

Item-54 10-02-2022

FMA 1268 of 2021
CAN 1 of 2021

sg Ct. 8

Amalesh Nanda & Ors.
Versus
Santosh Kumar Rana

(Through Video Conference)

Mr. Suman Banerjee, Adv.
...for the appellants

Mr. Pradip Kumar Roy, Adv.
Mr. Joydeep Roy, Adv.
...for the respondent

By consent of the parties, the appeal and the application are taken up together and disposed of by this common order.

The appellant filed a suit for specific performance. On the basis of the pleadings and documents, ten issues were framed by the learned Trial Judge for consideration. The issues are set out herinbelow:

- 1. Whether the suit is maintainable in its present form and prayer?*
- 2. Whether the plaintiff has cause of action to institute this suit?*
- 3. Whether the suit is barred by the principles of estoppel, waiver and acquiescence?*
- 4. Whether the suit is barred by limitation?*
- 5. Whether the suit is barred by defect of parties?*
- 6. Whether Rabindranath Barik was constituted attorney of the defendant no.-1? If so, whether he was empowered to execute any agreement for sale on behalf of the defendant no.-1?*

7. *Whether the alleged agreement for sale is valid and legal one?*
8. *Whether the plaintiff was/is ready and willing to perform his part of contract?*
9. *Whether the defendant nos.-2 and 3 are bona fide transferee for value without notice of the alleged agreement for sale?*
10. *Whether the plaintiff is entitled to get the decree as prayed for?*

The issue nos. 5, 6, 7, 8 and 9 were amalgamated and these issues were decided against the plaintiff. This decree was challenged before the learned Appellate Court, which does not appear from the memorandum of appeal filed before the learned Appellate Court that one of the grounds taken by the plaintiff was that the plaintiff was prejudiced by the amalgamation of the aforesaid issues. However, it is not in dispute that the evidences were adduced by the parties in relation to the said issues.

It is the requirement of law that the Court shall state its findings or decision with reasons upon each separate issue unless the finding upon one or more of the issues is sufficient for the decision of the suit. In the instant case, the learned Trial Court has amalgamated few of the issues, namely, issue nos. 5 to 9 and decide the said issues together upon analysis of the evidence. The learned Appellate Court remanded the matter for fresh consideration after noticing that initially on 20th March, 2008, these issues were framed and thereafter, on 7th April, 2011 three more issues were added. However, there is no order of amalgamation of the said issue.

It is elementary that, if the parties have led evidence even in respect of the issues not specifically raised with a clear intention that the Court should decide such or any of the issues that come up in the course of trial and the parties having been conscious of the said fact adduced evidence on such issues which are not specifically framed, a party shall be estopped from challenging that the judgment rendered on an issue not raised at the trial. All that is required to be seen is whether there is a pleading in support of such issue.

In the instant case, it is nobody's case that from a reading of the pleadings the original issue nos. 1 to 6 or added issue nos. 1 to 3 could not have been framed. The issues are not de-horse the pleading. The evidences were adduced. Recasting of issues on such consideration would be a useless formality. The learned First Appellate Court did not address the said issues in its proper prospective. All evidence in support of the issues were before the learned First Appellate Court. We feel that the learned First Appellate Court in exercise of its appellate power ought to have decided the appeal on merits instead of remanding the matter to the learned Trial Court on the basis of the materials on record.

On such consideration, the order of the learned First Appellate Court is set aside.

The learned Appellate Court is directed to decide the appeal as expeditiously as possible within a reasonable time without giving any adjournment to either of the parties unless it is unavoidable.

Till the disposal of the appeal, the respondent shall not dispose of and/or alienate the suit property.

With the above observations, the appeal and the application are accordingly, disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)