

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 6339 of 2014 (O&M)

Date of Decision: 29.01.2019

Jagdeep Singh

.....Appellant

Vs.

Kulwinder Singh

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. B.R. Mahajan, Senior Advocate, with
Ms. Manpreet Ghuman, Advocate,
for the appellant.

Mr. Kanwaljit Singh, Senior Advocate, with
Mr. Abhishek Bajaj, Advocate,
for the respondent.

AMOL RATTAN SINGH, J. (ORAL)

Before going into the actual merits of this 2nd appeal, Mr. Mahajan, learned Senior Counsel appearing for the appellant, has drawn the attention of this Court to the fact that the learned first Appellate Court, after referring to the basic pleadings to the parties before the trial Court, the issues framed by the trial Court and the arguments raised in the first appeal by learned counsel appearing on both sides, though very much in *extenso* (in paragraphs 13 and 14 of its judgment), thereafter, summed up its finds in the following manner, as a part of paragraph 14 itself:-

“I have considered the arguments raised by both the learned counsel for the parties and have also carefully gone through the record of this case. From the perusal of the record and evidence led by the parties as well as the arguments advanced by the learned counsel for the parties, I

find that the learned lower Court has passed a perfect and valid judgment by decreeing the suit of the respondent-plaintiff. The ownership of the respondent-plaintiff is duly proved in this case. The sale deed is also proved and the defendant admitted that he appeared before the Sub-Registrar, Amritsar, for registration of the sale deed and put his signatures as one of the attesting witness of Ex. P-2 and its endorsement Ex. PX/3. It stand also proved that the appellant took the property in dispute on 18.12.2000 and in January, 2003 he has forcibly taken the possession of the entire building by trespassing over the property of the respondent-plaintiff. The appellant has not disputed the purchase of the property by the respondent-plaintiff and agreement vide which respondent gave the property to the appellant for running his business. The learned lower court has rightly hold that the respondent-plaintiff is entitled to recovery of Rs. 4,19,800/- as arrears for use and occupation of the property from the appellant. Accordingly, I hold that the appellant-defendant has failed to establish his case. Accordingly, it is held that the learned lower Court has rightly gave its findings on issues no. 1 to 5 and the findings given by the learned lower Court stands up-held and affirmed on all the issues.”

Immediately thereafter, it was held in paragraph 15 as follows:-

“In view of what has been discussed above, the learned lower Court after proper and complete appreciation of the pleadings as well as oral and documentary evidence adduced by the parties, has rightly decreed the suit of the respondent/plaintiff. So, findings no merit in this appeal, the judgment and decree under appeal is hereby affirmed and the appeal filed by the appellant is hereby dismissed, leaving the parties left to bear their own costs. The appellant-defendant is directed to hand over the vacant possession of the property

bearing old No. 298 and new M.C. No. 487, situated at Lakkar Mandi, Dhab Wasti Ram, Amritsar and is directed to hand over the possession to the respondent-plaintiff within three months from the receiving of copy of this judgment and is also directed to pay a sum of Rs. 4,19,800/- to the respondent along with interest pendente lite and future @ 6%. Decree sheet be prepared. Lower Court record be returned and the appeal file be consigned to the record room.”

Mr. Mahajan thereafter refers to Rule 31 of Order 41 of the Code of Civil Procedure, which reads as follows:-

“31. 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 reason 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.”

He therefore submits that no independent reasoning having been given by the first appellate Court, other than stating that it agreed with the finding of the trial Court and that as the purchase of the property by the respondent-plaintiff and the agreement by which the respondent gave the property to the appellant for running his business, were admitted, therefore the eventual finding of the lower court, that the respondent-plaintiff was entitled to recover Rs. 4,19,800/- as arrears for the use and occupation of the property, were affirmed.

Mr. Kanwaljit Singh, learned Senior Counsel appearing for the respondent, on the other hand submits that once that Court had discussed the issues before the trial Court as also the arguments of both sides in *extenso*, and had

found no reason to disagree with the findings of the lower court, giving detailed reasons for agreeing of those findings, it would only amount to a repetition to state the same reasoning again, with there being no requirement of that even in terms of law settled on that.

In support of the aforesaid contention, Mr. Kanwaljit Singh relies upon a judgment of the Supreme Court in G. Amalorpavam and others vs. R.C. Diocese of Madurai and others (2006) 3 SCC 224, wherein while referring to an earlier judgment of the Supreme Court in Girja Nandini Devi vs. Bijendra Narain Choudhury AIR 1967 SC 1124, the following passage thereof was referred to:-

“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 Girja Nandini Devi vs. Bijendra Narain Choudhury).”

Further quoting from Girja Nandini Devis' case, their Lordships held that while writing a judgment of reversal, the appellate Court must be conscious of two principles; firstly, that a finding of fact based on conflicting evidence arrived at by the trial Court must weigh with the appellate court and 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.”

