on 22.7.2003. Defendant purchased the property from real owner and her predecessor had every right to alienate the property. The unregistered sale deed dated 25.5.1996 was validated under law and the same is acted upon between the parties. It was considered by the revenue authorities and pattadar pass books were also issued by the revenue authorities in favour of the purchaser. There is no time limit prescribed for execution of sale deeds. There is no cause of action for the suit and the suit is barred by limitation. Court fee paid is insufficient as suit was undervalued. After purchase of the property, defendant brought the schedule property to cultivation, laid fencing and developed it by investing lot of money. Hence, it is prayed to dismiss the suit.

5. Basing on the above pleadings, the trial Court settled the following issues for trial.

1) Whether the plaintiff is entitled for a decree to declare her title and ownership in respect of the suit schedule property as prayed for ?

2) Whether the plaintiff is entitled for recovery of possession of suit schedule property as prayed for ?

3) Whether the plaintiff is entitled for rectification of records as prayed for ?

4) to what relief ?

6. During trial, on behalf of the plaintiff, P.Ws.1 to 5 were examined and Exs.A1 to A9 were got marked, and on behalf of defendant, D.Ws.1 and 2 were examined and Exs.B1 to B7 were got marked.

7. The trial Court, upon appreciation of the evidence on record, decreed the suit declaring that the plaintiff is owner of suit schedule property, and entitled for recovery of possession and for rectification of entries in the revenue records. Challenging the judgment and decree of the trial Court, the defendant preferred Appeal Suit No.12 of 2009 on the file of the District Judge, Medak at Sanga Reddy. Vide the impugned judgment and decree, the first appellate court

dismissed the appeal confirming the judgment and decree of the trial Court. Challenging the same, the present Second Appeal has been preferred by the defendant.

8. Heard Sri P.Sri Raghuram, learned senior counsel appearing for the appellant and Sri Vedula Venkataramana, learned senior counsel appearing for the respondent. Perused the record.

9. (a) The learned senior counsel appearing for the appellant/defendant would contend that several contentious issues are involved in the case; that compliance of the provisions of Order XLI Rule 31 CPC viz. to frame the points for determination and record its findings on each of the points, is mandatory for the first appellate court; that in the case on hand, the first appellate court failed to comply with the mandatory requirement under Order XLI Rule 31 CPC, and that even there is no substantial compliance thereof; that the first appellate court, being the final court of facts, the pure findings of fact remain immune from challenge before the High Court; that the first appellate failed in its duty in considering the crucial contentions of facts and law and record specific findings thereon by reappreciating the evidence on record; that the impugned judgment of the first appellate court is cryptic and it merely referred to the pleadings and the evidence to some extent, and held that it concurred with the findings of the trial court without recording any findings on questions of law and fact raised by the parties, after independent appreciation of the evidence, and therefore the impugned judgment and decree are liable to set aside on this ground alone. In support of his contention, he relied on the following decisions.

i) a decision of the Hon'ble Apex Court in *Santosh Hazare Vs. Purushottam Tiwari(deceased) by LRs.* [1]

ii) a decision of this court in *Thummala Kanakamma and another Vs. Vottikala Venkataswamy and another*[2].

(b) It is his further contention that, the defendant is disputing the very identity and location of the suit schedule property; that even as per the plaintiff, there is a mistake crept in, in the description of the boundaries mentioned in Ex.A1-sale deed; that when the defendant is vehemently disputing the identity of the property, the plaintiff ought to have taken steps for rectification of the mistake in the boundaries mentioned in EX.A1 from her vendor; that for not doing so, an adverse inference can be drawn against the plaintiff with regard to identity of the property mentioned in EX.A1; that even as per the admission of P.W.1, the plaintiff is not certain or definite about the property covered under EX.A1; that when the plaintiff failed to establish identity of the property, she is not entitled to the relief of declaration of title.

