2022 INSC 642

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No (s). 1117 of 2009

SOMAKKA (DEAD) BY LRS. ...APPELLANT (S)

VERSUS

K.P.BASAVARAJ(DEAD) BY LRS. ... RESPONDENT(S)

J U D G M E N T

Vikram Nath, J.

1. The appellant is the own sister of the sole respondent. Their father Puttanna had inherited certain properties from his father which were ancestral properties and are described as item nos. 1 and 2 of Schedule 'A' to the plaint, whereas property described at item no. 3 was

alleged to be self-acquired property of Puttanna on the basis of occupancy rights. In so far as the property described at Schedule 'B', it belonged to the respondent which the appellant claimed to have purchased.

2. The appellant is the plaintiff in OS No. 2506 of 1991 instituted in the Court of the City Civil Judge, Bangalore, wherein the sole defendant is the respondent herein (brother of the appellant). Primarily, two reliefs were claimed in the said suit; firstly a partition and separate possession of ¼ (one fourth) share in properties described at item nos. 1 and 2 and ½(one half) share in the property described in item no. 3 of Schedule 'A' to the plaint; the second relief prayed was for a decree of specific performance of the agreement and sale dated 25.05.1981 with

respect to the property described in Schedule 'B' to the plaint.

3. The claim set up by the appellant was that properties described at item nos. 1 and 2 in Schedule 'A' were ancestral properties and, therefore, upon the death of her father in 1974, she would be entitled to ¼ share and further that the property described as item no.3 of Schedule 'A' was exclusively occupied by her father who had applied before the revenue authorities for being declared as an occupant and the same was pending at the time when her father died. Later on, it was continued to be prosecuted by the respondent and it was ordered that his name be recorded as occupant as such she would be entitled to ½ share. With respect to the relief of specific performance of

contract, it was alleged that she had paid a sum of Rs. 12,000/- for purchasing 1 acre and 10 guntas in Survey no. 60 situated on Dyavasandra Village, Krishnarajapura Hobli, Bangalore South Taluk and for which an agreement to sell dated 25.05.1981 was executed. The respondent had placed the appellant in possession of the said property. Later on, he declined to execute the sale deed despite appellant being always ready and willing to perform her part of the obligation to the agreement.

4. The respondent contested the suit, filed written statement and denied averments made in the plaint. According to the respondent his father had already spent substantial amount on the marriage of the appellant. She was also

given jewellery worth Rs. 50,000/- and also an additional sum of Rs. 8,000/-for establishing a stationary-cum-coffee shop. Other averments made in the written statement were to the effect that the appellant had access to the savings of her father and that she had secretly utilized the savings of both her and her father's in purchasing property in the name of her husband. In paragraph 15 of the written statement, further details have been mentioned with regard to the property acquired by the appellant and also which is received from their father.

5. The respondent, however, admitted that the properties described at item nos. 1 and 2 of the Schedule 'A' were ancestral properties. It is, further, stated that the property described at

item no. 3 of Schedule 'A' of the plaint was jointly cultivated by him and his father and after the death of his father, he was exclusively cultivating the same and upon the coming of the Mysore (Religious and Charitable) Inams Abolition Act, 1955[1], he became entitled to occupancy rights and accordingly applied for it, which was granted. Further, the respondent denied the alleged agreement to sell and stated that it was a false and fabricated document and he never received any consideration amount as alleged by the appellant. On such pleadings, it was prayed that the suit be dismissed with exemplary costs.

6. Parties led evidence, both oral and documentary. The XIX Additional City Civil Judge, Bangalore vide judgement and order

1 In short "Inam Act"

dated 02.09.2003 decreed the suit declaring that the appellant was entitled for ¼ share in properties described as item nos. 1 and 2 and ½ share in item no. 3. of Schedule 'A' and for separate possession by metes and bounds. It, further, directed the respondent to execute the sale deed in respect of the property described in Schedule 'B' of the plaint.

