

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.34 of 2009

1. Inder Son of Sukhai, aged about 42 years,
2. Jagdish son of Sukhai, aged about 39 years,
3. Indrajeet Son of Sukhai, aged about 37 years,
All residents of Odgi, Police Station Bhaiyathan, Tahsil Surajpur, District Surguja (CG)
4. Savitri (died and deleted)
5. Hirman D/o Sukhai, aged about 50 years,
6. Munni Bai D/o Sukhai, aged about 35 years, Wife of Rambar,
7. Sanmat Bai D/o Sukhai, aged about 33 years,
8. Chanda Bai D/o Sukhai, aged about 27 years,
Appellant No.5, is resident of Dudi, appellant No.6 is resident of Savarawan, appellant No.7 is resident of village Pipara, Police Station Patna, Tahsil Baikunthpur, District Koriya (CG)
Appellant No.8 is resident of Dhur, Police Station Jhilmili, Tahsil Surajpur, District Surguja (CG)

(Defendants)

---- Appellants

Versus

1. Amrut Ram Son of Sukhai, Caste Ahir, aged about 44 years, Occupation Service (Block Development Officer), Resident of Village Bhaiyathan, Tahsil Surajpur, District Surguja (CG)
---- Plaintiff
2. Jirmen D/o Sukhai, aged about 55 years, Resident of Village Bedmi, Police Station Ramkola, Tahsil Wadraf Nagar, District Surguja (CG)
3. Bandhu Son of Sukhlal, aged about 50 years, Resident of Village Odgi, Police Station and Tahsil Odgi, District Surguja (CG)
-----Defendants
4. State of Chhattisgarh, Through the Collector, Surguja (CG)

---- Respondents

For Appellants/Defendants:

Mr.Ashok Kumar Shukla, Advocate

For Respondent No.1/Plaintiff:

Mr.Ashish Surana, Advocate

For Respondent No.4/State:

Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

31/08/2020

1. This second appeal preferred under Section 100 of the CPC by the appellants herein / defendants was admitted for hearing by formulating the following substantial question of law: -

“Whether the first appellate Court was justified in dismissing the first appeal preferred by the defendants by not recording findings on all the issues, which were raised and canvassed by the defendants by recording a finding, which is perverse to the record and contrary to the decision rendered by the Supreme Court in the matter of **Santosh Hazari v. Purushottam Tiwari**¹ ?

[For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the suit before the trial Court.]

2. The plaintiff's suit was decreed by the trial Court by its judgment and decree dated 27.8.2008 filed for declaration of title, partition and possession after answering eight issues including the issue whether the plaintiff is son of Sukhai or not. The first appeal was filed by 11 defendants, which the first appellate Court dismissed affirming the judgment and decree of the trial Court and held that since the judgment of the trial Court is being affirmed, the first appellate Court is not required to consider all the issues elaborately and thereby the first appeal was dismissed, which has been assailed by the defendants in this second

¹ (2001) 3 SCC 179

appeal, in which substantial question of law has been formulated, which has been set-out in the opening paragraphs of this judgment for sake of completeness.

3. Mr.Ashok Kumar Shukla, learned counsel for the appellants/defendants, would submit that the first appellate Court is absolutely unjustified in summarily dismissing the appeal in two paragraphs without framing the points for determination as contained in Order 41 Rule 31(a) of the CPC and even not answered all the issues and the grounds raised in memo of appeal have not been adverted to and dismissed the appeal, therefore, the judgment and decree of the first appellate Court deserves to be set aside on this short ground.
4. Mr.Ashish Surana, learned counsel for the respondent No.1/plaintiff, would support the impugned and decree and submit that since the judgment is of affirmation by the first appellate Court, therefore, the detailed reasons need not be assigned as there is conscious application of mind and as such, the issue whether the plaintiff is son of Sukhai or not has already been adverted to and it has been held that the trial Court is right in holding that the plaintiff is son of Sukhai and rightly dismissed the appeal.
5. I have heard leaned counsel appearing for the parties and considered their rival submissions made hereinabove also went through the records with utmost circumspection.
6. The plaintiff's suit was decreed by the trial Court, against

which, 11 defendants filed first appeal before the first appellate Court. A careful perusal of the memo of appeal would appear that seven grounds have been taken to question the validity and correctness of the judgment passed by the trial Court, but the first appellate Court also did not frame the points for determination except a vague question in para-6 which states as under:-

“1. क्या व्यवहार वाद क्र- 84 अ/08 में विचारण न्यायालय ने प्रस्तुत साक्ष्य, लागू होने वाली विधि एवं वाद के तथ्यों की त्रुटिपूर्ण विवेचना कर त्रुटिपूर्ण निर्णय एवं आज्ञा पारित किये है ?”

