2019 INSC 699

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7418 OF 2009

R.S. Anjayya Gupta .....Appellant

Versus

Thippaiah Setty & Ors. ....Respondents

J U D G M E N T

A.M. Khanwilkar, J.

1. The present appeal takes exception to the judgment and decree of the High Court of Karnataka at Bangalore dated 7th September, 2004, in RFA No.456 of 2002, whereby the High Court upheld the findings of the Trial Court, that the suit properties described in Schedules A and B to the plaint were not self-acquired by the appellant (defendant No.1) but, instead, belonged to the Joint Hindu Family of which he was a member and, therefore plaintiff and defendant Nos.1 and 2 were equally entitled to 5/12th share in all the suit properties and defendant No.3 (a) (b) and (c) each were entitled to 1/24th share in all the

suit properties and thus the same could be partitioned and distributed amongst the members of the said joint family. The High Court, however, granted liberty to the appellant to approach the Trial Court for an enquiry into the question whether the sale of agricultural lands belonging to joint family would bind the appellant (defendant No.1) and to pass another preliminary decree, if necessary. The appellant has also assailed the judgment of the High Court rejecting his review petition being R.P. No.567 of 2002 dated 27th September, 2006.

2. The parties to this appeal are the children of the original defendant No.3-patriarch of the family, Hanumanthaiah Setty. The appellant is the eldest son, while respondent No.1 and respondent No.2 are his younger brothers. Respondent Nos. 3 to 5 are the daughters of Hanumanthaiah Setty and thereby sisters to the appellant and respondent Nos. 1 and 2. Respondent Nos. 3 to 5 came on record as the legal representatives of Hanumanthaiah Setty after he passed away during the course of the proceedings before the Trial Court.

3. This appeal has its origins in a suit for partition of certain properties, being O.S. 1300 of 1982, filed by respondent No.1

(original plaintiff) against the appellant (original defendant No.1), respondent No.2 (original defendant No.2) and the original defendant No.3 Hanumanthaiah Setty before the Court of the XXXI Additional City Civil Judge at Bangalore. Respondent No.1, claiming to be a member of a Joint Hindu Family comprising the other parties to the suit, alleged that the scheduled suit properties belonged to the said Joint Hindu Family since they had been purchased by the original defendant No.3 father with money from joint family funds. The crux of respondent No.1's plea was that the suit properties mentioned in Schedules A and B to the plaint had been purchased ostensibly in the name of the appellant since he was the senior-most member of the family (after defendant No.3) and also the eldest son, however, in actuality, the said properties belonged to the joint family. Respondent No.1 also asserted that suit properties were in the joint possession of the appellant, respondent No.2 and the original defendant No.3 and that the appellant was attempting to illegally dispose of the same and obstruct partition thereof, thus necessitating the suit. Accordingly, respondent No. 1 sought a 1/4th share in the suit properties and mesne profits in that regard.

4. The original defendant No.3 father supported the stand of the respondent No.1/original plaintiff, contending in his written statement that the suit properties were purchased for and on behalf of the joint family and were merely purchased in the name of the appellant/original defendant No.1 since the original defendant No.3 could not travel to Bangalore, where the properties in question were situated, and since the appellant was the eldest son and "worldly-wise". He denied that the suit properties were self-acquired properties of the appellant and submitted that the appellant was exploiting the fact that the properties had been purchased in his name. He then submitted that his children, namely the appellant and respondent Nos.1 and 2, had an equal share, right, title and interest in the suit properties. Accordingly, the original defendant No.3 sought for a partition of the suit properties amongst his children after making provisions for respondent Nos.3 to 5 herein (who, at the time of filing the said written submissions, were his unmarried daughters and had not been impleaded as parties to the suit). Respondent No. 2 (original defendant no.2) supported and echoed the stance of respondent No.1 and the original defendant no.3.

5. The appellant/original defendant No.1 in turn, denied that the properties set out in Schedules A and B to the plaint had been purchased by family from joint family funds or that they belonged to the Joint Hindu family and submitted that he was the absolute owner thereof since he had purchased it out of his own funds and through loans. The appellant submitted that he had exclusive possession and enjoyment over the said properties since the date of their purchase and there was no question of any illegality in his dealings therewith. The appellant further submitted that a shop being run by him, constructed on one of the suit properties, had been sold by respondent No.2 and original defendant No.3, and that he was entitled to the sale consideration of the same. Additionally, the appellant was entitled to 1/4th share in certain other ancestral property of the original defendant No.3 father. The appellant also filed an additional written statement wherein he alleged that certain joint family properties had intentionally been omitted from the plaint for nefarious purposes.

