

(1982) 07 KAR CK 0006
In the Karnataka High Court
Case No : Second Appeal No. 57 of 1975

Assistant Commissioner, Tumkur and Others

APPELLANT

Vs

K.N. Nagaraja

RESPONDENT

Date of Decision : 21-07-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31

Citation : AIR 1983 Kar 111

Hon'ble Judges : N.D. Venkatesh, J

Bench : Single Bench

Advocate : K.P. Ashok Kumar, Govt. Pleader, for the Appellant; K.G.C. Prabhu, for the Respondent

Judgement

1. Appellants 1 to 3 herein were defendants 1, 3 and 4 respectively in O.S. No.554 of 1968 on the file of the Additional Munsiff, Tumkur. The respondent herein had filed that suit for a declaration of his title in respect of a well (fully described in the plaint) and for a permanent injunction against these appellants restraining them from interfering with his possession and enjoyment of the said well.

2. The plaintiff's case was that the well is situated in Sy. No. 3/3 of Village Devarayanadurga of which he is the owner; that the well exclusively belongs to him; that the defendants have absolutely no manner of right, title or interest over the same and that at the instance of these appellants the second defendant in the suit was making preparations to put up a pump-house in order to install a pumpset in the well. The contention of these appellants was that the well is not of the exclusive ownership of the plaintiff as claimed by him, that it is a well in the use of the public and the public have the right to draw water from this well for the use of the public in Devarayanadurga village proper; that the Government has prepared a scheme under which a pumpset has to be installed in the well and therefore they had entrusted the second defendant, contractor, with that work. The second defendant in the suit remained ex parte. In view of these rival

contentions, the Munsiff had framed as many as 9 issues, of which the relevant ones are: issues 1 and 4, the former being as to whether the plaintiff was the owner of the well in question and the latter was to whether the public have a right to draw water from the well as contended by the contesting defendants in the suit. On the first issue the finding was in favour of the plaintiff and on the second against the defendants. In the result, he decreed the suit as prayed for with costs.

3. These appellants challenged that judgment and decree in R.A. No. 137 of 1971 on the file of the Prl. Civil Judge, Tumkur. The learned Civil Judge, by his judgment dated 30-9-1974 in R.A. No. 137 of 1971 on his file dismissed the appeal thereby confirming the judgment and decree of the trial court.

4. Challenging the decrees of the Courts below the learned High Court Government Pleader made the following two submissions :

His first submission is that the judgment of the first appellate court does not satisfy the requirements of O.41, R.31 of the C.P.C. and therefore it is vitiated and is required to be set aside remitting the matter to the first appellate court for fresh disposal according to law.

His second submission is that even otherwise the courts below had wholly misconstrued the evidence and had arrived at wrong conclusions and therefore the finding though concurrent were required to be set aside.

5. On the other hand, learned Counsel appearing for the respondent, supporting the concurrent findings of the court's below, submitted that in this second appeal there were no good grounds to interfere with the said findings, which according to him, were findings arrived at on proper appreciation of facts.

6. Now to consider the first point raised by the learned High Court Government Pleader, O.41, R.31 of the Civil P.C. ("the Code") provides that 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 is pronounced be signed and dated by the Judge or by the Judges concurring therein.

According to the Government Pleaders the Judgment of the first appellate court does not satisfy the requirements of this Rule. His main grievance is that the learned Civil Judge had not formulated any points for his decision and thereby had missed the basic issues involved and had reached thereby a wrong conclusion. In this connection the Government Pleader placed strong reliance on

a decision of this Court in *Sedappa Yellappa v. Sadashiva Maharudrappa* (1963 (2) Mys LJ 379). Before considering the ratio of that decision let us examine the judgment of the 1st appellate court to find out as to whether it does not satisfy substantially with the requirements of this Rule. It is a fact that the learned Civil Judge has not formulated any points as such for his decision before proceeding with the discussion of the facts involved. In paras 1 to 4 he has given a summary of the pleadings of the parties. In para 5 he has extracted the issues framed by Munsiff. In para 6 he mentions about his having heard the arguments in the appeal. Paras 7 to 9 contain the discussion of the evidence, assessment of the judgment of the Munsiff and his own conclusion. As can be seen from para 7 of the judgment the Civil Judge has drawn his attention to the only question that arose for consideration, I may extract that observation of his :

"But the dispute is with regard to the well which is claimed by the plaintiff as included in his land."

Thus, having drawn his attention to the only question that arose for consideration he proceeded to discuss the evidence in the light of the findings of the Munsiff and ultimately agreeing with his findings has held that the plaintiff had proved his possession to the exclusion of others and dismissed the appeal.

7. In *Sedappa Yellappa Dalawai's* case, Hedge, J., (as he then was) has been pleased to observe as follows:

"R. 11 of O. 41, C.P.C. is controlled by R.31. Hence an order of dismissal under R.11 must comply with the requirements of R.31 and should give reasons for the dismissal."