(c) It is his further contention that originally the respondent/plaintiff filed O.S.No.123 of 2000 on the file of the Principal Junior Civil Judge, Sangareddy for perpetual injunction against her vendor J.V.Lakshmana Rao and vendor's vendor V.Narayana Rao; that the appellant/ defendant is not a party to the said suit; that the appellant withdrew the said suit with the leave of the court to file a comprehensive suit for declaration of title and recovery of possession, and filed the present suit against the defendant alone, who is not a party to the earlier suit, without impleading the said J.V.Lakshman Rao and V.Narayana Rao;

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[1] (2001) 3 SCC 179
[2] 2003(2) ALD 523

hence, the suit is not maintainable for non-joinder of her vendor J.V.Lakshman Rao and his vendor V. Narayana Rao.

(d) It is his further contention that admittedly the defendant has been in possession and enjoyment of the subject property since 1996 by virtue of Exs.B3 to B7 and revenue records are also mutated in her favour; that the title of the defendant's vendor is traceable to Ex.B3-sale deed dated 25.05.1996 which is prior in date to EX.A1; that EX.B3 was validated by the District Registrar as per law, and that under the provisions of the Indian Stamp Act, 1899, the validation relates back to date of its execution; that in the circumstances, the defendant is entitled to protection under Section 53 A of the Transfer of Property Act, 1882.

(e) It is his further contention that the defendant filed O.S.No. 192 of 2000 against the plaintiff and another for permanent injunction and the said suit was decreed on 22.07.2003 and the same has become final; that the plaintiff, being a party to the above suit, did not obtain leave of the court to file a comprehensive suit for declaration; that when the decree granted by a competent civil court granting permanent injunction in favour of the defendant, is in force in respect of the very same property, the said decree would operate as *res judicata* and it is impermissible for plaintiff to seek a relief of recovery of possession.

(f) It is his further contention that there are several inconsistencies in the oral evidence of the plaintiff witnesses which would go to the root of the case; that vendor of the plaintiff's vendor is stated to be an attester to Ex.A1-sale deed, but for the reasons best known, he was not examined by the plaintiff; that the plaintiff's vendor and his vendor, who are parties to the earlier suit filed by the plaintiff, filed written statement in the said suit opposing the claim of the plaintiff.

(g) The learned senior counsel would submit that the first appellate court did not at all consider the aforesaid questions of fact and law and no specific findings are recorded on the aforesaid aspects by re-appreciating the evidence on record; that both the courts below did not appreciate the evidence on record in proper perspective and arrived at, perverse findings, and ultimately, prayed to allow the Second Appeal.

In support of his contentions, the learned senior counsel relied on the following decisions.

(i) in *Balmik v. Ramnaresh Singh & others*[3];

(ii) in *Shrimant Shamrao Suryavanshi & another v. Pralhad Bhairoba Suryavanshi (dead) by LRs & others*[4];

(iii) in *Boodireddy Chandraiah & others v. Arigela Laxmi & another*[5]; &

(iv) in *Mallu Venkatraman Reddy & others v. Gundluri Govinda Reddy & another*[6];

10. On the other hand, the learned senior counsel appearing for respondent would contend that the plaintiff is the absolute owner of the subject property by virtue of Ex.A1 registered sale deed; that Ex.B3 unregistered sale deed is a sham and fabricated document pressed into service to grab the property from the plaintiff in collusion with the original owner Narayana Rao; that there is no dispute with regard to identity of the subject property; that the mistake crept in, in the description of boundaries would not disentitle a person for the relief of declaration of title; that the suit is not bad for non-joinder of necessary parties since the plaintiff filed the suit for declaration against the persons who denied her title; that

