

(2003) 03 AP CK 0100
In the Andhra Pradesh High Court
Case No : SA No. 516 of 1994

Baratam Seethamma and Others

APPELLANT

Vs

Bora Chandravathi

RESPONDENT

Date of Decision : 25-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2003) 4 ALD 866 : (2003) 5 ALT 556

Hon'ble Judges : P.S. Naryana, J

Bench : Single Bench

Advocate : K.V. Subrahmanya Narsu, for the Appellant; M. Bhaskaralakshmi, for the Respondent

Judgement

P.S. Naraya, J.—Heard Sri Subhramanya Narsu, Counsel representing the appellants-plaintiffs and Mrs. Bhaskara Laxmi, Counsel representing the respondent-defendant.

2. At the out set the Counsel representing the appellants had raised a question relating to the non- consideration of the oral evidence in toto by the appellate Court while reversing the judgment and decree of the Court of first instance. At paragraph 52 of the appellate Court's judgment it was observed as follows:

"Hence, the oral evidence, in this case, is not helpful to either party, having regard to the foregoing reasoning, observations and findings."

Several other questions also have been elaborately argued by both the Counsel touching the merits and demerits of the matter. I had gone through the findings recorded by the appellate Court and except referring to PW-7 the other oral evidence recorded by the Court of first instance had been left untouched. No doubt, the learned Counsel for the respondent-defendant made a serious attempt to convince the Court that even if the oral evidence available on record is taken into consideration it is not going to alter the situation in any way and hence, the non-consideration of such oral evidence will not vitiate the judgment and decree

of the appellate Court and hence, the Second Appeal is liable to be dismissed. The Counsel for the appellants had pointed out the oral evidence, which had been recorded PWs.1 to 7, DW1 and DW-2, and also documentary evidence Exs.A1 and A2, Exs.B1to B3 and also Exs.C-1 to C-6.

3. Heard the learned Counsel

4. The facts in brief for disposal of the present Second Appeal are as specified hereunder. The appellants-plaintiffs instituted a suit O.S. No. 53 of 1985 on the file of Principal Subordinate Judge, Srikakulam against the respondent-defendant for a declaration that the plaint schedule wall is a joint wall and that the plaintiffs have got a right in the said wall along with the defendant for mandatory injunction directing the defendant to close the two windows in the joint wall and if the defendant failed to do it, through Court the windows have to be closed and for a permanent injunction restraining the defendant from interfering with the said wall by putting holes and windows in the plaint schedule joint party wall. It was pleaded in the plaint as follows:

"The plaintiff No. 1 purchased the house site measuring 3-81 meters from east to west and north to south on the eastern side 39.01 meters and on the western side 37.19 meters situated in T.S. No. 87/2. In the southern row of Mandala Veedhi from Dadisatti Rukminamma under a registered sale deed dated 16-8-1976 for a sum of Rs. 4,000/- and he has been in possession and enjoyment of the same. The defendant also purchased house site situated on the eastern side abutting the site purchased by the plaintiff No. 1 that the same vendor on 16-3-1978 and applied to the municipality for the construction of the house thereon. In the month of December, 1977, the defendant approached plaintiff No. 1 with a request to construct a wall on the western side of her house as a joint wall in the joint site of the plaintiff No. 1 and the defendant in equal extent and not to claim any amount from the first plaintiff. Accordingly, the plaintiff No. 1 agreed and the defendant constructed a joint party wall in the joint site of the plaintiff No. 1 and the defendant. Thereafter the defendant entertained evil desire to get unlawful and illegal benefit and wanted to put windows in the joint party wall and the plaintiff No. 1 objected and raised the dispute and put a petition to the municipality on 4-1-1978. The officials of the municipality come and measured the site and directed the defendant not to put windows in the joint party wall. Accordingly, the defendant completed the western joint wall and construction of the house. The western wall of the defendant's house is a joint party wall of the plaintiff No. 1 and the defendant, being their common boundary, and the said wall divided incidentally in the two portions each belongs to the adjoining owners i.e., the plaintiff No. 1 and the defendant. The plaintiff No. 1 has rights analogous to those of the defendant and can use the said wall for constructing the house thereon. The defendant is proclaiming that will dug the joint wall and put windows in that wall which is shown in the plaint schedule. As it is a joint wall of the plaintiff No. 1 and the defendant and as they both got equal rights therein the defendant has no right to

put any window in the plaintiff schedule joint party wall. The defendant is powerful and there is nobody to oppose her. Unless the defendant is prevented by injunction the plaintiff No. 1 will be put to loss and hardship. Hence, the suit is filed for a declaration that the plaintiff schedule party wall is a joint wall and that the defendant has no right to do and put windows and for a permanent injunction restraining the defendant from interfering with the same. Subsequently the plaintiff No. 1 died and the plaintiff Nos. 2 to 9 were added in the plaintiff as his class-I heirs. After receipt of the injunction order the defendant dug the joint wall and put up windows. Unless the windows are closed the plaintiffs will be put to loss and hardship. Hence, this suit is filed by the plaintiffs for a declaration that the plaintiff schedule wall is a joint wall and that the plaintiffs have got a right in the said wall along with the defendant and for a mandatory injunction directing the defendant to close the two windows in the joint wall, and if the defendant fails to do so then the windows may be closed through Court and for a permanent injunction restraining the defendant from interfering with the said wall by putting holes and windows in the said joint party wall."