7. The respondent preferred an appeal under Section 96 of the Code of Civil Procedure, 1908[2] before the High Court of Karnataka registered as RFA No. 214 of 2004. Before the High Court, the counsel for the appellant, gave up the relief for specific performance. The High Court vide judgment and order dated 19.08.2006 upheld the ¼ share of the appellant in the property described at item nos. 1 and 2 of Schedule 'A'.

2 In short "CPC"

However, it agreed with the contention of the respondent that the property described at item no. 3 of Schedule 'A" was jointly cultivated by the defendant and his father, and therefore, upon death of his father, defendant would get ½ share of his own and the remaining ½ share of his father would be divided between his heirs i.e. ¼ to his daughter and ¼ to his son. Thus, the appellant would be entitled for ¼ share in the property described at item no. 3 of Schedule 'A' and not ½ share as decreed by the Trial Court. To this limited extent the decree of the Trial Court was modified.

8. Aggrieved by the same, the appellant has filed the present appeal with respect to the reduction of her share from ½ to ¼ with respect to the property described at item no. 3 of

Schedule 'A'. There is no appeal by the respondent with respect to the ¼ share given to the appellant by the Trial Court and affirmed by the High Court with respect to item nos.1 and 2 of Schedule 'A' properties.

9. Heard learned counsel for the parties and perused the material on record. It may be noticed that this Court, while issuing notice vide Order dated 30.07.2007 had confined it to the question of shares of the parties in Item No.3 of Schedule 'A' of the property.

10. The only issue thus which survives for our consideration and adjudication is whether the appellant is entitled to ½ share or ¼ share in the property described at item no. 3 of Schedule 'A' property over which occupancy rights under the Inam Act were claimed. Remaining claim of

the appellant regarding ½ share in item nos. 1 and 2 of Schedule 'A' and Schedule 'B' properties stand closed at the stage of first appeal before the High Court.

11. The Trial Court framed six (6) issues, which read as follows:-

> "1. Whether plaintiff proves that suit property are the joint family property of herself and defendant?
>
> 2. Whether plaintiff proves that defendant executed an agreement in respect of 'B' Schedule property in favour of plaintiff on 25.05.81 for a sale consideration of Rs.12,000/-?
>
> 3. Whether suit is barred by limitation?
>
> 4. Whether suit is not properly valued and court fee paid is insufficient?
>
> 5. Whether plaintiff is entitled for suit relief?
>
> 6. What order or decree?"

12. While dealing with issue no.1, the Trial Court records that, although, the defendant-respondent denied the right, title and interest of the appellant in item nos.1 and 2 of Schedule 'A'

properties, but having admitted that his father Puttanna succeeded to item nos.1 and 2, and that they were ancestral properties, as such, the appellant would be entitled to ¼ (one fourth) share in item nos.1 and 2 of Schedule 'A' properties. This finding has been confirmed by the High Court also in appeal and as there is no further appeal by the respondent with respect to item nos.1 and 2 of Schedule 'A' properties, the relief granted to the appellant to that extent stands finalized and closed.

13. Now coming to item no. 3 of Schedule 'A' property, it was a Devadaya Inamathi Land. During life time of Puttanna, father of the parties, he was cultivating the same on the basis of Panchashala Gutta and on the coming of the Inam Act, Puttanna filed an application for grant

of occupancy rights before the Special Deputy Commissioner, Inam Abolition, Bangalore. Later on, the said matter came up before the Land Tribunal, Bangalore and during pendency of the said application, Puttanna died. Thereafter, the respondent came on record and he carried forward the application, filed by Puttanna for occupancy rights, which ultimately came to be granted in his favour.

14. The respondent had set up a specific claim that he was cultivating item no.3 of the Schedule 'A' property personally and he alone had made the application for occupancy rights and the same being granted in his name, it became his self-acquired property.