Thereafter, in para-7 the first appellate Court held that in a case of affirmation of the judgment, he need not give elaborate reasons and thereafter in two paragraphs held that the plaintiff is son of Sukhai and proceeded to dismiss the appeal.

7. Order 41 Rule 31 of the CPC deals with the judgment of the Appellate Court and states as under: -

“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 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.”

8. From the above-stated provision, it is quite vivid that the judgment of the first appellate Court has to set out points for determination, record the decision thereon and give its own reasons for the said decision. As such, the provisions of Order 41 Rule 31 of the CPC are mandatory and imperative. The object behind the provision is two fold. Firstly, to afford the parties an opportunity of knowing and understanding the grounds of the decisions with a view to enable them to exercise the right of Second Appeal, and secondly, to enable the High Court in Second Appeal to judge whether the Lower Appellate Court has properly appreciated the facts of the case and has decided it after applying its mind to it and that whether material on record is considered in judicial manner. Therefore, the judgment of the first appellate Court deciding the appeal under Section 96 of the IPC must strictly comply with the provisions contained in Order 41 Rule 31 of the CPC.
9. The provisions contained in Order 41 Rule 31 of the CPC came to be considered by the Supreme Court in the matter of **Thakur Sukhpal Singh v. Thakur Kalyan Singh and another**² in which highlighting the object of the aforesaid provisions their Lordships observed as under: -

“(10)... The object seems to be that the parties should know for what reasons the decision has gone against them and thereby be in a position to decide whether they should go up in appeal or revision against the judgment. If they do not know the decision and the reasons therefor, they

² AIR 1963 SC 146

cannot make up their mind and, even if they have no intention to go up in appeal, they may not even be satisfied about the Court considering the matter for determination properly.

(11) Another object can be that the second appellate Court or the revision Court be in a position to know why the Court below came to a certain conclusion. Such knowledge is undoubtedly of great assistance to the Court. ...”

Further, their Lordships also made it clear that the provisions of Rule 31 of Order 41 of the CPC should be reasonably construed and should be held to require the various particulars to be mentioned in the judgment only when the appellant has actually raised certain points for determination before the appellate Court and not when no such points have been raised.

10. Similarly, in the matter of **Hari Shankar and others v. Rao Girdhari Lal Chowdhury**³, their Lordships of the Supreme Court held that a right of appeal carries with it a right of re-hearing on law as well as on fact, unless the statute conferring a right of appeal limits the re-hearing in some way as has been done in second appeal arising under the CPC.

11. In the matter of **B.V. Nagesh and another v. H.V. Sreenivasa Murthy**⁴, the Supreme Court set aside the judgment of the first appellate Court (High Court) because without framing points for determination and considering both facts and law, without proper discussion and

3 AIR 1963 SC 698

4 (2010) 13 SCC 530

assigning reasons, the appeal was decided. Their Lordships observed as under: -

“3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41 CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court 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.

4. 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 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. Sitting as a court of first 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*¹ (supra), SCC p. 188, para 15 and *Madhukar v. Sangram*⁵, SCC p. 758, para 5.)

5. In view of the above salutary principles, on going through the impugned judgment, we feel

⁵ (2001) 4 SCC 756

that the High Court has failed to discharge the obligation placed on it as a first appellate court. In our view, the judgment under appeal is cryptic and none of the relevant aspects have even been noticed. The appeal has been decided in an unsatisfactory manner. Our careful perusal of the judgment in the regular first appeal shows that it falls short of considerations which are expected from the court of first appeal. Accordingly, without going into the merits of the claim of both parties, we set aside the impugned judgment and decree of the High Court and remand the regular first appeal to the High Court for its fresh disposal in accordance with law.”

12. Similarly, in the matter of **Laliteshwar Prasad Singh and others v. S.P. Srivastava (Dead) Through Legal Representatives**⁶, their Lordships after relying upon **B.V. Nagesh** (supra) held as under: -

“12. ... It is well settled that the first appellate court shall state the points for determination, the decision thereon and the reasons for decision. However, it is equally well settled that mere omission to frame point/points for determination does not vitiate the judgment of the first appellate court provided that the first appellate court records its reasons based on evidence adduced by both the parties.

13. An appellate court is the final court of facts. The judgment of the appellate court must, therefore, reflect the court’s application of mind and record its findings supported by reasons. The law relating to powers and duties of the first appellate court is well fortified by the legal provisions and judicial pronouncements. ...”