6. On the basis of the above pleadings, the Trial Court framed the following issues:

> "7. On the pleadings of the parties, the following issues have been framed:
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> i. Whether the plaintiff and defendants are the members of a Hindu Joint family?
> ii. Whether the suit schedule properties have purchased by defendant No.3 in the name of defendant No.1 from out of the joint family funds?
> iii. Whether the plaintiff is entitled for a share as claimed in the plaint schedule properties?
> iv. Whether the suit properties are self acquired properties of defendant No.1?
> v. What order or decree?
> Adl. Issue No.2 A : Whether suit properties are joint family properties of plaintiff and defendants?"

7. During the pendency of the matter, the original defendant No.3 expired and the present respondent Nos.3 to 5 daughters were brought on record as his legal representatives. Thereafter, the Trial Court rendered its judgment dated 30th January, 2002, wherein it found in favour of respondent No.1/original plaintiff on all the issues. The Trial Court opined that the appellant had not claimed any partition or separation from the joint family and infact, had pleaded for a 1/4th share in certain other ancestral property of the original defendant No.3. This was sufficient to establish that the parties viz the appellant (original defendant No.1), respondent No.1 (original plaintiff), respondent No.2

(original defendant No.2) and the original defendant No.3, belonged to a Hindu Joint Family.

8. The Trial Court relied upon several judgments to opine that once the acquisition of the suit properties from the nucleus of a joint family had been admitted or proved, thereafter, property acquired by any member of the joint family would be presumed to be joint family property subject to the condition that the acquired property had to be such that it could have been acquired only by the aid of the family. It reasoned that after the acquisition of the suit properties from the nucleus of a joint family had been established, the burden of proof then shifted on to the person who claimed that the property was self-acquired, to prove that the property had been acquired without any aid from the family. The Trial Court found that the evidence on record established the existence of a joint family nucleus and thereafter, the appellant/original defendant No.1 had failed to discharge the burden that the suit schedule properties were self-acquired and had also failed to prove that his business, from the proceeds of which he claimed to have purchased the suit schedule properties, was conducted without the aid of family funds.

9. The Trial Court also rejected the appellant's contention that he was the sole owner of the schedule suit properties by relying upon the evidence of DW3 advocate. DW3 had deposed that he advised the original defendant no.3 to purchase the said properties in the name of the appellant since the original defendant No.3 was aged and resided in the village, and since the parties were living as members of an undivided joint family. The Trial Court also relied upon evidence which showed that the original defendant No.3 had taken out loans and paid interest in that regard, for some of the schedule suit properties. The Trial Court reasoned that if the appellant was indeed the absolute and independent owner of the properties, then there was no reason for the original defendant No.3 to make any payments for the said properties. Additionally, evidence on record established that various rent receipts for the businesses being run on the scheduled properties had been issued in the name of the father of plaintiff (original defendant No.3) and appellant original defendant No.1, thus proving that they were engaged in joint family businesses and not independently run by the appellant. The Trial Court also noted that the appellant had failed to explain as to why the original defendant No.3 had sided with the stance

taken by the other respondents and not with the appellant. These factors established that the suit scheduled properties belonged to the joint family, rather than the appellant. Additionally, the properties in Schedule C to the plaint were admittedly joint family properties.

10. The Trial Court also found that the village panchayat had already effected a prior partition of certain properties, including those set out in Schedules A and B to the suit, between the parties, which indicated that such properties belonged to the joint family. On the basis of the aforesaid findings, the Trial Court ordered that the suit schedule properties be partitioned amongst the parties, with the appellant, respondent No.1 and respondent No.2 each getting 5/12th share and respondent Nos.3 to 5 getting remaining 1/12th share in the suit schedule properties. The Trial Court also ordered an enquiry into the mesne profits payable to respondent No.1.

