

(2006) 01 AP CK 0013
In the Andhra Pradesh High Court
Case No : SA No. 1529 of 2005

Kamepalli Sitaramaiah and Others

APPELLANT

Vs

Nalluri Krishna Mohan Rao

RESPONDENT

Date of Decision : 03-01-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 4(2), Order 41 Rule 31, 100, 96

Citation : (2006) 3 ALD 411

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Manmadha Rao Kumbhajadala, for the Appellant; Y.V. Ravi Prasad, for the Respondent

Final Decision : Allowed

Judgement

V.V.S. Rao, J.—The appellants are the defendants. The suit filed by the respondent for declaration of title, permanent injunction and mandatory injunction was dismissed by the trial Court. However, on appeal, the appellate Court reversed the judgment and decree of the trial Court and decreed the suit, aggrieved by which, the present second appeal is filed by the unsuccessful defendants. In this judgment, the parties are referred to by their status in the original suit.

2. In the suit being O.S. No. 103 of 2000 on the file of Court of learned Principal Junior Civil Judge, Ongole, the plaintiff alleged that the properties shown in "A" series in the plaint plan belong to plaintiff; whereas the properties in "B" series belong to defendants, that there is a small lane on the west of the house and a common passage on the east of the house in "A" series, that at the time of construction, the father of the plaintiff left 1 1/2 feet width of site to the south of the wall for eaves water and for repairs of the southern wall, which is suit schedule property; and that when the plaintiff wanted to reconstruct the varandah on the south, the defendants caused obstruction denying the title of the plaintiff and, therefore, the suit was filed for perpetual injunction.

3. The first defendant filed written statement, which was adopted by the remaining defendants. While denying the allegation that 1 1/2 feet width of wall on the southern side belongs to plaintiff family, the defendants further alleged that the dividing wall in between the houses in the backyard is a joint wall upto a height of 6 1/2 feet and is continuation wall in between the houses and varandah for the plaintiff and defendants. It was further alleged that by making construction on the southern side, the plaintiff wants to make exclusive use of joint wall area on which he has no right and, therefore, the defendants resisted such claim.

4. The trial Court framed four issues having regard to the rival claim in the pleadings. The plaintiff examined three witnesses and marked as many as fifteen documents - Exs.A.1 to A. 15. In rebuttal, the second defendant was examined as D.W.I besides marking Exs.B.I to B.14. On consideration of oral and documentary evidence, the trial Court, by judgment and decree dated 5-3-2003 dismissed the suit with costs. The trial Court came to the conclusion that the enjoyment of 1 1/2 feet width site on the south of the plaintiffs property by the defendants and insertion of door frame by them into "S" series wall, disprove the plaintiffs claim to absolute right over the area covered by the joint wall, that the plaintiff has no title to the suit schedule property and, therefore, not entitled for permanent injunction and mandatory injunction.

5. Aggrieved by the judgment and decree dated 5-3-2003 passed by the trial Court, the plaintiff preferred A.S. No. 40 of 2003 on the file of the Court of II Additional District Judge (Fast Track Court), Ongole. A copy of grounds of appeal placed before this Court would show that the plaintiff/appellant raised as many as forty eight (48) grounds running into thirteen (13) pages. Every conceivable point was urged in the memorandum of grounds by the plaintiff. Be that as it is, the lower appellate Court framed a single point for determination. Taking overview of the matter with specific reference to the judgment of the trial Court, by judgment dated 31-8-2005, allowed the appeal decreeing the suit.

6. In this second appeal, learned Counsel for the appellant, Mr. Y.S. Sai Vara Prasad, inter alia, contends that the judgment of the lower appellate Court is not in accordance with Order XLI Rule 31 of the Code of Civil Procedure, 1908 (for short "CPC"). Having regard to the submission made by the learned Counsel for the plaintiff/respondent (who filed caveat in the second appeal) and having regard to the disposal of the second appeal, at the admission stage, it is not necessary to refer to submissions on merits of the case.

7. The lower appellate Court did not summarise the pleadings in suit. The appellate Court did not even advert to the grounds of appeal, which were as many as 48 grounds. The appellate Court also did not refer to the oral evidence nor summarise the documentary evidence, as usually done by every appellate Court, be it High Court or Supreme Court, as seen from the reported judgments. Curiously, the lower appellate Court followed very unconventional method and delivered a laconic order, which is prone to much criticism, not on the question of

merit, but the way the lower appellate Court dealt with.

8. Order XX of CPC deals with "Judgment and decree". The Court exercising original jurisdiction, the Court exercising appellate jurisdiction and the Court exercising second appeal or revisional jurisdiction, are required to adhere the principles adumbrated in Order XX of CPC. It would be a misconception for one to think that Order XX of CPC applicable only to the trial Court. It is well to remember that an appellate Court has to consider the first appeal as if it is a fresh consideration, if necessary by ignoring the trial Court judgment in appeal. This requires the study of the pleadings, the evidence and consideration of all points urged by the Counsel for the appellant and respondents. Whether any such exercise has been done can only be known if an appellate Court adheres to the principles and various rules contained in Order XX of CPC. Rule 4(2) of Order XX of CPC requires that every judgment of the Court shall contain concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. The four principles therefore to be adhered to strictly by the trial Court as well as the first appellate Court are (i) giving a concise statement of the case, (ii) framing points for consideration, (iii) recording the decision thereon and (iv) the reasons for such decision. These basic principles have been ignored by the learned first appellate Judge in the impugned judgment.

