

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09 / 07 / 2018

DELIVERED ON : 04 / 03 / 2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SECOND APPEAL NO.820 OF 2010
AND M.P.NO.1 OF 2010

1.Ramasamy
2.Alagammal
3.R.Ramalingam Appellants/Plaintiffs

Vs.

K.Janaki Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 11.12.2009 of the Subordinate Court, Harur, in A.S.No.31 of 2008 by reversing the judgment and decree dated 12.10.2007 passed in O.S.No.182 of 2004 on the file of the District Munsif Court, Harur.

For Appellants : M/s.Sai Bharath

For Respondent : M/s.N.Premkumar

J U D G M E N T

The appellants are the plaintiffs before the Trial Court. Aggrieved over the reversal of the decree granted by the Trial Court, by the Lower Appellate Court, this Second Appeal has been preferred.

2. The plaintiffs filed a suit for specific performance against the respondent. According to the plaintiffs, the suit property originally belonged to their father. The plaintiffs were in need of money for their family expenses and therefore, they borrowed a sum of Rs.83,700/- from the defendant and executed a sale deed in favour of the defendant for security purposes. However, possession of the suit property continued with them. On the date of execution of sale deed viz., 06.11.2000, the defendant had also executed a sale agreement for re-conveyance in favour of the plaintiffs for Rs.83,700/-. The

time fixed for execution of the sale deed was three years from 06.11.2000. The plaintiffs were ready and willing to perform their part of contract. However, the defendant evaded from her part of performance. On 05.11.2003, the plaintiffs were waiting at the Sub-Registrar's office whereas the defendant had evaded and hence, the plaintiffs presented the above suit for specific performance.

3. Per contra, the defendant denied the averments made in the plaint and contended that the sale deed was executed in favour of the defendant after having received the sale consideration of Rs.83,700/- and possession was also handed over to her. Thereafter, patta was transferred in her favour. The agreement of re-conveyance was not true and genuine and the defendant never agreed to re-convey the property to the plaintiffs. Having incurred besides sale consideration, huge expenses towards purchase of stamp paper, registration charges and the expenses for reforming the land, it is inconceivable to anyone to re-convey the property for the same amount. Therefore, she contended for dismissal of the suit.

4. On the side of the plaintiffs, four witnesses were examined and four documents vide Exs.A1 to A4 were marked. On the side of the defendant, two witnesses were examined and four documents vide Exs.B1 to B4 were marked. The Trial Court decreed the suit in favour of the plaintiffs. On appeal, the Lower Appellate Court reversed the finding and dismissed the suit, against which, the present Second Appeal has been preferred.

5. On consideration of the pleadings several disputed questions of facts and law emanate from them. It gives rise to the issues regarding the execution of sale agreement, the signature of the defendant, credibility of attesting witnesses, nature and purpose of sale, whether genuine, bonafide or for collateral purposes, the nature of transaction whether the defendant lent the money or intended to purchase property, effect of mutation of revenue records, proof possession and onus of proving execution of sale agreement and as to whether the plaintiff proved that he was ready and willing for performing the contract, question of limitations. Relevant issues ought to have been framed by the Trial Court. However, it is seen that the Trial Court has framed two issues, namely, as to whether the plaintiffs are entitled to specific performance against the defendant and the statement made by the defendant that she continues to be in possession and no necessity to re-convey the same is correct or not.

6. Be that as it may, the Trial Court has found that the defendant has failed to discharge the burden that the signature found in the sale agreement was not her's. Further,

refusing to accept the documents regarding mutation of revenue records obtained from the Revenue Department, as post suit documents, had decreed the suit. On appeal, the Lower Appellate Court, without considering the evidence let in by the witnesses and the documents marked on both sides, has simply presumed that there are probabilities that possession was handed over in favour of the defendant between 2000 and 2003 and the revenue documents could have been issued in her favour and that the witnesses being relatives of the plaintiffs could not have let in evidence against her.

7. Surprisingly, both the Trial Court as well as the Lower Appellate Court failed to frame crucial issues and absolutely no evidence on the basis of the relevant issues. The Lower Appellate Court simply justified its stand for reversing the findings of the Trial Court. It has not analysed the factual circumstances on the basis of the exhibited documents and evidence as well as the legal issues arising from the factual circumstances of the case. Simply, without discussing the relevant issues of facts and law and without application of mind, the Lower Appellate Court reversed the findings of the Trial Court.