13. In the matter of **R.S. Anjaya Gupta v. Thippaiah Setty and others**⁷, their Lordships of the Supreme Court dealing with Section 96 and Order 41 Rule 33 of the CPC

6 (2017) 2 SCC 415

7 (2019) 7 SCC 300

summarised the principles of disposing the first appeal which are as under: -

- ➔ In first appeal parties have right to be heard both on questions of facts as well as on law.
- ➔ First appellate court is required to address itself to all the aspects and decide case by ascribing reasons.
- ➔ Judgment of first appellate court has to state reasons for its decision.
- ➔ First appellate court may agree with trial court or take different view.
- ➔ If it is agreeing with view taken by trial court on the evidence, it is not necessary to restate the effect of evidence or reiterate reasons given by trial court.
- ➔ Expression of general agreement with reasons given in trial court's judgment should ordinarily suffice.
- ➔ However, expression of general agreement with findings recorded in judgment of trial court should not be a device or camouflage to be adopted by appellate court for shirking its duty cast on it.
- ➔ First appellate court has a defined role and its judgment should show application of mind and reflect reasons on the basis of which it agrees with trial court.
- ➔ There has to be an "expression of opinion" in proper sense of the said phrase.

➔ It cannot be said that mere concurrence meets the requirement of law.

➔ It is one thing to state that appeal is without any substance and it is another thing to elucidate, analyse and arrive at conclusion that appeal is devoid of merit.

14. The principle of law laid down in **B.V. Nagesh** (supra) has been further relied upon by the Supreme Court in the matters of **Vinod Kumar v. Gangadhar**⁸ and **Shasidhar and others v. Ashwani Uma Mathad and another**⁹.

15. In an extremely recent decision in the matter of **Malluru Mallappa (D) Thr. LRs. v. Kuruvathappa and others**¹⁰, their Lordships of the Supreme Court taking cognizance of its earlier decisions in **B.V. Nagesh** (supra), **Vinod Kumar** (supra) and **Shasidhar** (supra) have clearly held that the judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons. It was further held that even when the first appellate court affirms the judgment of the trial court, it is required to comply with the requirement of Order 41 Rule 31 of the CPC and non-observance of this requirement leads to infirmity in the judgment of the first appellate court. While setting aside the judgment and decree of the first appellate Court, it was held as under: -

“19. It is clear from the above provisions and the

8 (2015) 1 SCC 391

9 (2015) 11 SCC 269

10 2020 SCC OnLine SC 174

decisions of this Court that the judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons. Even when the first appellate court affirms the judgment of the trial court, it is required to comply with the requirement of Order XLI Rule 31 and non-observance of this requirement leads to infirmity in the judgment of the first appellate court. No doubt, when the appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by trial court. Expression of a general agreement with the reasons given by the trial court would ordinarily suffice.

20. Keeping in mind the above principles, let us examine the present case. As stated above, the issue relating to readiness and willingness of the plaintiff to perform his part of the contract and issue relating to limitation were held against the plaintiff and the suit was accordingly dismissed. The appeal before the High Court involved both disputed questions of law and fact. The High Court without examination of any of these aspects has dismissed the appeal by a cryptic order. The court below has neither reappreciated the evidence of the parties, nor it has passed a reasoned order. The High Court has failed to follow the provisions of Order XLI Rule 31 of the CPC while deciding the appeal. Mr. Bhat has argued that the suit was well within time under Article 54 of the Schedule to the Limitation Act. Even this question has not been examined in its proper perspective. “

16. The Supreme Court in **Santosh Hazari**¹ (supra) has clearly laid down the procedure to be followed by the first appellate Court while reversing the decree of the trial Court in paragraph 15 of the report which has been followed by the Supreme Court in the matter of **U. Manjunath Rao v. U. Chandrashekar and another**¹¹ by holding that in first

¹¹ (2017) 15 SCC 309

appeal parties have right to be heard both on questions of facts as well as law and first appellate court is required to address itself to all aspects and decide case by ascribing reasons. Paragraph 15 of the decision of the Supreme Court in **Santosh Hazari**¹ (supra) reads as follows: -

