

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 836 OF 2019
WITH
CIVIL APPLICATION NO. 1678 OF 2019
IN
SECOND APPEAL NO. 836 OF 2019

M/S Kulswamini Builders And
Developers Through Its Partners
Sanjay Ramnarayan Singh And Ors. } .. Appellants

Versus

Sahadev Kamlya Paringe And Ors. } .. Respondents

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Mr. Surel Shah a/w Mr. Nachiket V. Khaladkar for the Appellants.

Mr. G. S. Godbole, Senior Advocate a/w Mr. Drupad S. Patil for Respondents.

Mr. Rahul Kate a/w Suresh Sabrad for Respondent No. 5a.

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CORAM : SANDEEP V. MARNE J.

DATE : 20 FEBRUARY 2024.

P.C.:-

1) By this Appeal, Appellants challenge Judgment and Decree dated 14 February 2019 passed by District Judge-1, Alibag (Raigad) dismissing Regular Civil Appeal No. 117 of 2013 and confirming decree dated 30 April 2013 passed by Joint Civil Judge, Junior Division, Panvel in Regular Civil Suit No. 316 of 2008.

2) Plaintiffs and deceased Defendant No.1 were siblings. Their father Kamlya Ambo Paringe was the tenant-owner of agricultural land bearing Survey No.198/4, 198/5 and 198/9 and according to the Plaintiffs, after his death, the said property devolved upon Plaintiffs and Defendant No.1 as his legal heirs. Plaintiffs claim that the said land was acquired by Government of Maharashtra on 3 February 1970 for establishing the City of Navi Mumbai by passing an Award under Section 11 of the Land Acquisition Act. It appears that the Award was passed in the name of Defendant No.1 - Kacher Kamlya Paringe. It was Plaintiffs' case that said Kacher distributed the compensation amongst family members on account of which, no dispute existed about apportionment of compensation. However later, CIDCO granted a plot of land in the name of Kacher under 12.5% scheme. Plaintiffs claimed share in respect of the said plot allotted by CIDCO in the name of Kacher. Plaintiffs, upon learning that Kacher was about to alienate the said plot, served notice on him claiming their share in the plot. Plaintiffs filed Regular Civil Suit No. 316 of 2008 against Kacher seeking a declaration that the four Plaintiffs and Kacher had 1/5th share each in the suit plot. They also sought directions against CIDCO for execution of Agreement for Lease in individual names as per shares of Plaintiffs and Defendant No.1. It appears that the Trial Court passed Interim Order directing parties to maintain status quo on 3 January 2009. Plaintiffs claim that by violating the said Interim Order of *status quo*, Defendant No.1-Kacher executed Tripartite Agreement with Defendant No.4 in collusion with CIDCO officials on 7 October 2009. Accordingly, Plaintiffs amended the plaint and included in their Suit, a challenge to the Tripartite Agreement dated 7 October 2009.

3) The Trial Court decreed Plaintiffs' suit on 30 April 2013 declaring that each of the Plaintiffs have 1/5th share in the suit plot and that they are entitled to partition and separate possession of their 1/5th share in the suit

plot. CIDCO is directed to enter Lease Agreement in favour of Plaintiffs to the extent of their share in the suit plot. The Trial Court further directed that the Tripartite Agreement dated 7 October 2009 executed between Defendant Nos. 1 to 4 is illegal, invalid and not binding on the share of Plaintiffs. Defendant No.4 is accordingly directed to hand over share of each of the Plaintiffs in the suit plots to them. The Defendants are also permanently enjoined from alienating the shares of each of the Plaintiffs in the suit plot.

4) Defendant No.4 (Purchaser) filed Regular Civil Appeal No. 117 of 2013 before District Judge, Alibag (Raigad) challenging the decree dated 30 April 2013. Defendant No. 1-Kacher did not challenge the Trial Court's Decree. By Judgment and order dated 14 February 2019, the First Appellate Court has dismissed Regular Civil Appeal No. 117 of 2013 filed by Appellants/ Defendant No.4. The present Second Appeal is accordingly filed by the Appellant/Defendant No.4 challenging the decisions of the Trial Court and the First Appellate Court.

5) I have heard Mr. Shah the learned counsel appearing for the Appellants, Mr. Godbole the learned senior advocate appearing for Respondent No. 2 and Mr. Kate the learned counsel appearing for Respondent No. 5a. I have also gone through the Judgments passed by the Trial Court and the First Appellate Court.

6) The issue that arose before the Trial Court was about entitlement of Plaintiffs to claim share in the suit plot allotted by CIDCO under 12.5% scheme as a Project Affected Person. It is Mr. Shah's contention that allotment of plot under 12.5% scheme is in the form of compensation for acquisition of land. That since suit plot is a part of compensation for acquisition of land, any dispute about apportionment must be raised under

Section 30 of the Land Acquisition Act 1894 and that Civil Court's jurisdiction is barred. Relying on Section 12 of the Land Acquisition Act, Mr. Shah has contended that the Award, as well as the issue of apportionment of compensation amongst the persons interested in it, has already attained finally.