15. The Trial Court discussed in detail the evidence led by the parties with regard to item

no.3 of the Schedule 'A' property. It noted that the appellant (P.W.-1) had stated that the said property was personally cultivated by the father of the parties namely, Puttanna, which was an agricultural land of the Devadaya Inamathi on the basis of a Panchashala Gutta. Puttanna had applied for grant of occupancy rights under the Inam Act on 17.04.1971. However, while the matter was pending before the Karnataka Land Tribunal, Puttanna died. The respondent got himself impleaded as legal representative of late Puttanna and he was, thereafter, granted occupancy rights by the Land Tribunal. The Trial Court further noticed that occupancy rights were heritable in nature and it is for this reason that after death of Puttanna, the respondent could get his name substituted and was also successful in obtaining the occupancy

rights, but the fact remains that upon the death of Puttanna, the item no.3 of Schedule 'A' property, being heritable in nature, would be inherited by both his children i.e. the appellant and the respondent and under law, both of them would be entitled to ½ (half) share each. The said property would be deemed to be self-acquired property of Puttanna.

16. The Trial Court further considered Exts. P-2 to P-36, which were receipts of payment of Panchashala Gutta and the revenue by Puttanna i.e. to say that Puttanna was throughout cultivating item no.3 of Schedule 'A' property on the basis of Panchashala Gutta. Ext. P-37 was also relied upon by the Trial Court, which was a document of the RTC extract to show that the said land was recorded as Inam

land and Puttanna was cultivating the same. Exts. P-2 to P-36 reveal that Puttanna had been cultivating the said land since 1955 continuously. Exts. P-38 and P-39 were copies of the applications, filed by late Puttanna before the Special Deputy Commissioner, Inam Abolition, Bangalore. Exts. P-40 and P-41 were copies of the notices issued by the Revenue Authorities calling upon him to appear for consideration of his applications for grant of occupancy rights. Further, Exts. P-42 and P-43 were copies of the statements given by one G.K. Gurunath and the respondent before the Land Tribunal, Bangalore. Ext. P-44 is the statement of one Narasimhaiah and Ext. P-45 is the order of the Land Tribunal, Bangalore granting occupancy rights in favour of the respondent.

17. The Trial Court further proceeded to consider the statement of the respondent, who entered the witness box as DW-1. He had set up a case that he was jointly cultivating item no.3 of the Schedule 'A' property along with his father and, as such, after death of his father, he was exclusively cultivating the said land. He also stated that he had applied for grant of occupancy rights before the Special Deputy Commissioner and, as such, rights were granted in his name. He denied that appellant was in joint possession of item no.3 of Schedule 'A' property. He claimed the said property to be his self-acquired.

18. The Trial Court discussed the cross-examination of respondent (DW-1) thread-bare. The Trial Court noticed the admission of the

respondent (DW-1) from his cross-examination as follows:

> "(i) Item No.3 of 'A' schedule property was given to Puttanna on basis of Panchashala Gutta.
>
> (ii) Puttanna during his life time was paying the revenue and cultivating the said land.
>
> (iii) Respondent had applied as legal representative in the proceedings initiated by Puttanna for grant of occupancy rights.
>
> (iv) Before the Land Tribunal, respondent DW-1 has stated that his father Puttanna was cultivating the said property and after his death, he is claiming occupancy rights being the legal representative."

19. The Trial Court further relied upon a statement of one Narasimhaiah marked as Ext. P-44, given before the Land Tribunal, wherein he stated that he knew Puttanna, and that he was cultivating the said land.

20. The Trial Court also noticed that even the order granting occupancy rights, passed by the Land Tribunal (Ext. P-45) clearly mentions that the respondent was claiming occupancy rights

on basis of the fact that his father was cultivating the land and that after his death, he is entitled for occupancy rights being his legal heir and representative.

21. On such material, the Trial Court came to the conclusion that item no.3 Schedule 'A' property was the acquisition of Puttanna himself and that upon his death, it would be inherited in equal shares by his heirs being both his children, the appellant and the respondent.

22. On the above findings the Trial Court decreed the claim of the appellant to be having half share in item no.3 of Schedule 'A' property vide judgment dated 02.09.2003.