11. Aggrieved by the decision of the Trial Court, the appellant preferred an appeal to the High Court of Karnataka being RFA No. 456 of 2002. In its judgment dated 7th September, 2004, the High Court recorded that the contest was only in regard to the

properties set out in Schedules A and B to the plaint and accordingly, upheld the findings of the Trial Court in that regard. The High Court noted the submissions of the plaintiff that although the properties had been purchased in the name of the appellant, the said purchases were done during the continuation of the joint family status. The properties had been purchased with the help of loans and the interest on the same was, admittedly, being serviced by the original defendant No.3 and not by the appellant. The license of the business being conducted on the suit schedule property was in the name of respondent No.2, and the lease was taken in the name of the original defendant No.3, while the appellant was merely managing the business. The purported businesses of the appellant were infact jointly conducted by all the parties and the appellant had failed to establish either that he had any independent business or that he had purchased the suit schedule properties without the aid of family funds. The High Court then went on to conclude that the findings of the Trial Court were just and proper and thus rejected the appellant's contentions, although it allowed the appellant to approach the Trial Court for an inquiry as to whether the sale of agricultural land by the other parties would bind the appellant

and to pass another preliminary decree in that regard, if necessary.

12. Thereafter, the appellant preferred a review petition before the same High Court being R.P. No. 567 of 2005. The said review petition was dismissed on 27th September, 2006. Hence, the present appeal.

13. We have heard Mr. Shailesh Madiyal, counsel for the appellant. The main contention of Mr. Madiyal is that the High Court dismissed the first appeal cursorily without discussing or considering the documentary or oral evidence produced by the parties. Further, the plaintiff had failed to plead and also to prove that the joint family was in possession of a nucleus and which was adequate to fund the purchase of properties at schedule 'A' & 'B' respectively. Hence, no presumption of jointness of the said property can be drawn in this case. It is then urged that both the courts have failed to consider crucial evidence which established that the appellant had paid for the purchase of the schedule suit properties with his own, personal funds and hence, was the absolute owner thereof. He also contends that the Trial Court grievously erred in putting the burden of establishing the

existence and adequacy of such a nucleus on the appellant/original defendant No.1 and the High Court ought not to have supported such an approach. Mr. Madiyal refers to the judgments of ***C. Venkata Swamy Vs. H.N. Shivanna (Dead) by Legal Representative & Anr.***[1], ***Madhukar & Ors. Vs. Sangram & Ors.***[2], ***Mudi Gowda Gowdappa Sankh Vs. Ram Chandra Ravagowda Sankh***[3], ***G. Narayana Raju (dead) by his Legal Representative Vs. G. Chamaraju & Ors.***[4] and ***Appasaheb Peerappa Chamdgade Vs. Devendra Peerappa Chamdgade and Ors.***[5] to buttress his submissions.

14. We have also heard Mr. Raghavendra Srivatsa, counsel for respondent No.1 (plaintiff), who argues that the evidence on record shows that the members of the family were living as an undivided joint family and that the schedule suit properties were purchased in the name of the appellant on legal advice but infact the consideration amount was paid from the joint family funds. He then contends that it is settled law that once admitted or

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1 (2018) 1 SCC 604 (paragraph nos.10-11, 13-18)
2 (2001) 4 SCC 756 (paragraph no.5)
3 (1969) 1 SCC 386 (paragraph no.6)
4 AIR 1968 SC 1276 (paragraph no.3)
5 (2007) 1 SCC 521 (paragraph nos.12-17)

proved that there was a sufficient joint family nucleus out of which the properties could be acquired, thereafter, the presumption would arise that the properties are joint family properties. It is then for the opposing party, in this case, the appellant, to prove that he had acquired the properties out of his own funds. In the present case, the business conducted from the schedule suit properties were clearly established as joint family business being run by the family members and acquired out of joint family funds. The appellant failed to impeach the evidence given by respondent No.1/plaintiff and the existence of the joint family nucleus had been proved by the respondent No.1/original plaintiff and admitted by the appellant/original defendant No.1.