7) It must be observed here that the Appellants did not raise the issue of jurisdiction of Civil Court either before the Trial Court or the First Appellate Court. Mr. Shah has however contended that the issue of jurisdiction, being a question of law, can be raised directly in the present Appeal. Even if Mr. Shah's contention is to be accepted, in my view, the objection of jurisdiction is clearly misplaced in view of judgment of Division Bench of this Court in ***Pratap Bhogilal Vs. City Industrial Development Corporation*** Writ Petition No. 11624 of 2013 decided on 4 April 2017, wherein this Court has held that allotment of Plot under 12.5% scheme is in addition to statutory compensation. Thus allotment of plot under 12.5% scheme of CIDCO does not form part of compensation and therefore provisions of Section 30 of Land Acquisition Act are clearly not attracted in the present case.

8) There was never a dispute amongst parties about apportionment of compensation. In fact, it has come in evidence in that Defendant No. 1 distributed the amount of compensation amongst his siblings. Thus, there was no reason for Plaintiffs to get aggrieved about the amount of compensation. Their grievance is completely different. They claim that Award made in sole name of Defendant No. 1-Kacher did not make him entitled for allotment of Plot under 12.5% Scheme by CIDCO for himself. In my view, therefore objection of jurisdiction would not apply to such prayer where allotment of suit plot is not a part of compensation.

9) Mr. Shah has also raised an issue that Civil Court does not have jurisdiction to decide the issue of tenancy rights in favour of Defendant No.1-Kacher. I am unable to agree. This Court has already taken a view in ***Ramakant Ganesh Naik Vs. Anusaya Shantaram Naik*** Second Appeal No. 284 of 2019 decided on 6 February 2024 that mere purchase of suit property by one of the family members under provisions of Section 32G and 32M of the Maharashtra Tenancy and Agricultural Lands Act 1956 does not make such person exclusive owner and the purchased land continues to be a joint family property. Similar view is expressed by this Court in ***Yashwant Hari Patil Vs. Shripati Hari Patil***¹ Therefore, the objection of jurisdiction of Civil Court sought to be raised by Mr. Shah in this regard also deserves rejection.

10) Last point urged by Mr. Shah is about failure on the part of the First Appellate Court to formulate points for consideration under Order 41 Rule 31 of the Code of Civil Procedure. Reliance is placed on judgment of the Apex Court in ***H. Siddiqui (Dead) By Lrs. Vs. A Ramalingam***². On the other hand, Mr. Godbole has relied upon judgment of the Apex Court in ***G. Amalorpavam And Others. Vs. R. C. Diocese of Madurai And Others***³ in support of his contention that so long as all the points arising in Appeal are considered and decided, mere failure to formulate points for determination would not vitiate a valid judgment. Para 9 of the Judgment in ***G. Amalorpavam and Ors*** (supra) reads thus:

"9. The question whether in a particular case there has been a substantial compliance with the provisions of Order 41 Rule 31 CPC has to be determined on the nature of the judgment delivered in each case. Non-compliance with the provisions may not vitiate the judgment and make it wholly void, and may be ignored if there has been substantial compliance with it and the second

1 (2018) SCC Online Bom 2775

2 (2011) 4 SCC 240

3 (2006) 3 SCC 224

appellate Court is in a position to ascertain the findings of the lower appellate Court. It is no doubt desirable that the appellate court should comply with all the requirements of Order 41 Rule 31 CPC. But if it is possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not thereby suffered, that would be sufficient. Where the appellate court has considered the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate Court there is substantial compliance with the provisions of Order 41 Rule 31 CPC and the judgment is not in any manner vitiated by the absence of a point of determination. Where there is an honest endeavour on the part of the lower appellate court to consider the controversy between the parties and there is proper appraisal of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifest by the perusal of the judgment of the lower appellate court, it would be a valid judgment even though it does not contain the points for determination. The object of the Rule in making it incumbent upon the appellate court to frame points for determination and to cite reasons for the decision is to focus attention of the Court on the rival contentions which arise for determination and also to provide litigant parties opportunity in understanding the ground upon which the decision is founded with a view to enable them to know the basis of the decision and if so considered appropriate and so advised to avail the remedy of Second Appeal conferred by Section 100 CPC."

11) Even in ***H. Siddiqui*** (supra) the Apex Court has that the Judgment of the Appellate Court must indicate proper appreciation of facts/evidence, application of mind and decision of the case considering the material on record, which constitute substantial compliance with the provisions of Order 41 Rule 31. The judgment in ***H. Siddiqui*** was rendered on account of High Court's failure to decide one out of two points formulated for determination. In my view therefore, though ideally the First Appellate Court ought to have formulated points for determination, its judgment is not vitiated on account of technical violation of Order 41 Rule 31.

12) I have gone through the judgment of the Appellate Court and it is seen that each and every point raised by Appellant have been considered and answered in the judgment. Therefore, though the First Appellate Court may have committed technical violation of provisions of Order 41 Rule 31 by

not formulating the points for determination, I am not inclined to interfere in the judgment when the judgment shows proper application of mind to all points raised before the First Appellate Court.

13) I therefore do not find any valid reason to interfere in the well-reasoned and concurrent judgments of the Trial and the First Appellate Court. It must also be observed that the Appellant has taken a calculated risk of entering into a Tripartite Agreement with Defendant No.1-Kacher after passing of *status quo* by the Trial Court.

14) Considering the overall conspectus of the case, I do not find that any substantial question of law is involved in the present Appeal. The Appeal is accordingly rejected.

15) In view of rejection of the Second Appeal, Civil Application No.1678 of 2019 do not survive and the same are also disposed of.

[SANDEEP V. MARNE J.]