
(2014) 01 BOM CK 0096
In the Bombay High Court
Case No : Second Appeal No. 551 of 2011

Wadhupal	Vs	APPELLANT
Smt. Mohinibai and Others		RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31, Order 41 Rule 32

Citation : (2014) 5 ALLMR 782

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : Darasingh Sindhu, for the Appellant; A.A. Bobde, Advocate for Respondents Nos. 1, 4, 6, 7 and Mr. D.M. Kale, AGP, for the Respondent

Final Decision : Disposed Off

Judgement

A.P. Bhangale, J.—The appellant had raised substantial question of law which is reflected in order dated 3.12.2012 passed by this Court as to whether the 1st appellate Court by merely asking the question as to whether the judgment of the Court below is correct, legal and valid, is hopelessly inadequate method of meeting the requirement of legal provisions. Heard submissions at the Bar. As this appeal was fixed for hearing or dismissal after absence of the Advocate for appellant was noted on 6.12.2013 and 10.1.2014.

2. Learned counsel for the appellant with reference to ruling in Khatunbi and Others Vs. Aminabai, submitted that the 1st appellate Court as final court of facts, is expected to take all the points for determination for the decision on each point to record the reasons for decision as also reasons in respect of all the issues arising from the decree appealed from, and the relief to which the appellant is entitled as stated in paragraph 5 of the ruling. Reference is also made to paragraph 7 with particular mention to Order 41, rule 31 CPC to argue that 1st appellate court cannot adopt hopelessly inadequate method by merely asking itself the question as to whether impugned judgment is correct, legal or valid since it is final court of facts. The 1st appellate Court is under obligation to

frame all necessary points for determination so as to focus on all the issues raised by the parties in the trial Court and to answer all the issues which were raised as it is final court of facts 1st appellate Judge can, after considering all the rival contentions in the light of evidence led on record, meet all the points while it decides the First Appeal on merits on the basis of properly formulated points for determination.

3. Therefore, learned counsel for appellant submitted that the impugned judgment and order framed hopelessly inadequate points for determination as follows:

- (i) Whether the learned lower Court properly appreciated the evidence on record?
- (ii) Whether the judgment and decree passed by the learned lower Court is bad in law?
- (3) What order?

He submits that learned appellate Court ignored the issues which were raised by the parties in the trial Court in respect of all the questions of facts and law which were required to be decided.

4. Learned counsel for respondent, on the other hand, contended that 1st appellate Judge did consider the necessary issues with reasons forming the impugned judgment. Therefore, no interference is required to be made in the impugned judgment and order particularly when the order by 1st appellate Court is concurrent with the trial Court. I have perused ruling in Khatunbi Aminabai's case (supra) cited before me delivered by the Division Bench of this Court. It cannot be disputed that after calling R & P from the trial Court, it is necessary for the 1st appellate Court to appreciate pleadings made by the parties as also to analyse the evidence led-oral as well as documentary on the record apart from considering questions of law which are raised. Speaking order with reasons is necessary to be recorded by 1st Appellate Court after meeting all the points in dispute, because it is a final Court of Facts. The second appeal is heard constrained within limits of formulated substantial questions of law. However, First Appellate Court, no doubt, may reverse or affirm findings recorded by the trial Court. The appellant in the 1st appellate Court do have very valuable right to be heard on the basis of facts pleaded in the trial Court to address the Court all the issues raised on the basis of pleadings and upon all rival contentions so that 1st appellate court can by conscious application of mind frame points for determination to give reasoned findings in respect of all the issues and contentions raised by the party to the appeal. It is duty of 1st appellate Court as final court of facts to deal with all the issues as also to examine entire evidence led by the parties so as to reflect in the judgment that entire evidence was re-appreciated adverting to all the findings recorded by the trial Court. In other words, 1st appellate Court cannot ignore the vital issues and all the findings of facts recorded by the trial Court otherwise it may be imputed with a blame of acting arbitrarily or perversely or capriciously if it ignores with settled principle of

law laid down by the Division Bench of this Court read with Order 41, rule 32 of the Code of Civil Procedure. Looking to the judgment of the trial Court in this case which dealt with total eight issues which related to issues as to whether plaintiff had proved title of his father-in-law to the suit property and whether Will dated 15.7.1991 was validly executed by father-in-law of the plaintiff and whether in the result, plaintiff became owner of the suit property. The issue also related to legality of mutation entry no. 1484 in respect of suit property and as to whether defendant no. 3 was entitled to the 1/6th share in the suit house and furthermore as to whether defendant proved that suit is false and not tenable. Thus, when the trial Court had dealt with multiple number of issues as above, learned 1st appellate Judge ought to have recorded findings of fact and law by considering all the above points in issue instead of adopting short-cut method of addressing itself only on the limited questions as to whether impugned judgment and order was bad in law and whether trial Court properly appreciated evidence on record. I find that the points of determination, in the facts and circumstances, were inadequate in the impugned judgment compliance for to meet all issues in the case. That being so, I am constrained to direct learned 1st appellate Court (District Judge concerned) to bear in mind reasons stated to frame all essential points for determination afresh, hearing the rival submissions and then to decide the appeal in accordance with law, preferably within a period of six months from the date of communication of this order as expeditiously as possible. Impugned judgment and order passed by 1st appellate Court is set aside and the proceedings are remanded back to 1st Appellate Court to decide the appeal on merit in accordance with law. Appeal stands disposed of accordingly with no order as to costs.