[3] 2002 (5) Supreme 178
[4] (2002) 3 SCC 676
[5] AIR 2008 Supreme Court 380
[6] 2013 (4) ALD 23

when the identity and location of property is clear and unambiguous, not taking steps for rectification of the mistake crept in, in the description of boundaries in Ex.A1 is not a bar to declare her title and order recovery of possession; that the nature and relief prayed in the earlier suits filed by the parties to the litigation are different and distinct, and hence, even if the permanent injunction granted in favour of the defendant is subsisting, it is not a bar to declare title of the plaintiff; that the *doctrine of priority* is applicable to the facts of the present case; that both the courts below rightly held that plaintiff is entitled for the declaration of title and consequential relief of recovery of possession and mutation in revenue records; that when both the parties are claiming title to the schedule property on the strength of documents, the Court has to decide who has better title basing on the oral and documentary evidence on record and declare title.

It is his further contention that strict compliance of the provisions of Order XLI Rule 31 CPC is not mandatory; that non-framing the points for determination alone is not a ground to set aside the judgment and decree of the first appellate court; that both the courts below appreciated the entire evidence on record, both oral and documentary, and came to right conclusions; that there is no substantial question of law to deal with, under Section 100 CPC in the Second Appeal and hence, he prayed to dismiss the Second Appeal.

In support of his contentions, he relied on the following decisions:-

(i) in *G.Amalorpavam & others v. R.C. Diocese of Madurai & others*[7];

(ii) in *Mahboob Saheb v. Syed Ismail & others*[8];

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[7] (2006) 3 SCC 224

(iii) in *Union of India & others v. Vasavi Cooperative Housing Society Limited & others*[9];

(iv) in *K.Satyamma (died) per LR & others v. Bhoodevi*[10];

&

(v) in *Sabhaji v. Nawalsingh & others*[11].

11. In view of the aforesaid contentions, the point that arises for determination in this Second Appeal is whether the impugned judgment and decree of the first appellate court is liable to be confirmed or set aside or any other order be passed in the interest of justice?

12. There cannot be any dispute that, under the amended Section 100 C.P.C., a party aggrieved by the decree passed by the first appellate court has no absolute right of appeal. He can neither challenge the decree on a question of fact or on a question of law. The second appeal lies only where the High Court is satisfied that the case involves a substantial question of law. The word 'substantial' as qualifying 'question of law', means and conveys of having substance, essential, real, of sound worth, important, considerable, fairly arguable. A substantial question of law should directly and substantially affect the rights of the parties. A question of law can be said to be substantial between the parties if the decision in appeal turns one way or the other on the particular view of law. But, if the question does not affect the decision, it cannot be said to be substantial question between the parties. Recording a finding without any evidence on record; disregard or non-consideration of relevant or admissible evidence; taking into consideration irrelevant or inadmissible evidence; perverse finding- are some of the questions, which involve substantial questions of law.

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[8] (1995) 3 SCC 693
[9] (2014) 2 SCC 269
[10] 2015 (3) ALT 540 (S.B.)
[11] AIR 1928 Nagpur 4

13. The first contention of the learned senior counsel appearing for the appellant/defendant is that the procedure contemplated under Order XLI Rule 31 CPC has not been followed by the first appellate court, and that there is also not even substantial compliance thereof; that judgment passed by the first appellate court is cryptic and bereft of reasons, and by simply extracting the pleadings of both the parties, the oral evidence and the recitals in the exhibits marked on behalf of both sides, the first appellate court mechanically concurred with the judgment of the trial court. It is his contention that the first appellate court, being the final court of facts, is duty bound to re-appreciate the entire oral and documentary evidence and record its findings on the contentious issues and the points framed for consideration, but it did not even frame single point for consideration.

14. Order XLI Rule 31 CPC reads as follows:

> "Contents, date and signature of the judgment:
> The judgment of the Appellate Court shall be in writing and shall state –
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> (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,
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> and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein."

