

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.265 of 2016

JUDGMENT:

This appeal is filed under Section 100 of CPC, by the second defendant, assailing the decree and judgment dated 26.10.2015 in A.S.No.10 of 2012 on the file of the Court of XII Additional District Judge, Vikarabad, wherein and whereby the decree and judgment dated 23.7.2010 in O.S.No.173 of 2005 on the file of the Court of Senior Civil Judge, Vikarabad, decreeing the suit by passing preliminary decree, was confirmed.

2. Heard the learned counsel for both the parties.

3. At the time of arguments, learned counsel for the appellant submitted that the first appellate Court, by reproducing certain paragraphs of the judgment of the trial Court, confirmed the judgment of the trial Court; therefore, it is a fit case to allow the appeal setting aside the judgment and decree of the first appellate court. He further submitted that non-application of mind by the first appellate Court itself is a valid ground to remand the matter to the first appellate Court for fresh disposal. ***Per contra***, learned counsel for the first respondent submitted that the first appellate Court disposed of the appeal on merits; therefore, there are no grounds to interfere with the judgment and decree of the first appellate Court.

4. It is needless to say that the appeal is continuation of the suit. The first appellate Court has to consider the oral and documentary evidence afresh and disposed of the appeal on merits without being influenced by the findings recorded by the trial

Court. While delivering the judgment in appeal, the appellate Court has to strictly adhere with the provisions of Order XLI Rule 31 of CPC. In **H.Siddiqui v A.Ramalingam**¹, the Hon'ble apex Court held at paragraph No.21 as follows:

21. ... 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. ...

5. Let me consider the facts of the case on hand, in the light of the above principle.

6. The trial Court, after considering the oral and documentary evidence available on record, recorded its findings in paragraph Nos.16, 17 and 18 of its judgment. In order to appreciate the contention of learned counsel for the appellant, this Court carefully perused the judgment of the first appellate court. Paragraph No.31 of the appellate Court judgment is replica of paragraph No.16 of the trial Court judgment. The first appellate Court reproduced paragraph No.17 of the trial Court judgment in paragraph No.32 of its judgment. Paragraph No.33 of the appellate Court judgment is nothing but paragraph No.18 of the trial Court judgment. A perusal of the record clearly reveals that the first appellate Court simply reproduced paragraph Nos.16, 17 and 18 of the trial Court judgment in paragraph Nos.31, 32 and 33 of its judgment. The record clearly reveals that the first appellate Court, without applying its mind, simply reproduced certain paragraphs of the trial Court judgment, as its findings, and confirmed the appeal.

¹ (2011) 4 SCC 240

Non-application of the mind by the first appellate Court itself is a substantial question of law. The first appellate Court framed as many as six points for consideration, but no point was answered independently by the first appellate Court. The record clearly reveals that the first appellate Court allowed the appeal in contravention of the provisions of Order XLI Rule 31 of CPC.

7. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, this Court is of the considered view that it is a fit case to set aside the judgment and decree of the first appellate Court and remand the matter for fresh disposal.

8. In the result, the second appeal is allowed, setting aside the decree and judgment dated 26.10.2015 in A.S.No.10 of 2012. Consequently, A.S.No.10 of 2012 is remanded to the Court of XII Additional District Judge, Vikarabad with a direction to dispose of A.S.No.10 of 2012 afresh, after affording reasonable opportunity to both parties, as expeditiously as possible preferably within a period of two months from the date of receipt of a copy of this order. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 23.10.2018

Note:

Office is directed to send L.C. records to
The Court of XII Additional District Judge,
Vikarabad, along with the copy of the judgment.
(By order)
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