It may be noted that in that case the first Appellate Court at the very stage of the admission without admitting the appeal had rejected the appeal memo. While so rejecting the appeal memo that Court had stated only this much: "Find no sufficient ground to admit this appeal. Hence rejected." In that context, in *Sadeppa's* case the learned Judge held that even when the first Appellate Court proposes not to admit the appeal it must give some reason for not so admitting and should not resort to dismiss the appeal by one or two sentences order, as had been done in that case. In that context the learned Judge observes as follows :

"It must be remembered that the right to file an appeal under O. XLI is a very valuable right. Therein both questions of law as well as facts can be agitated. On questions of fact the decision of the first Appellate Court is final. Therefore, that decision has to be reached after carefully knowing the points in dispute, the evidence bearing on those points and the law governing the subject. That is the basis of R.31. The object of R.31 is to see that a Judge does not act callously or even mechanically. Its purpose is to put the judge on the right track and to the extent rules of procedure can do it, to see that he acts judicially. If the restrictions placed by R.31 are held to be inapplicable in case of dismissal an appeal as a shortcut to disposal cannot be avoided. It is dangerous to offer such

a temptation".

Subsequently, the learned Judge further observes : that "all judicial orders should be supported by reasons". He has also stated that regard being had to the plain and unambiguous Rule 31 its requirement should not be ignored.

8. In effect the ratio of that decision is that the requirement of R. 31 shall have to be kept in view by the first Appellate courts even when they dispose of the appeals under R. 11 of O. 41. The learned Government Pleader submits that the ratio of this decision is that the requirement of R. 31 of O. 41 is mandatory and cannot to any extent be deviated from. On the other hand, it was argued by the learned Counsel appearing for the other side that any substantial compliance with the requirements of R. 31 would be sufficient and merely because points are not formulated in the judgment that should be no reason to set aside the entire judgment and remit the matter for a reconsideration . For this lapse, which is according to him only technical, his client should not be penalised at this point of time. I have gone carefully through the decision in Sadeppa's case 1963 (2) Mys. L.J. 379. The emphasis is mainly on the question that R. 31 O. 41 shall have to be kept in view by the first appellate courts even while disposing of the appeals preferred to them under R. 11 of O. 41, and not that the deviation from the requirements, even of a minor nature, of that R. 31 would make the judgment a nullity .

9. In my view, a substantial compliance with the requirements of R. 31 O. 41 would be sufficient and any little deviation therefrom should not be a ground to set aside the entire judgment on that account. It is no doubt, desirable that the first Appellate Court complies with all the requirements of that Rule, but if it is possible to make out from the very judgment that they have substantially complied with the said requirements and that justice has not thereby suffered that would be sufficient.

10. In this connection the following observations of the Privy council in AIR 1938 292 (Privy Council) may be noted:

"The failure of a judge of an Appellate Court to comply with the provisions of O. XLI, R. 31 of the Civil P. C. requiring him to sign his judgment is merely an irregularity not affecting "the merits of the case or the jurisdiction of the Court" within the meaning of S. 108 of the Code, and accordingly does not affect the rights of the parties to a judgment and decree."

11. The Supreme Court had also occasion to consider the question as to how the first Appellate Courts should deal with the appeals. In Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, the Court observes:-

"12.....We are unable to hold that the learned Judges of the High Court did not, as is contended before us, consider the evidence. It is not the duty of the Appellate Court when it agrees with the view of the trial Court on the evidence either to restate the effect of the evidence or to 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."

12. Viewed in the light of these decisions it cannot be said that the judgment of the first appellate Judge is vitiated for the reason that he has not formulated the points for his decision at the very commencement of his judgment.

13. On merits both the Courts have found the well in question lying in between Sy. Nos. 3/3 and 3/4 and mostly in 3/3. Both these lands are private hiduvali lands. Admittedly , Sy. No. 3/3 belongs to the respondent and Sy. No. 3/4 to some individual. The well does not lie in any Government land. The evidence on record does not show that the villagers had at all times any access to the well water. No doubt, one or two witnesses have stated that during Jatra time the devotees used to take water from the well. Both the Courts have considered this evidence. It is a fact that in the index of XXX land records and the record of rights entries have been made showing that the well in question is a sweet-water well and public make use of the water. These entries have an initial presumption of correctness, but the two courts, having gone into the facts have concurrently found in favour of the plaintiff holding that the well being almost wholly within his holding belongs to him. It has come out that the village Devarayanadurga proper is about a furlong away from the well. I have gone through the evidence carefully to find out as to whether there has been any well defined path leading from the village or outside up to the well. There is no such evidence. I find no good grounds to take a view contrary to the one taken by the Courts below on this question.

14. Therefore, for the reasons stated above, this appeal is dismissed with costs.

15. Appeal dismissed.