“15. A perusal of the judgment of the trial Court shows that it has extensively dealt with the oral and documentary evidence adduced by the parties for deciding the issues on which the parties went to trial. It also found that in support of his plea of adverse possession on the disputed land, the defendant did not produce any documentary evidence while the oral evidence adduced by the defendant was conflicting in nature and hence unworthy of reliance. The first appellate Court has, in a very cryptic manner, reversed the finding on question of possession and dispossession as alleged by the plaintiff as also on the question of adverse possession as pleaded by the defendant. The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. 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 v. Bijendra Narain Choudhary*¹²). 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. While writing a judgment of reversal the

appellate Court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial Court must weigh with the appellate Court, more so when the findings are based on oral evidence recorded by the same Presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the appellate Court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate Court is entitled to interfere with the finding of fact. (See *Madhusudan Das v. Narayanibai*¹³) 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 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. (See *Sarju Pershad Ramdeo Sahu v. Jwaleshwari Pratap Narain Singh*¹⁴) 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

13 (1983) 1 SCC 35 : AIR 1983 SC 114

14 AIR 1951 SC 120

the erroneous findings of the first appellate Court even on questions of law unless such question of law be a substantial one.”

17. It was further held by their Lordships of the Supreme Court in **U. Manjunath Rao** (supra) that while reversing findings and conclusion of trial court, duty of first appellate court is different than while affirming judgment and its decision is founded in both cases on different parameters. It was also held that moreover, it is final court of law in sense that its decision on question of law even if erroneous may not be vulnerable before High Court in second appeal because jurisdiction of High Court is not available to correct errors of law or erroneous findings of first appellate court even on questions of law unless such question of law is substantial one. Even in **Malluru Mallappa** (supra), the said decision of the Supreme Court in **Santosh Hazari**¹ (supra) has been followed in paragraphs 14 and 15 of the report which read as under: -

“14. It is a settled position of law that an appeal is a continuation of the proceedings of the original court. Ordinarily, the appellate jurisdiction involves a re-hearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the trial court are open for re-consideration. Therefore, the first appellate court is required to address itself to all the issues and decide the case by giving reasons. The court of first appeal must record its findings only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious application of mind and

record findings supported by reasons on all issues and contentions [see: **Santosh Hazari**¹ (supra), **Madhukar and others v. Sangram and others**⁵, **B.M. Narayana Gowda v. Shanthamma (Dead) By LRs. and another**¹⁵, **H.K.N. Swami v. Irshad Basith (Dead) By LRs.**¹⁶ and **M/s. Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar**¹⁷].

15. A first appeal under Section 96 of the CPC is entirely different from a second appeal under Section 100. Section 100 expressly bars second appeal unless a question of law is involved in a case and the question of law so involved is substantial in nature.”

18. Reverting to the facts of the present case in the light of aforesaid settled legal position, it is quite vivid that firstly the first appellate Court in para-6 of its judgment only framed general/vague question as to whether the judgment and decree of the trial Court is contrary to the facts & law and based on erroneous appreciation of fact and did not formulate any points for determination as required under Order 41 Rule 31(a) of the CPC, which the first appellate Court was obliged to frame while adjudicating the first appeal. Thereafter the first appellate Court only answered one issue and held that since it is judgment of affirmation, the first appellate Court is not required to give elaborate reasons and thereafter proceeded to decide the appeal. The fact remains that it only decided one issue that whether the plaintiff is son of Sukhai or not and agreeing with the finding of the trial

15 (2011) 15 SCC 476

16 (2005) 10 SCC 243

17 (1980) 4 SCC 259

Court with that issue dismissed the appeal, whereas the first appellate Court was required to formulate the points for determination particularly on all the issues decided against the defendants by the trial Court and particularly could have considered main grounds raised by the defendants/appellants like whether the plaintiff is entitled for 1/5th share in the suit property and whether he is entitled for partition and possession and the issue with regard to whether he is son of Sukhai or not could have been discussed elaborately performing the duty of the first appellate Court, which have not been done and that has caused serious prejudice to the appellants/defendants and as such, the judgment and decree passed by the first appellate Court is in teeth of the judgment rendered by the Supreme Court in this regard particularly in the matters of **Santosh Hazari** (supra) and **Malluru Mallappa** (supra).

19. For the foregoing reasons, the judgment and decree of the first appellate Court is hereby set aside. The matter is remitted to the first appellate Court to formulate the points for determination as mandated in Order 41 Rule 31(a) of the CPC and to decide the appeal in the light of the judgment of the Supreme Court in the matter of **Santosh Hazari** (supra) within 30 days from the date of appearance of the parties. The parties are directed to appear before the first appellate Court on **21st September, 2020**. No further notice is required to be issued. It is made clear that if

physical hearing is not possible, the matter will be heard by the first appellate Court through video conferencing as the matter is old one and pending since 2009.

20. The second appeal is allowed to the extent indicated herein-above by answering the substantial question of law accordingly. Records of the Courts below be sent back forthwith. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-