

(2012) 01 KAR CK 0313

In the Karnataka High Court

Case No : Regular Second Appeal No. 1685 of 2005

Bangarappa

APPELLANT

Vs

Rudrappa Since Deceased by His L.R. and Thippamma Since
Deceased by Her L.R. R2 (a) Smt. Thippamma

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31, 100

Citation : (2012) ILR (Kar) 1020

Hon'ble Judges : Dilip B. Bhosale, J

Bench : Single Bench

Advocate : C.M. Nagabhushana, for the Appellant;

Judgement

Dilip B. Bhosale

1. This second appeal u/s 100 of the CPC is directed against the concurrent judgments of the Courts below whereby a suit bearing O.S.No. 236/94 filed by the respondents-plaintiffs, hereinafter referred to as the plaintiffs, stands allowed. The suit was instituted for declaration that the plaintiffs are owners in possession of the suit properties and for injunction restraining the appellant-defendant, hereinafter referred to as the defendant, from interfering with their possession over the suit property.

The facts that are relevant for deciding this appeal are as under:

The plaintiffs are husband and wife. The defendant claims that he had purchased the suit property, under registered sale deed dated. 18.01.1993 and since then he is in possession thereof as owner.

It is the case of the plaintiffs that they were not in a position to look after and cultivate their agricultural land i.e., the suit property and hence they had requested the defendant to help them out for managing the same. After the defendant started looking after the suit property, he allegedly took the first plaintiff to the Tahsildar's Office under the pretext that he needs to execute a

power of attorney in his (defendant's) favour and under that pretext obtained his (plaintiff No. 1's) signatures on the sale deed dated 18.1.93, and thereby practiced fraud on him. The defendant on the basis of the sale deed, started claiming right in the suit property and obstructing the plaintiffs' possession.

2. At the stage of admission of the appeal, the following substantial questions of law were formulated for consideration:

1. Whether Courts below are justified in not framing proper issues when the suit filed by the plaintiff for cancellation of sale deed dated 18.1.93 executed by him on the ground that the same is obtained by playing fraud on him?

2. Whether appreciation of evidence by the Courts below is just and proper?

3. Sri Nagabhushana, learned counsel for the appellant, at the outset, invited my attention to the judgment of the High Court of Bombay in Anita M. Harretto Vs. Abdul Wahid Sanaullah, , to contend that mere statement as to "Whether the judgment of the trial Court requires consideration?" as a point for determination by the appellate Court is inadequate. He further submitted, as a result of framing of such a point for determination, the Court of appeal misdirected itself and/or failed to consider the real points/issues involved in the appeal for determination. In support of his contentions, he took me through the judgments of the Courts below, more particularly, the judgment of the Court of first appeal and submitted that the appellate Court misdirected itself while deciding the first appeal, merely because no proper points for determination were framed.

4. In Anitha's case, the situation was somewhat similar. The Court of first appeal in that case had formulated the following point for consideration "Whether the judgment and decree of the trial Court is liable to be set aside?"

The learned Judge in that (Anitha's) case, after considering the provisions contained in Order 41 Rule 31 of CPC, held thus:

17. The points which must arise for determination by a court of first appeal must cover all important questions involved in the case and they should not be general and vague. It is a matter of almost text book knowledge that the exact questions which arise in the appeal and require determination must be stated in the judgment, "It is not sufficient to state the point to be determined in appeal whether or not the decision is consistent with the merits of the case." "The point so stated is hardly a point for determination as contemplated in Order 41 Rule 31 of the Code. The learned Judges of the Courts of first appeal should not approach the appeals merely from the point of speedily disposing of the same. The appeals must be also intelligently disposed of after taking note of the arguments advanced, the points arising from the arguments and other material and then deciding those points properly. A failure to understand the object of the provision such as O.41, R.31(a) of the Code has demonstrably resulted in the instant case in the failure of justice at the hands of the lower appellate Court.

(emphasis supplied)

5. Similarly, the Supreme Court in *H. Siddiqui (Dead) by LRS -Vs-A. Ramalingam* 2011 (2) KCCR 1389 (SC) had occasion to consider the provisions contained in Order 41 Rule 31 of CPC. In that case, the Supreme Court observed that the said provisions provide guidelines for the appellate Court as to how Court has to proceed and decide the appeal. It is further observed that the provision should be read in such a way as to require that the various particulars mentioned therein should be taken into consideration. It must be evident from the judgment of the appellate Court that the Court has properly appreciated the facts/evidence, applied its mind and decided the case considering the material on record. In paragraph 18 of the Judgment, the Hon"ble Supreme Court, after considering its several judgments, observed thus:

It is mandatory for the appellate Court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final Court of fact, the first appellate Court must not record mere general expression of concurrence with the trial Court judgment rather it must give reasons for its decision on each point independently to that of the trial Court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of the said provisions and the Court must proceed in adherence to the requirements of the said statutory provisions.

