
(2014) 01 BOM CK 0023

In the Bombay High Court

Case No : Second Appeal Nos. 78, 79 & 80 of 2007

Francisco Coutinho

APPELLANT

Vs

Comunidade of Canacona

RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

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

Citation : (2014) 6 ALLMR 162

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : Sudin Usgaonkar, Advocate for the Appellant; P.A. Kamat, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

F.M. Reis, J.—Heard Mr. Sudin Usgaonkar, learned counsel appearing for the appellants and Mr. P. A. Kamat, learned counsel appearing for the respondent.

2. The above appeals came to be admitted by order dated 19.11.2007 on the following substantial questions of law.

(a) Whether in the facts and circumstances, the Appellate Court could have reversed the order of the trial Court which has recorded a finding of fact that the appellant herein was in possession of the property coupled with the survey records, without the respondents establishing their title and long possession over the property ?

(b) Whether the First Appellate Court overlooked the fact that the suit property and the parties being the same and the issue in both the case being directly and substantially the same i.e. in the suit No.39/90 and the present suit, the decree in No.39/90 acted as res judicata ?

(c) Could the First Appellate Court overlook that the respondent and its officers had not fulfilled the mandatory requirement of the law to prosecute the suit ?

3. By consent, the above appeals are taken together as it was pointed out by the learned counsel that the dispute is with regard to the same property and there are identical reliefs claimed and the points raised by the parties are the same and as such the substantial questions of law framed by this Court are also same.

4. During the course of the hearing of the above appeals, both the learned counsel have pointed out that on perusal of the judgments of the learned Lower Appellate Court, it is evident that the provisions of Order 41 Rule 31 of CPC have not at all complied with. Hence, by consent of the learned counsel an additional substantial question of law is framed in the present appeals.

Whether the First Appellate Court has committed gross error in not complying with Order 41 Rule 31 of CPC ?

5. Mr. Usgaonkar, learned counsel appearing for the appreciating the evidence on record has come to the conclusion that the appellants were in possession of the suit property and consequently dismissed the suit filed by the respondent. The learned counsel further pointed out that in another suit which was initiated earlier by one Mr. Pagui there are findings in favour of the appellants to the effect that they were in possession of the suit property. The learned counsel further pointed out that the learned Trial Judge has rightly appreciated the evidence on record and come to the conclusion that the appellants were in possession of the suit property and the respondent was not entitled for the reliefs sought in the suit. The learned counsel thereafter has taken me through the impugned judgments of the learned Lower Appellate Court passed in the appeals preferred by the respondent and pointed out that the learned Judge has summarily rejected the findings of the learned Trial Judge without scrutinizing and appreciating the oral as well as the documentary evidence adduced by the appellants. The learned counsel further pointed out that the learned Judge has totally misconstrued the evidence on record as well as the other material produced by the appellants to come to such erroneous findings. The learned counsel has taken me through the judgments of the learned Lower Appellate Court and pointed out that there are no points for determination framed by the learned Judge nor any scrutiny of the evidence as expected of the learned Lower Appellate Court. The learned counsel further pointed out that on this count alone the appeals deserve to be allowed and the suits filed by the respondent be dismissed.

6. On the other hand, Mr. P. A. Kamat, learned counsel appearing for the respondent has supported the impugned judgments. The learned counsel has pointed out that it is well settled that any findings in the earlier suit by itself does not amount to res-judicata. The learned counsel further pointed out that the Trial Court has misconstrued the evidence on record to come to the conclusion that the appellants were in possession of the suit property. The learned counsel further pointed out that the respondent have brought ample evidence on record to substantiate their claim in the suit but however, fairly conceded that the learned Lower Appellate Court has in fact not complied with the provisions of

Order 41 Rule 31 of CPC. The learned counsel as such submits that the appeals be rejected.

