

(2011) 10 BOM CK 0153

In the Bombay High Court

Case No : Second Appeal No. 45 of 2008

Shri Camilo Gomes

APPELLANT

Vs

Unknown heirs/legal representatives of deceased Prisca
Olinda Teodolina Menezes

RESPONDENT

Date of Decision : 05-10-2011

Acts Referred:

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

Citation : (2011) 10 BOM CK 0153

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

Bench : Single Bench

Advocate : V. Menezes, for the Appellant; F.E. Noronha, for the Respondent

Final Decision : Allowed

Judgement

F.M. Reis, J.—Heard Shri V. Menezes, Learned Counsel appearing for the appellant and Shri F. E. Noronha, Learned Counsel appearing for the respondents.

2. Admit on the following substantial question of law :

Whether the judgment dated 12.12.2007 passed by the First Appellate Court is vitiated for non compliance of Order 41 Rule 31 of C.P.C.?

3. Heard finally forthwith by consent of both the Learned Counsel.

4. The point for determination in the appeal is as to whether the Lower Appellate Court has complied with Order 41 Rule 31 of the C.P.C., while disposing of the appeal preferred by the appellant. On perusal of the judgment passed by the Civil Judge Senior Division, Margao, there were different grounds on which the suit filed by the appellant came to be dismissed. All such grounds were challenged by the appellant before the Lower Appellate Court. On perusal of the impugned judgment of the First Appellate Court, I find that such contentions advanced by the Learned Counsel for the appellant have not been dealt with nor scrutinized by the Lower Appellate Court while disposing of the appeal preferred

by the appellant. No points for determination have been framed by the Lower Appellate Court while disposing of the Regular Civil Appeal. On going through the judgment of the Lower Appellate Court, one cannot ascertain as to which were the points for determination considered by the Lower Appellate Court while disposing of the Regular Civil Appeal. Non compliance of the provision of Order 41 Rule 31 C.P.C. by itself vitiates the judgment of the Lower Appellate Court which requires interference by this Court in the Second Appeal.

5. As such, considering the facts and circumstances of the case, I find that the impugned judgment passed by the Lower Appellate Court deserves to be quashed and set aside and the matter be remanded to the learned Additional District Judge to decide the Regular Civil Appeal filed by the appellant afresh in accordance with law after hearing the parties as expeditiously as possible. The substantial question of law is answered accordingly.

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

ORDER

(i) The appeal is partly allowed.

(ii) The impugned judgment and decree dated 12.12.2007 is quashed and set aside.

(iii) Regular Civil Appeal No. 22/2007 is restored to the file of the learned Ad-hoc District Judge -2, FTC II, South Goa, Margao.

(iv) The learned Judge is directed to decide the said appeal afresh after hearing the parties in accordance with law as expeditiously as possible preferably on or before 31.03.2012.

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

(vi) The appeal stands disposed of accordingly with no order as to costs.

(vii) The parties are directed to appear before the learned Judge on 12.12.2011 at 10.00 a.m.