5. The respondent-defendant filed written statement denying the allegations. It was further pleaded that the defendant purchased the house site under the registered sale deed and she constructed the house in the said site by leaving some space to the western side to use it as a lane. It was further pleaded as follows:

"The allegations made in the plaintiff are not true, valid and binding on the defendant. The defendant purchased the house site under a registered sale deed. She constructed a house in the said site by leaving some space to the western side to use it as a lane. The defendant has no need to have a joint party wall as alleged in the plaintiff and the said wall is within the site of the defendant. The defendant got liberty to do anything with the western wall of her house and the plaintiffs have no locus standi to question her action. The defendant installed two windows in the western wall of her house immediately as and when she received the revised plan approved by the municipality. The plaintiff has no right, title or interest in the western wall as it exclusively belongs to the defendant. The said wall is in the site of the defendant. There is no cause of action for the plaintiff to file this suit as the defendant has already installed two windows long prior to the filing of this suit. The valuation of the suit and the Court fee paid is not correct. The plaintiff schedule is not correct. The suit is speculative. The plaintiff has nothing to do with the western wall of the defendant and the plaintiff is not entitled for the permanent injunction."

6. In view of the amendment of the plaintiff, an additional written statement was filed and on the respective pleadings of the parties, issues and additional issues were settled. The Court of first instance had recorded the evidence of PWs.1 to PW7 and DW-1 and DW-2 and marked Exs.A1 and A2, Exs.B1 to B3 and Exs.C1 to C6. PW1 after chief examination died and there was no opportunity to cross-examine him and hence, his evidence was not considered. The rest of the

evidence PWs.2 to 7, DW1 and DW-2 and also other documentary evidence had been considered and the Court of first instance had decreed the suit. Aggrieved by the same, the defendant had preferred an appeal AS No. 9 of 1987 on the file of the Additional District Judge, Srikakulam and the same was reversed by, the learned Judge and aggrieved by the same, the present Second Appeal is preferred.

7. It is no doubt true that as contended by Mrs. Bhaskara Laxmi, the Counsel for the respondent-defendant, the appellate Court had placed strong reliance on the recitals in the documents Ex.A1 and A2 and also the report of the Commissioner Ex.C1 and the other documents Exs.C-2 to C-6. It may be that consideration and non-consideration of the oral evidence, which is available on record, may twilt the balance or may not twilt the balance. But however, in my considered opinion the first appellate Court as a final Court of fact definitely is expected to discuss not only the documentary evidence but also the oral evidence available on record. It is not a case where atleast the oral evidence had been touched, it is a peculiar case where the oral evidence of PWs.2 to 6 and DWs.1 and 2 had been left untouched totally. No doubt, certain observations were made relating to the evidence of PW.7 in relation to Ex.C-1. But it is pertinent to note that oral evidence of PW.7 also had not been discussed. This approach of the appellate Court in my opinion cannot be sustained. It is no doubt true that it is always easy to say that the judgment should be a speaking or reasoned one but it is difficult to lay down all the essentials to be observed while writing a judgment since it will depend upon the facts and circumstances of each case. Any amount of elucidation in this regard can at the best be either illustrative or modulative and cannot be said to be exhaustive at any rate. What are the essential facts of a judgment of appellate Court in civil appeal, to specify a few can be as hereunder:

- (1) Points for determination keeping in view the issues framed.
- (2) Recording of findings.
- (3) Appreciation of oral and documentary evidence.
- (4) Discussion where the Trial Court had gone wrong if findings are to be reversed and the grounds relating thereto.
- (5) While affirming the findings also reasons to be given though not elaborately at least briefly.
- (6) Relevant decisions to be discussed at appropriate places.
- (7) Judgment to be divided into paras in a systematic way.
- (8) To deal with all the aspects so that the judgment can be as per law.
- (9) Judgment should be in conformity of the provisions though not in meticulous form at least in substance.

These are only certain of the aspects, which I am referring to and as already

observed by me these aspects are illustrative and cannot be said to be exhaustive.

8. In the light of the view expressed by me, I am of the opinion that the non-consideration of oral evidence by the first appellate Court itself definitely is a substantial question of law and no other questions need be gone into. In such a case, in the present second appeal, I am satisfied that the appellate Court though had recorded the findings basing on the documentary evidence and the report of the Commissioner, had not adverted to the oral evidence and definitely this is an illegality and in view of the fact that the approach of the appellate Court is totally erroneous in omitting to consider the oral evidence available on record, I am left with no other option except to set aside the judgment and decree of the appellate Court and to remand the matter to the appellate Court to re-hear, the parties and decide the matter in accordance with law appreciating both oral and documentary evidence available on record.

9. Accordingly, the Second Appeal is allowed to the extent indicated above inasmuch as the order of remand is being made this Court makes no order as to costs.