15. In the judgment relied on by the learned senior counsel appearing for the appellant in *Santosh Hazari* case (1 supra), the Hon'ble Supreme Court held as follows :

> "First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open

for rehearing 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. The task of an appellate Court affirming the findings of the trial Court is an easier one. The appellate Court agreeing with the view of the trial Court need not restate the effect of the evidence or 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 (See Girijanandini Devi & Ors. Vs. Bijendra Narain Choudhary, AIR 1967 SC 1124). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate Court for shirking the duty cast on it. ....

The rule is - and it is nothing more than a rule of practice - 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 Judges notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate Court should not interfere with the finding of the trial Judge on a question of fact.(See Sarju Pershad Ramdeo Sahu Vs. Jwaleshwari Pratap Narain Singh & Ors., AIR 1951 SC 120). 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."

16. In the other decision relied on by the learned senior counsel appearing for appellant in *Tummala Kanakamma* case (2 supra), it is held as follows: (para 9)

"9. Keeping in view the principles of law stated in the above decisions I propose to examine the issue involved in the present appeal. It is significant and pertinent to stress one important aspect. In the above decisions it was not observed even remotely that first appellate Court Judge need not at all consider any of the relevant grounds raised in the memorandum of Appeal or at the time of hearing of the appeal and in a confirming judgment a one line judgment that the first Appellate Court Judge agrees with the findings of the trial Court would serve the purpose of the provision in Order 41 Rule 31 C.P.C. What all is stated in the above judgments is that elaborate reference to the evidence on record and lot of discussion on the effect of evidence are not necessary in a confirming judgment. The procedure laid down in the above provision cannot be treated as an empty formality. The trial Court in its judgment stated categorically that the defendants in fact encroached into the land of the plaintiffs. However, it did not grant the decree in favour of the plaintiffs on the sole ground that the plaintiffs failed to establish that the extent of the encroachment and also to localize the area encroached by the defendants. In this regard, in para 5 of its judgment, the lower appellate Court itself stated that it was contended by the appellants-plaintiffs before it that the Commissioner's report and personal inspection supports the case of the plaintiffs. This is undoubtedly an important contention raised before the lower Appellate Court. In para 7 of its judgment the lower appellate Court did not focus its attention on the said crucial contention raised by the appellant before it. It is the duty of the appellate court to consider all relevant and tenable contentions raised in the grounds of appeal or at the time of oral or written arguments and decide the appeal on merits. If the lower appellate Court had considered that contention with reference to evidence on record and negatived the said contention for any reason whatsoever there would be no need for this Court to interfere with the findings of fact recorded by the lower appellate Court. The lower appellate Court failed in its duty in considering the crucial contention advanced before it and looking at the judgment of the trial Court from the point of view on which the judgment of the trial court was challenged by the appellant before it. Normally, if all relevant points for consideration are not framed as such by the appellate Court, at least there would be one usual and general point namely, whether the judgment of the trial Court is to be confirmed or set aside. Even that usual point for consideration is not framed by the lower appellate Court. It is to be stated that if the procedure adopted by the present lower appellate Court is approved by this Court then in many of the appeals the

> first appellate Court judges may not at all discuss any evidence on record and simply say that he or she agrees with the findings of the trial Court and confirm the judgment of the trial Court. I am therefore of the opinion that it is necessary to set aside the judgment of the lower appellate Court and remit back the appeal to the lower appellate Court for fresh consideration and disposal of appeal on merits. The impugned judgment is not being set aside on the sole ground that points for consideration are not framed."

17. A perusal of the impugned judgment of the appellate court reveals that it recorded the pleadings of both the parties, the issues framed by the trial court, the oral evidence of both the parties, the description of the documents marked on both sides and some of the contentions raised by both the parties to the appeal. At some places, it extracted the gist of the evidence of witnesses examined on both sides. It has not given findings on the contentions raised by both the parties, on its own with reference to oral and documentary evidence except mere mentioning the observations of trial court.