(emphasis supplied)

6. Appeal court, while considering and deciding a first appeal should realise that it has to be decided strictly in adherence with the provisions contained in Order 41 Rule 31 of CPC. These provisions deal with judgment of the appeal Court and it says amongst other things that the judgment shall state the points for determination. When a requirement such as this is insisted upon by the procedural law, one must try to understand the object and scope of this provision. The appeal court, at the first instance is expected to re-appreciate/reassess the evidence and apply its mind to the facts of the case in the light of the arguments advanced by learned counsel for the parties. It must be evident from the Judgment of the first appellate court that it has properly appreciated the facts/evidence, applied its mind and decided the case considering the material on record. Unless the Appellate Court's judgment is based on independent assessment of the relevant evidence on all points, it would not amount to substantial compliance of these provisions (O.41 R-31 of CPC). It is, therefore, necessary for the appellate Court to frame the points for determination and examine the same independently in the light of the facts/evidence led by the parties. Merely asking the question as to whether the judgment of the Court below is correct or legal or valid is hopelessly an inadequate method of meeting the requirement of this legal provision.

7. The first appeal is a valuable right of the parties. The whole case in the first appeal is open for re-hearing, both on questions of Act and law. The Appellate

Court has jurisdiction to reverse or re-affirm the findings of the trial Court. It is, therefore, mandatory for the Appellate Court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and bearing of the evidence on those points. Being the final Court of fact, the first appellate Court must not record mere general expression of concurrence with the trial Court judgment, and it must give reasons for its decision on each point independently to that of the trial Court. Thus, the entire evidence must be considered and discussed in detail and such exercise should be done after formulating the points for consideration in terms of the provisions of Order 41 Rule 31 of CPC.

8. It would be necessary, at this stage, to observe that from perusal of the judgment if it is clear/apparent or it could be demonstrated that the appellate Court considered and discussed in detail, the facts and evidence, after application of mind and dealt with all the points for consideration, in such case, merely because points were not formulated properly, cannot be a ground for setting aside the judgment, though it is necessary/desirable for the Courts of first appeal to formulate properly the points for consideration in the suit.

9. During past one week, I have come across few judgments where the appellate Courts framed similar points for determination, such as the one in the present case. This trend of formulating the point for decision is becoming routine. The question before the Courts of appeal is not only whether the judgment of the Court of below was liable to be set aside or requires consideration or is valid. The first appellate Court requires to frame all the points that arise on the basis of the arguments advanced by the parties in the appeal. As observed earlier, Courts of first appeal must cover all important questions involved in the case and they should not be general and vague. The exact question, which arises in the appeal and requires determination must be stated in the judgment.

10. Keeping in view, the well settled position of law, I have examined the judgment of the first appellate Court. The trial Court had framed as many as 12 issues, out of which, I deem it proper to reproduce the relevant issues to understand whether the appellate Court in fact misdirected itself while deciding the appeal.

- i) Whether the plaintiff prove their title to the suit lands ?
- ii) Whether the defendant proves that he has acquired the suit properties under registered sale deed dated 18.01.1993 executed by first plaintiff ?
- iii) Whether the plaintiffs prove their lawful possession over suit lands on the date of suit ?
- iv) Whether the plaintiffs prove the interference and obstruction by defendant to their possession and enjoyment of suit lands ?
- v) Whether plaintiffs are entitled for the relief of declaration and injunction as prayed ?

Additional Issues:

vi) Whether the plaintiff proves that the sale deed dated : 18.01.1993 is obtained by playing fraud on him by defendant and by misrepresentation and coercion ?

vii) Whether the plaintiff is entitled for the relief of cancellation of the sale deed dated 18.01.1993 ?

11. The Lower appellate Court, however, framed the following point for determination:

Whether the judgment of the trial Court requires interference?

12. In my opinion, the appellate Court did not consider all the points involved in the case in the manner in which it ought to have. For instance, the appellate Court holds that the defendants got the sale deed executed by undue influence. As a matter of fact that was not the case set up by the plaintiffs. The case set up by the plaintiffs was that the sale deed was obtained by the defendants by practicing fraud and misrepresentation. The learned judge overlooked the definitions of the expressions "undue influence", "fraud" and "misrepresentation" as defined in the Indian Contract Act, 1972. From perusal of the definitions, of these expressions, it is clear that they have different connotations/meaning. The appellate Court, in my opinion, committed such error of fact and law only because it did not frame proper points for determination on the basis of the pleadings/evidence and the arguments advanced by learned counsel for the parties. Further, the appellate Court, considered the issues/points, which were not even raised and/or framed by the trial Court. For instance, whether the sale deed was supported by consideration and that it was obtained by undue influence. There were not the issues raised in the suit. The appellate Court, proceeded to consider whether the defendant was financially capable to pay the consideration to the plaintiff, which was not the point/issue involved in the suit. It was not a suit for specific performance of an agreement. Further, the first appellate Court even did not address on the point of possession and injunction in the judgment and that all happened only because it failed to frame proper points for determination. In the circumstances, this appeal deserves to be allowed. Hence, I pass the following order:

ORDER

13. The judgment and order dated 8.6.2005 passed by the lower appellate Court is set aside and the appeal bearing No. 108/2004 is restored to file and remitted to the first appellate Court for its consideration afresh in accordance with law.

14. The Appellate Court, in the light of observations made in this judgment, shall decide the appeal as expeditiously as possible and preferably within a period of six months from the date of receipt of the record and proceedings along with copy of this judgment.

15. Registry is directed to send the records to the First Appellate Court and copy of this judgment forthwith.

16. Interim order passed by this Court on 21.9.2007 shall remain operative till disposal of the appeal. Refund of court fee, if any, as per the rules.