23. Respondent preferred an appeal before the High Court under Section 96 CPC registered as RFA No. 214 of 2004. Before the High Court,

the appellant gave up her claim regarding specific of performance with respect to Schedule 'B' property. The High Court vide judgment dated 19.08.2006 confirmed the finding relating to ¼ share to the appellant with respect to item nos.1 and 2 of Schedule 'A' properties. It, however, went on to modify the decree of the Trial Court relating to item no.3 of Schedule 'A' property by reducing the share of appellant from ½ to ¼.

24. The High Court in a very cursory and cryptic manner, partly allowed the first appeal. It did not consider the evidence considered by the Trial Court. Neither did it deal with the statements or the other documentary evidence on record and only on a bald statement of the respondent, which according to it, was

mentioned in the order of the Land Tribunal that respondent was jointly cultivating the said land along with his father held that it became a joint family estate and, accordingly, reduced the share of the appellant to ¼ (one fourth) from 1/2 (one half).

25. The only discussion made by the High Court in the impugned judgment is reproduced hereunder:

> "The contention of the defendant that the properties were given to plaintiff during the lifetime of her father. Therefore, not entitled to any share in the estate of her father by way of succession is an untenable contention and not a triable defence. Whatever the properties gifted to her during his lifetime constitute separate properties of the plaintiff and such a gift/assignment does not deprive the right of the plaintiff to seek share by way of succession after the demise of the father. Item No.3 of 'A' schedule property is an agricultural land and it was Devadaya Inamathi land cultivated by the father of the plaintiff. He had made an application in Form No.1 for grant of occupancy rights. The defendant also made an application in Form No.7 for grant of occupancy rights in respect of the same land. Ex.P-5 is the order of the Land Tribunal, in which, it categorically mentions that the defendant had made a statement before the Tribunal that the land was jointly cultivated by

himself and by his father. Therefore, it becomes a joint family estate.

In that view, after the demise of the father, the defendant and his father are entitled to the notional share of 1-1/2 each and the plaintiff would be entitled to the 1/4th share in Item No.3 of 'A' schedule property and not half share as claimed."

26. Section 96 of the CPC provides for filing an appeal from original decree. Further Order XLI Rule 31 of the CPC provides for the contents of the judgment of the First Appellate Court. According to it, the judgement of the Appellate Court shall be in writing and would include the points for determination, the decision thereon, the reasons for the decision and where the decree is reversed or varied, the relief to which the appellant is entitled. Section 96 and Order XLI Rule 31 of the CPC are reproduced below:

"**Section 96**-Appeal from original decree.

(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree

passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed 2 [ten thousand rupees.]"

Order XLI Rule 31

"Contents, date and signature of Judgment"

The Judgment of the Appellate Court shall be in writing and shall state- (a) the points for determination; (b) the decision thereon; (c) the reasons for the decision; and (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein."

27. It has been a matter of debate in a catena of decisions as to what would be the scope, power and duty of the First Appellate Court in deciding an appeal under Section 96 CPC read with Order XLI Rule 31 CPC. We briefly deal with the law on the point.

28. Learned Judge **V.R. Krishna Iyer, J.,** [as he then was a Judge of the Kerala High Court] in 1969, while deciding the case between **Kurian Chacko vs. Varkey Ouseph**[3], dealing with a similar judgment of the First Appellate Court which had been disposed of by a brief order, observed as follows:

> "…2. An appellate court is the final court of fact ordinarily and therefore a litigant is entitled to a full and fair and independent consideration of the evidence at the appellate stage. Anything less than this is unjust to him and I have no doubt that in the present case the learned Subordinate Judge has fallen far short of what is expected of him as an appellate court."

29. Further following the above, there have been a series of judgments by this Court;

29.1 In **Santosh Hazari vs. Purushottam Tiwari**[4] (relevant portion of para 15) is reproduced below:

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3 AIR 1969 Ker 316
4 (2001) 3 SCC 179 para 15

> "15…The appellate court has jurisdiction to reverse or affirm the findings of the Trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. … while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the Trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it."

29.2 In **H.K.N. Swami vs. Irshad Basith**[5], this Court again reiterated the same principle in paragraph 3 of the judgment:

> "3. The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title."