9. The recording of reasons by every judicial authority - needless to say, is essentially requisite of exercising judicial power. It ensures transparency in the discharge of judicial functions. It would also satisfy the principle that judicial authority should consider the grievance of the aggrieved in proper perspective. How the grievance is considered by the judicial authority and how it is decided can only be known by perusing the reasons for the conclusion. The thought process of judicial authority manifests in the form of reasons, which would be sufficient compliance with the exercise of sacred power. In *M/s. Hindustan Times Ltd. v. Union of India* AIR 1988 SC 688, the Supreme Court opined that the necessity to provide reasons however brief in support of the conclusions is too obvious to be reported. The application to give reasons introduces clarity and excludes the chances of arbitrariness. The higher Court can test correctness of those reasons. It was further observed as under:

The legal profession is entitled to have it demonstrated that the Judge had the correct principles in mind, had properly applied them and is entitled to examine the body of the judgment for the learning and precedent that they provide and for the reassurance of the quality of the judiciary which is still the centerpiece of our administration of justice. It does not take long for the profession to come to know, including through the written pages of published judgments, the lazy Judge, the Judge prone to errors of fact etc. The reputational considerations are important for the exercise of appellate rights, for the Judges' own self-discipline, for attempts at improvement and the maintenance of the integrity and quality of our judiciary. From the point of view of other Judges, the benefit that accrues to

the lower hierarchy of Judges and Tribunals is of utmost importance. Justice Asprey of Australia has even said in *Pettit v. Dankley* (1971) 1 NSWLR 376, that the failure of a Court to give reasons is an encroachment upon the right of appeal given to a litigant. In our view, the satisfaction which a reasoned judgment gives to the losing party or his lawyer is the test of a good judgment. Disposal of cases is no doubt important but quality of the judgment is equally, if not more, important. There is no point in shifting the burden to the higher Court either to support the judgment by reasons or to consider the evidence or law for the first time to see if the judgment needs a reversal.

10. The lower appellate Court framed only one issue viz., "Whether there are grounds to set aside the judgment and decree of the lower Court?" No doubt, as held by this Court in various judgments, Rule 31 of Order XLI of CPC is not mandatory, especially when an appellate Court discusses the entire evidence and considers all points that may possibly arise in the appeal. The same does not, however, mean that the lower appellate Court can deal with the matter in such a casual manner framing single point, as is noticed hereinabove.

11. The method and manner in which the lower appellate Court dealt with the matter also leaves much to be desired. A thorough reading of the judgment under appeal would show that it is more like reviewing the judgment of the trial Court than considering all aspects afresh. The lower appellate Court takes up one issue and records its own observations recording finding on a particular issue as recorded by the trial Court. This is illegal method of exercising appellate jurisdiction and cannot be sustained. Of late, this Court has come across many such orders delivered by the learned Senior Civil Judges and learned District Judges, while exercising appellate jurisdiction u/s 96 read with Order XLI of CPC or under Order XLIII of CPC. To say the least, the known principles to be followed while exercising the appellate jurisdiction are followed more in breach by many appellate Judges causing concern to this Court. Therefore, this Court observes that whenever an appellate Court disposes of an appeal, necessarily it has to (i) briefly advert to the pleadings in a nutshell depending upon the facts and circumstances of each case; (ii) discuss the entire oral and documentary evidence in a brief manner having regard to the settled principles under the Evidence Act, 1872 (iii) formulate appropriate points for consideration and (iv) take up each point separately and record its findings giving as many reasons as possible in support of conclusions. Merely framing one point for consideration and dealing with the matter in a laconic manner is objectionable and while exercising jurisdiction u/s 100 of CPC by this Court, such approach by the lower appellate Courts would certainly cause anxiety to the High Court.

12. As noticed supra, the method and manner in which the learned II Additional District Judge (Fast Track Court), Ongole disposed of A.S. No. 40 of 2003 is unconventional. It is not only unconventional, but objectionable warranting interference in this second appeal. Accordingly, after hearing the learned Counsel for the defendants and the plaintiff, the second appeal is allowed and remitted to

the Court of the learned II Additional District Judge (Fast Track Court), Ongole. The plaintiff and defendants shall appear through their respective learned Counsel before the learned lower appellate Judge on 30-1-2006. After hearing the respective learned Counsel afresh, the learned lower appellate Judge shall pass appropriate orders in the first appeal in accordance with law within a period of ten (10) days thereafter.

13. The second appeal is accordingly allowed. No costs.