18. The suit is filed for declaration of title, recovery of possession and mutation in the revenue records, in respect of the suit schedule property. The plaintiff based her title to Ex.A1 registered sale deed executed by one J.V. Lakshman Rao on 12.07.1999. It is her case that her vendor purchased schedule land and other land from its original owner V. Narayana Rao under registered sale deed dated 23.2.1998. On the other hand, it is the case of defendant that she purchased the schedule property under Ex.B7 registered sale deed dated 24.03.2000 from one A. Satya Prasad, who purchased it under Ex.B6 registered sale deed dated 16.03.2000 from one Sharath Chandra(D.W.2), who

purchased the same under Ex.B5 registered sale deed from one G. Satyanarayana, who purchased the same under Ex.B3-unregistered sale deed dated 25.05.1996 from Smt. V. Padma, who is G.P.A holder of the original owner V. Narayana Rao. The defendant had taken several defences such as disputing the very identity of the suit schedule property in view of the discrepancy in the description of boundaries in the sale deed of plaintiff ; protection under Section 53 A of the Transfer of Property Act, 1882; non-maintainability of suit for non-joinder necessary and proper parties; subsistence of decree of permanent injunction in her favour against the plaintiff granted by a competent civil court, from which no leave was obtained by the plaintiff to file the suit for a comprehensive relief of declaration; mutation of her name in the revenue records, etc. It is her specific case that Ex.B3 unregistered sale deed dated 25.05.1996 under which the G.P.A holder of original owner V. Narayana Rao sold the subject property to one G. Satyanarayana, from whom the title had allegedly flown to the vendors of defendant and to her finally under Ex.B7, was validated as per law by the District Registrar concerned, and that the validation relates back to the date of execution of the document i.e., 25.05.1996.

19. The first appellate court, being the final court on facts, has to re-appreciate the entire oral and documentary evidence adduced by the parties issue-wise/point-wise and record its independent findings on the questions of fact and law raised by the parties. The said exercise is not done in the case on hand. Several contentious issues are raised in the first appeal. The appellate court has not framed any point for determination. It has not appreciated the oral evidence with reference to the relevant documents to answer the contentions raised by both the parties and did not give its independent findings thereon.

20. One of the salutary principles of principles of natural justice is spelling out all the reasons in the order made. Right to reason is an indispensable part of sound judicial system. Failure to give reasons amounts to denial of justice. It is nothing but denial of a forum to the parties to agitate their grievances. Mere reproduction of the words mentioned in the judgment of the trial court and stating that the first appellate court is concurring with the said findings, would not be a proper compliance of the aforesaid principle. In such an event, in view of the restricted powers under Section 100 CPC, this Court cannot sit over as a first appellate court and record findings on the questions of fact and law raised by the parties. Provisions of O.XLI Rule 31 CPC is not an empty formality. No doubt, substantial compliance of the said provision would suffice.

21. First appeal is a valuable right of the parties. In the first appeal, the entire case of the parties is open for rehearing 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. Merely because it was in agreement with the findings recorded by the trial Court, it should not be a device or camouflage adopted by the appellate Court for shirking the duty cast on it. In the case on hand, the impugned judgment does not show that the first appellate court reflected its conscious application of mind. It has not recorded findings supported by reasons on all contentions put forth. Therefore, this Court has no hesitation to hold that the first appellate court did not discharge the duty cast on it as a court of first appeal.

22. It is needless to state that the first appellate Courts have an additional obligation cast on them by the scheme of the present Section 100 CPC substituted in the Code. The first appellate Court continues, as before, to be a final Court of facts, and the pure findings of fact remain immune from challenge before the High Court in Second Appeal. Now, even on a question of law, the first appellate Court is a final Court, 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.