15. The respondents have relied on ***Appasaheb Peerappa Chamdgade*** (supra) in support of the submission that when it is proved or admitted that a family possessed sufficient nucleus with the aid of which the member might have made the acquisition, the law raises a presumption that it is a joint family property and the onus is shifted to the individual member to establish that the property was acquired by him without the aid of the said nucleus. Additionally, reliance is placed on ***V.D.***

Dhanwatey Vs. Commissioner of Income Tax, M.P., Nagpur[6] for the same proposition. While, refuting the argument that the High Court cursorily dismissed the first appeal without adverting to the relevant points and evidence on record, it is urged by the respondents that the High Court after noticing the relevant aspects was pleased to uphold the finding of fact recorded by the Trial Court being convinced that the same was just and proper. It was unnecessary for the High Court to restate the effect of the evidence or reiterate the reasons given by the Trial Court as observed by a three judge Bench in the case of ***Santosh Hazari Vs. Purushottam Tiwari***[7] and ***U. Manjunath Rao Vs. U. Chandrashekar and Another***[8].

16. After cogitating over the rival submissions made during the elaborate arguments by the respective counsel and who had invited our attention to the pleadings and evidence on record, we deem it to appropriate to relegate the parties before the High Court for consideration of the first appeal afresh. We say so for more than one reason. The first is that, the High Court has disposed of the first appeal by a cryptic judgment. For, the first

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6 (1968) 2 SCR 62(paragraph nos.4 and 5)
7 (2001) 3 SCC 179 (paragraph no.15)
8 (2017) 15 SCC 309

five paragraphs of the impugned judgment are only reproduction of the submissions made by the counsel for the concerned parties. After doing so, in paragraph no.6 of the impugned judgment, the High Court straightaway proceeded to affirm the opinion of the Trial Court that the suit properties forming part of Schedule A and Schedule B to the plaint, are the joint family properties. It is apposite to reproduce paragraph nos.6 and 7, whereby the first appeal has been disposed of. The same read thus:

> "6. I find no merit in the appeal in so for as A and B schedule propertied are concerned. The opinion of the trial court that they are the joint family propertied is sound and proper. But in respect of the sales of agricultural lands made by the defendants No and 3 and plaintiff. I feel that the appellant can make another application before the trial court for an enquiry to find out whether the impugned sales would bind the appellant. To that extent, the appellant can pursue his remedy for another preliminary decree before the trial court.
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> 7. In so far as A and B schedule propertied are concerned the finding of the trial court is sound and proper, Accordingly, the appeal is disposed of."

17. In a recent decision of this Court in ***U. Manjunath Rao*** (supra), the Court after adverting to ***Santosh Hazari*** (supra), ***Sarju Pershad Ramdeo Sahu Vs. Jwaleshwari Pratap Narain***

Singh and Ors.[9], ***Madhukar*** (supra), ***H.K.N. Swami Vs. Irshad Basith (Dead) by LRs.***[10] and ***State Bank of India and Another Vs. Emmsons International Limited and Another***[11] went on to observe thus:

> "11. .....Thus, in the first appeal the parties have the right to be heard both on the questions of facts as well as on law and the first appellate court is required to address itself to all the aspects and decide the case by ascribing reasons.
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> 12. In this context, we may usefully refer to Order 41 Rule 31 CPC which reads as follows:
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> "**ORDER 41**
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> APPEALS FROM ORIGINAL DECREES
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> * * *
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> 31. ***Contents, date and signature of judgment***.—The judgment of the appellate court shall be in writing and shall state—
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> (*a*) the points for determination;
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> (*b*) the decision thereon;
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> (*c*) the reasons for the decision; and
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> (*d*) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled,
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> and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein."
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> 13. On a perusal of the said Rule, it is quite clear that the judgment of the appellate court has to state the reasons for the decision. It is necessary to make it clear that the approach of the first appellate court while

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9 AIR 1951 SC 120 (paragraph no.15)
10 (2005) 10 SCC 243 (paragraph no.3)
11 (2011) 12 SCC 174

affirming the judgment of the trial court and reversing the same is founded on different parameters as per the judgments of this Court. In *Girijanandini Devi*[12], the Court ruled that while agreeing with the view of the trial court on the evidence, it is not necessary to restate the effect of the evidence or reiterate the reasons given by the trial court. Expression of general agreement with reasons given in the trial court judgment which is under appeal should ordinarily suffice. The same has been accepted by another three-Judge Bench in *Santosh Hazari*[13]. However, while stating the law, the Court has opined that expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage to be adopted by the appellate court for shirking the duty cast on it. We are disposed to think, the expression of the said opinion has to be understood in proper perspective. By no stretch of imagination it can be stated that the first appellate court can quote passages from the trial court judgment and thereafter pen few lines and express the view that there is no reason to differ with the trial court judgment. That is not the statement of law expressed by the Court. The statement of law made in *Santosh Hazari* has to be borne in mind.