7. I have considered the submissions of the learned counsel and I have also gone through the records. Without going into the rival contentions on merits of the dispute, I will deal with the additional substantial question of law referred to above. On going through the judgments of the learned Lower Appellate Court, I find that the learned Lower Appellate Court has reversed the judgments of the Trial Court essentially on the ground that the findings on possession and ownership in an earlier suit on the basis of the judgment passed in Regular Civil Suit No. 39/90 is erroneous. Even assuming that the said contention is to be accepted, it was expected of the learned Lower Appellate Court to scrutinize the other evidence on record as well as the documents adduced by the parties to ascertain whether the appellants have proved their case. The oral evidence has not at all been examined to ascertain as to whether the appellants have established their case. The effect of the evidence of the respondent disputing the claim put forward by the appellants has also not been examined by the learned Lower Appellate Court. In the matter of reversal of the judgment, it was expected of the learned Lower Appellate Court to note the findings of fact based on conflicting evidence arrived at by the Trial Court and ascertain whether there is any error committed by the Trial Court. No doubt, the First Appellate Court is also entitled to reverse the findings of fact arrived at by the Trial Court. This can be done only after scrutiny of the evidence adduced by both the parties. This Court in the judgment passed in Second Appeal No. 78 of 2012 dated 12.07.2013 has held at para 8 thus :

8.....The judgment of the First Appellate Court should disclose the detailed discussion regarding the material on record and the findings arrived at being supported by proper reasoning. The discussion in the judgment should not only reveal mere analysis and the findings on such analysis but should also disclose proper application of mind on consideration of the provisions of law applicable to the facts of a given case. Such exercise would reveal the application of mind by the First Appellate Court which would in turn show the manner in which the point which has been considered to arrive at its findings. It is not open to the First Appellate Court only to re-produce the submissions advanced before the Court and summarily decide the matter in controversy. If such exercise is resorted to there would be no consideration by the First Appellate Court of the detailed analysis of the material on record or recording of reasons in terms of Order 41 Rule 31 of C.P.C.

Taking note of the ratio laid down by this Court, I find that the learned Lower Appellate Court has not complied with the requirements of Order 41 Rule 31 of CPC while passing the impugned judgments by not giving any specific reasons or appreciating the material adduced by the appellants to come to the conclusion that the appellants have not established their case. Before the First Appellate Court, the issues on fact and law are open for discussion and as such all the

aspects raised by the parties would have to be scrutinized and reasons given for their consideration. Even the point for determination culled out in the impugned judgments does not meet the requirements of Order 41 Rule 31 of Civil Procedure Code. In such circumstances, taking note of the fact that Mr. Kamat, learned counsel appearing for the respondent fairly accepts the position that the learned Lower Appellate Court has not scrutinized and examined the evidence adduced by both the parties while disposing of the appeals preferred by the appellants, I find it appropriate and in the interest of justice to quash and set aside the impugned judgments passed by the learned Lower Appellate Court and remand the matters to the learned Lower Appellate Court to decide the appeals preferred by the respondent afresh after hearing the parties in accordance with law. The third substantial question of law is answered accordingly.

8. In view of the findings rendered herein above while deciding the additional substantial question of law, I need not examine the rival contentions of the parties on merits of the dispute. All contentions of both the parties on merits are left open to be re-examined by the learned Lower Appellate Court in accordance with law.

9. In view of the above, I pass the following :

ORDER

(i) The appeal is partly allowed.

(ii) The impugned judgments of the learned Lower Appellate Court dated 13.04.2007 are quashed and set aside.

(iii) Regular Civil Appeal Nos. 2, 3 and 4/2007 are restored to the files of the learned Lower Appellate Court.

(iv) The learned Lower Appellate Court is directed to decide the said appeals afresh after hearing the parties in accordance with law.

(v) All contentions of both the parties on merits are left open.

(vi) The parties are directed to appear before the learned Lower Appellate Court on 04.03.2014 at 10.00 a.m.

(vii) The appeals stand disposed of accordingly.