23. It is held in the decision relied on by the learned counsel for the respondent in *G.Amalorpavam & others* case (7 supra), non-compliance with the provisions may not vitiate the judgment and make it wholly void, and may be ignored if there has been substantial compliance with it and the second appellate Court is in a position to ascertain the findings of the lower appellate Court, and that it is desirable that the appellate court should comply with all the requirements of Order XLI Rule 31 CPC, and that if it is possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not thereby suffered, that would be sufficient. It is further held by the Hon'ble Apex Court that when the appellate court considered the entire evidence on record, discussed the same in detail, and came to any conclusion and its findings are supported by reasons, there is substantial compliance with the provisions of Order XLI Rule 31 CPC, even though the point has not been framed by the appellate Court and the judgment is not in any manner vitiated by the absence of a point of determination.

It is further held that where there is an honest endeavour on the part of the lower appellate court to consider the controversy between the parties and there is proper appraisement of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifest by the perusal of the judgment of the lower appellate court, it would be a valid judgment even though it does not contain the points for determination. The Hon'ble Apex Court observed that the object of the Rule in making it incumbent upon the appellate court to frame points for determination and to cite reasons for the decision, is to focus attention of the Court on the rival contentions which arise for determination and also to provide litigant parties opportunity in understanding the ground upon which the decision is founded with a view to enable them to know the basis of the decision and if so considered appropriate and so advised to avail the remedy of Second Appeal conferred by Section 100 CPC. But, as seen from the impugned judgment of the first appellate court, none of the above requirements is complied with. Therefore, it can be safely concluded that there is no substantial compliance of the provisions of the Order XLI Rule 31 CPC by the first appellate Court.

24. The first appellate Court Judge need to consider the relevant grounds raised in the memorandum of appeal or grounds raised at the time of hearing of the appeal. A one line judgment that the original court appreciated the evidence in right perspective and the first Appellate Court Judge agrees with the findings of the trial Court, would not serve the purpose of the provision in Order XLI Rule 31 C.P.C. The procedure laid down in the above provision cannot be treated as an empty formality. The appellate court is duty bound to consider all relevant and tenable contentions raised in the

grounds of appeal or at the time of oral or written arguments and decide the appeal on merits with reference to the evidence adduced by the parties. In the instant case, the lower appellate Court failed in its duty in considering the contentions advanced before it and looking at the judgment of the trial Court from the point of view on which the judgment of the trial court was challenged by the appellant before it.

25. Normally, if all relevant points for consideration are not framed as such by the appellate Court, at least there would be one usual and general point namely, whether the judgment of the trial Court is to be confirmed or set aside. Even that usual point for consideration is not framed by the lower appellate Court in the instant case. It is to be stated that if the procedure adopted by the present lower appellate Court is approved by this Court, then in many of the appeals the first appellate Court judges may not at all discuss any evidence on record and simply say that he or she agrees with the findings of the trial Court and confirm the judgment of the trial Court. Therefore, the impugned judgment and decree are liable to be set aside not only on the ground that there is not even substantial compliance of the provisions of Order XLI Rule 31 CPC, but also on the ground that it lacks reasons for its decision. Hence, this Court is of the opinion that it is necessary to set aside the judgment of the lower appellate Court and remit back the appeal to the lower appellate Court for fresh consideration and disposal of appeal on merits after hearing both sides recording reasons on the factual and legal aspects raised supra by both the parties and on any other aspects which arise for consideration at the time of hearing of the appeal by framing relevant points for determination.

26. In the result, the Second Appeal is allowed. The impugned judgment and decree dated 15.02.2010 in Appeal Suit No.12 of 2009 on the file of the Principal District Judge,

Medak at Sanga Reddy are set aside. The matter is remanded to the first appellate court for fresh consideration and disposal of the appeal on merits after hearing both sides, recording reasons on the factual and legal aspects raised supra by both the parties and on any other aspects which arise for consideration at the time of hearing of the appeal, as expeditiously as possible preferably within a period of six months from the date of receipt of copy of this judgment.

There shall be no order as to costs of the Second Appeal.

The miscellaneous petitions pending, if any, in the Second Appeal stand closed.

(Dr.SA, J.)

29.10.2018
DRK

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

SECOND APPEAL No. 826 OF 2010

29.10.2018