8. It is relevant to consider the following judgments of Hon'ble Supreme Court,

(i) RAMVILAS (DEAD) THR. LRS. AND ANOTHER VS. KARIM KHAN AND ANOTHER [CIVIL APPEAL NO.2078 OF 2008 decided on 01.12.2016] has held as under:

"10. On the basis of oral and documentary evidence, the Courts below recorded that Exhibit D/1 Sale Deed dated 14.06.1972 and Exhibit P/1 Agreement dated 14.06.1972 having been executed on the same day and both ought to be read together. The Courts below have also recorded a concurrent finding of fact that Exhibit D/1 Sale Deed was executed only as a security for the loan and it was never the intention of the 1st respondent-plaintiff to convey the suit property. Since 1st respondent-plaintiff has paid back the loan amount i.e. Rs.6,700/- as is evident from the subsequent Agreement Exhibit P/2 dated 05.06.1974, the Courts below rightly recorded the concurrent findings of fact that Exhibit D/1 Sale Deed is not binding on the 1st respondent-plaintiff. Once repayment was made, the 1st respondent-plaintiff was entitled to the declaration as prayed for. "

(ii) U.MANJUNATH RAO VS. U.CHANDRASHEKAR AND ANOTHER
[CIVIL APPEAL NO.9951 OF 2017 decided on 04.08.2017] has held as
under:

"6. To appreciate the submissions of Mr. Hegde, we have perused the impugned judgment passed by the High Court. It is clearly demonstrable that the High Court has neither analysed the evidence brought on record nor has it answered the issues raised in law. Stating the facts and thereafter reproducing few passages from the trial Court and ultimately referring to certain exhibited documents in a cryptic manner, we are disposed to think, will not convert an unreasoned judgment to a reasoned one. In fact, as we notice, the learned Judge has posed the question about the defensibility of the ultimate direction by the trial Court and thereafter proceeded to quote paragraphs from the trial Court judgment. Posing a question which is relevant for adjudication of the appeal is not enough. There has to have been proper analysis of the same. That apart, there are other issues they deserved to be dealt with. Therefore, the obvious conclusion is that the judgment passed by the High Court is not a reasoned one.

7. It is well settled in law that the reason is the life of law. It is that filament that injects soul to the judgment. Absence of analysis not only evinces non-application of mind but mummifies the core spirit of the judgment. A Judge has to constantly remind himself that absence of reason in the process of adjudication makes the ultimate decision pregnable. While dealing with the first appeal preferred under Section 96 CPC, the Court in State of Rajasthan v. Harphool Singh (dead) through his LRs took note of the exception to the judgment passed by the first appellate court by observing that there was no due or proper application of mind or any critical analysis or objective consideration of the matter, despite the same being the first appellate court.

8. A three-Judge Bench in Santosh Hazari v. Purushottam Tiwari (deceased) by LRs, while discussing about power of the first appellate court, has opined that it is the final court of facts and, therefore, pure findings of fact

remain immune from challenge before the High Court in second appeal. It is necessary to note that the Court had also held thus:

"... 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*). 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...." [Emphasis supplied]

The aforesaid passage has to be appositely understood. While reversing the finding and conclusions of the trial Court, the duty of the first appellate court is different than while affirming a judgment. Be it stated, the Court has also held that it is 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 is a substantial one. In the said case, the Court, after referring to the decision in Sarju Pershad Ramdeo Sahu v. Jwaleshwari Pratap Narain Singh⁴, has further opined that:

"... 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 purpose of referring to the said decision is to highlight the responsibility cast on the first appellate court or a court hearing the first appeal. "

9. The Lower Appellate Court has not discussed the reasoning given by the Trial Court and reason for reversing the judgment as held by the Hon'ble Supreme Court in the above referred Judgment. Therefore, I am of the considered opinion that the matter has to be remitted back for adjudication of relevant issues and proper analysis of the same. For that purpose, I am inclined to set aside the judgment and decree passed by the Lower Appellate Court and remit the matter for passing reasoned order taking into consideration all the questions of fact and law.

10. Accordingly, the judgment and decree dated 11.12.2009 passed in A.S.No.31 of 2008 by the Subordinate Court, Harur is set aside and the matter is remitted back to the Lower Appellate Court with a direction to pass orders, within a period of three months from the date of receipt of a copy of this order.

11. The Second Appeal is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TK

To

1.The Subordinate Judge
Subordinate Court
Harur.

2.The District Munsif
District Munsif Court
Harur.

Copy to :
The Section Officer,
VR Section , High Court Madras.

+1 cc to M/s. Sai & bharath ,Advocate Sr.No. 18929
+1 cc to M/s.N.Premkumar,Advocate Sr.No. 20117

SECOND APPEAL NO.820 OF 2010

PA(CO)
RMP(08/01/2021)

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