Thus learned Senior counsel appearing for the respondent submits that in the present *lis* the judgment of the lower appellate court not being one reversing the finding of the trial court, even what has been held in Girja Nandini Devis' case (supra), would not be applicable, because the lower appellate court has affirmed all

findings of the trial court.

He also wishes to draw attention of this Court to the evidence led before the trial court, to submit that once the appellate court was seized of that evidence and had agreed to the findings of the trial court, there was no need for it to simply repeat such findings.

Mr. Mahajan, learned Senior Counsel appearing for the appellants on the other hand relies upon the following judgments of the Supreme Court:-

1. **B.V. Nagesh and another** vs. **H.V. Sreenivasa Murthy** (2010) 13 SCC 530;
2. **H. Siddiqui (dead) by LRs** vs. **A. Ramalingam** (2011) 4 SCC 240 and
3. **Union of India and another** vs. **Ranchod and others** 2008 (2) RCR (Civil) 23.

From **B.V.Nageshs'** case (supra), Mr. Mahajan points to what was held as follows:-

“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, SCC p. 188, para 15 and Madhukar vs. Sangram, SCC p. 758, para 5)."

[Emphasis applied in this judgment only]

Similarly from **Ranchods'** case, he submits that after referring to the judgment in **Girja Nandini Devis'** case (supra), as also **G. Amalorpavams'** case (supra), it was held as follows:-

"8. In the case in hand the High Court has not referred to even an iota of evidence which was adduced by the parties. There were large number of landholders whose land was acquired and they had filed separate objections under Section 9 of the Act and had separately sought references under Section 18 of the Act. They had separately lead evidence in support of their cases before the reference court. It is not a case where a single case may have large number of parties and the evidence adduced is common for all of them. In the matter of determination of compensation large number of factors have to be seen, namely, nature and quality of land, whether irrigated or unirrigated, facilities for irrigation like existence of well etc., presence of fruit bearing trees, the location of the land, closeness to any road or highway, the evenness of the land, namely, whether its level is even or there are pits etc., its position in rainy season, namely, whether water gets accumulated in rains, existence of any building or structure and a host of factors having bearing on valuation of the land."

To similar effect, he refers to paragraphs 20 to 25 of the judgment passed in **H. Siddiquis'** case (supra).

Having considered the above, what is to be noticed by this Court again at this stage, is that the learned first appellate court has given absolutely no reasoning of its own while stating as follows:-

“It stand also proved that the appellant took the property in dispute on 18.12.2000 and in January, 2003 he has forcibly taken the possession of the entire building by trespassing over the property of the respondent-plaintiff.”

Immediately thereafter, it was stated that “the appellant has not disputed the purchase of the property by the respondent-plaintiff and agreement vide which respondent gave the property to the appellant for running his business”. (Mr. Mahajan has submitted that in fact the 2nd part of that observation is also factually incorrect, because though the purchase of the property was admitted, as regards the agreement between the parties, that was the entire bone of contention, with each side giving its own version of its interpretation).

After that, the 1st appellate court has recorded that the lower court rightly held that the plaintiff was entitled to the recovery of Rs.4,19,800/- as arrears for the use and occupation of the suit property by the appellant.

Thus, without actually referring to any evidence led, it was held that it was proved that the appellant took the property in dispute on a particular date and thereafter, in January 2003, he had taken forcible possession of the entire building by trespassing over it.

In the opinion of this Court to record such a finding, even if it was in agreement of the same finding by the trial Court, a Court of first appeal was necessarily required to refer to the evidence led by parties to come to that conclusion, instead of simply recording its final finding on that issue without any discussion on the evidence led, other than by way of reproduction of the arguments raised before it by learned counsel on both sides.

Hence, for that court to simply arrive at a conclusion, that because the agreement itself was not disputed, even the issues that arose from that agreement

were undisputed, without coming to a finding on the actual contents thereof, is a wholly unsustainable decision.

Therefore, to repeat, in the opinion of this Court, the lower appellate court did not discharge the duty cast upon it to record findings in terms of the evidence led before the trial court, to come to the conclusion that it came to, without any reference to the evidence which it was required to do even in terms of clause (c) of Rule 31 of Order 41 of the CPC.

Consequently, this appeal is allowed and the judgment of the lower appellate court is set aside, with the matter remitted to that court to reconsider the first appeal before it and to pass a reasoned judgment thereupon, after considering the evidence as would be necessary to be considered, with the needful to be done within a period of two months from the date that the case file is first placed before that Court.

The parties would appear, themselves or through counsel, before the first appellate court on 15.02.2019.

The record of the learned courts below be returned immediately; before 15.02.2019.

January 29, 2019
nitin/diensch

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No.