14. In this regard, a three-Judge Bench decision in *Asha Devi* v. *Dukhi Sao*[14] is worthy of noticing, although the context was different. In the said case, the question arose with regard to power of the Division Bench hearing a letters patent appeal from the judgment of the Single Judge in a first appeal. The Court held that the letters patent appeal lies both on questions of fact and law. The purpose of referring to the said decision is only to show that when the letters patent appeal did lie, it was not restricted to the questions of law. The appellant could raise issues pertaining to facts and appreciation of evidence. This is indicative of the fact that the first appellate court has a defined role and its judgment should show application of mind and reflect the reasons on the basis of which it agrees with the trial court. There has to be an "expression of opinion" in the proper sense of the said phrase. It cannot be said that mere concurrence meets the requirement of law. Needless to say, it is one thing to state that the appeal is without any substance and it is another thing to elucidate, analyse

12 AIR 1967 SC 1124
13 (2001) 3 SCC 179
14 (1974) 2 SCC 492

> and arrive at the conclusion that the appeal is devoid of merit."

In another recent decision in ***C. Venkata Swamy*** (supra), once again this Court reiterated the settled legal position regarding the purport of power of the appellate court coupled with its duty, under Section 96 of the Code, while deciding the first appeal, by adverting to decisions in ***Kurian Chacko Vs. Varkey Ouseph***[15], ***Santosh Hazari*** (supra), ***H.K.N. Swami*** (supra), ***Jagannath Vs. Arulappa and Another***[16], ***B.V. Nagesh and Another Vs. H.V. Sreenivasa Murthy***[17], ***S.B.I.*** (supra) and ***Union of India Vs. K.V. Lakshman and Others***[18]. The court, even in this reported case relegated the parties before the High Court for reconsideration of the first appeal afresh.

18. We are conscious of the fact that in the present case the suit came to be filed by the respondent No.1 as back as in 1982 and that the present appeal has remained pending in this Court from 2009, against the impugned judgment of the High Court. We, at one stage were persuaded to consider and examine the

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15 AIR 1969 Kerala 316
16 (2005) 12 SCC 303 (paragraph no.2)
17 (2010) 13 SCC 530 (paragraph nos.3 and 5)
18 (2016) 13 SCC 124

matter on its own merits instead of relegating the parties before the High Court. But, it is noticed that the appellant has raised formidable issues on facts as well as on law which ought to receive proper attention of the High Court, in the first instance in exercise of powers under Section 96 of CPC. Additionally, the High Court will have to address the grievance of the appellant that some of the documents, which in the opinion of the appellant are crucial have not been even exhibited although the same were submitted during the trial, as noted in the written submissions filed by the appellant. Therefore, we do not wish to deviate from the consistent approach of this Court in the reported cases that the first appellate court must analyse the entire evidence produced by the concerned parties and express its opinion in the proper sense of the jurisdiction vested in it and by elucidating, analysing and arriving at the conclusion that the appeal is devoid of merit.

19. We refrain from analysing the pleadings and the evidence in the form of exhibited documents and including the non-exhibited documents and expect the High Court to do the same and arrive at conclusions as may be permissible in law. In other words, we

should not be understood to have expressed any opinion either way on the merits of the controversy. The High Court shall decide the first appeal uninfluenced by any observation made in the impugned judgment. As the remanded first appeal pertains to year 2002, we request the High Court to dispose of the same expeditiously.

20. The appeals are accordingly allowed. The impugned judgment and decree and orders dated 7th September, 2004 and 27th September, 2006 respectively, passed by the High Court of Karnataka at Bangalore are set-aside and instead remand the RFA No.456 of 2002 to the High Court with the aforementioned directions. No order as to costs. All pending applications are disposed of.

.....J
(A.M. Khanwilkar)

.....J
(Ajay Rastogi)

New Delhi;
July 01, 2019.