5 (2005) 10 SCC 243

29.3 In 2015, this Court again in **Vinod Kumar vs. Gangadhar**[6] considering the previous judgment recorded its view in paras 18 and 19 which are reproduced hereunder:

> "18. In our considered opinion, the High Court did not deal with any of the submissions urged by the appellant and/or the respondent nor it took note of the grounds taken by the appellant in grounds of appeal nor made any attempt to appreciate the evidence adduced by the parties in the light of the settled legal principles and decided case law applicable to the issues arising in the case with a view to find out as to whether the judgment of the Trial Court can be sustained or not and if so, how, and if not, why.
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> 19. Being the first appellate court, it was the duty of the High Court to have decided the first appeal keeping in view the scope and powers conferred on it under Section 96 read with Order 41 Rule 31 CPC mentioned above. It was unfortunately not done, thereby, resulting in causing prejudice to the appellant whose valuable right to prosecute in the first appeal on facts and law was adversely affected which, in turn, deprived him of a hearing in the appeal in accordance with law. It is for this reason, we unable to uphold the impugned judgement of the High Court."

29.4 Very recently, this Court in 2022 (to which one of us, Brother Abdul Nazeer, J. was a

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6 (2015) 1 SCC 391

member) in **Manjual and others vs. Shyamsundar and Others**[7], reiterated the same view in para 8 thereof, which is reproduced hereunder:

> "8. Section 96 of the Code of Civil Procedure, 1908 (for short, 'CPC') provides for filing of an appeal from the decree passed by a court of original jurisdiction. Order 41 Rule 31 of the CPC provides the guidelines to the appellate court for deciding the appeal. This rule mandates that the judgment of the appellate court shall state
>
> (a) points for determination;
> (b) the decision thereon;
> (c) the reasons for the decision; and
> (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.
>
> Thus, the appellate court has the jurisdiction to reverse or affirm the findings of the Trial Court. It is settled law that an appeal is a continuation of the original proceedings. The appellate court's jurisdiction involves a rehearing of appeal on questions of law as well as fact. The first appeal is a valuable right, and, at that stage, all questions of fact and law decided by the Trial Court are open for re-consideration. The judgment of the appellate court must, therefore, reflect conscious application of mind and must record the court's findings, supported by reasons for its decision in respect of all the issues, along with the contentions put forth and pressed by the parties. Needless to say, the first appellate court is required to comply with the requirements of Order 41 Rule 31 CPC and non-observance of these requirements lead to infirmity in the judgment."

7 (2022) 3 SCC 90

30. From the above settled legal principles on the duty, scope and powers of the First Appellate Court, we are of the firm view and fully convinced that the High Court committed a serious error in neither forming the points for determination nor considering the evidence on record, in particular which had been relied upon by the Trial Court. The impugned judgment of the High Court is thus unsustainable in law and liable to be set aside.

31. The next question which arises is that where the judgment of the Appellate Court is being set aside on the ground of non-consideration of the evidence on record, the matter would normally be required to be remanded to the First Appellate Court, whether

in the facts and circumstances this case requires a remand. In the facts and circumstances of the present case, we find that the suit was instituted in the year 1991, more than three decades ago; the evidence discussed by the Trial Court is neither disputed nor demolished by the learned Counsel for the respondent. As such, we do not find any good reason to remand the matter to the High Court. We are of the view that in order to put a quietus to the litigation and relieve the parties from any further harassment, we set aside the judgment of the High Court and confirm the judgment and decree of the Trial Court to the extent it relates to item no. 3 of Schedule 'A' property described in the plaint, i.e. to say that the appellant and the respondent would be entitled to ½ share each in the said property. The Trial Court shall

accordingly proceed to draw out the proceedings for final decree of partition.

32. The appeal is accordingly allowed. There shall be no order as to costs.

.....J.
[S. ABDUL NAZEER]

.....J.
[VIKRAM NATH]

NEW DELHI
JUNE 13, 2022.