

**(1998) 11 GAU CK 0001**

**In the Gauhati High Court**

**Case No : Second Appeal No. 33 of 1991**

Moinuddin Laskar and Another

APPELLANT

Vs

Habibur Rahman Barbhuiya

RESPONDENT

**Date of Decision :** 16-11-1998

**Acts Referred:**

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

**Citation :** (1999) 1 GLT 195

**Hon'ble Judges :** J.N. Sharma, J

**Bench :** Single Bench

**Advocate :** H.R.A. Choudhury, A.S. Choudhury and A. Begum, for the Appellant;  
N. Dhar and M.H. Rajborbhurya, for the Respondent

## Judgement

J.N. Sarma, J.—Heard Shri Choudhry, learned Advocate for the Appellant and Shri Borbhuyan, learned Advocate for the Respondent The following are the substantial question of law:

(1) Whether the impugned appellate judgment is a judgment of reversal in accordance with law.

(2) Whether the impugned appellate judgment is vitiated for non-consideration of Exhibit-1.

2. Regarding me first question the learned Advocate submits that no point for decision was formulated as required under Order 41 Rule 31 of the CPC and as such the judgment of the appellate Court is not a proper judgment of reversal in as much as the learned Judge did not apply his mind to the findings arrived at by the Trial Court The provisions of Rule 31 are no doubt to be generally complied with. The judgment of the First Appeallate Court requires to set out the point for determination, record the decision thereon and give its own reasons and if the provisions are not complied with the sitting in Second Appeal generally is to remand the case to the Appellate Court. But this power can be exercised by the Second Appellate Court only if it is found that the appeal must succeed on

merits. The importance of setting the points for determination is that the Appellate Court should apply its mind to all the important points (See AIR 1950 FC 10). It is the duty of the lower Appellate Court to consider independently the finding both on facts and law and give its own independent findings. The reasons are required to enable a party to determine whether Second Appeal should be preferred. Even in concurrent judgment oral evidence should be summarised through reasons given for concurrence of the judgment may not be in elaborate manner, expression of general agreement with reasons given by the Trial Court, ordinarily would suffice when a judgment is affirmed (See *Girija Nandan v. Brajendra* AIR 1967 S.C. 114 ) Further there is no justification for the appellate court to interfere with the findings of fact by the Trial Court and which is established and borne by record *Mohd. Salamatullah and Others Vs. Government of Andhra Pradesh*, But at the same time a judgment of reversal can not be said to be an improper judgment, merely because of the reasons given by the Trial Court are not discussed independently when reasons of the Trial Court are rejected on justified ground after proper discussion of materials and necessary findings are arrived at for the disposal of appeal even without strict inference to Order 41 Rule 31 of the Code of Civil Procedure, the judgment can not be set aside on each case. It does not fall through, if certain points are discussed only leaving other points. In such a situation it may be assumed that the other points have been abandoned. Whether that situation exists will depend on the background of this law let us have a look to the impugned judgment. A bare perusal of the impugned judgment will show that he has discussed the matter and has given his findings for proper disposal of the appeal. The argument advanced by Shri Choudhury has no substance.

3. The second submission is that Exhibit-1, the deed of purchase was not considered by the Appellate Court. There was no necessity to consider it in view of the fact that the earlier deed of purchase in the year 1974 was found not to be a valid purchase deed, and as such the subsequent purchase vide Exhibit-1 also automatically shall be invalid. That being the position, there is no merit in this Second Appeal, Accordingly the Second Appeal is dismissed.