Laliteshwar Prasad Singh & Ors vs S.P.Srivastava(D) Tr.Lr on 15 December, 2016

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Bench: R. Banumathi, R.K. Agrawal

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4426 OF 2011

LALITESHWAR PRASAD SINGH & ORS. APPELLANTS

Versus

S.P. SRIVASTAVA (D) THR. LRS. RESPONDENT

J U D G M E N T

R. BANUMATHI, J.

This appeal arises out of the judgment of High Court of Patna in First Appeal No. 230 of 2007 dated 30.07.2007 reversing the judgment of the trial court and thereby decreeing first respondent-Plaintiff's suit for declaration of title.

2. Genealogy of the first respondent-Plaintiff and Tarawati Devi are as under:-

> Mahabir Prasad Tej Pratap Narayan Jagadambi Prasad Rudra Mahendra Kanta Kanji Girish Chandra Prasad (1960) Narayan Prasad Prasad Prasad Tarawati Devi (died in 1985) died issueless died issueless Shailendra Prasad Suresh Chandra Prasad (1942) Plaintiff Deoki Devi Sita Devi Umashanker Prasad (1970) Died died issueless (died unmarried) The genealogy of parental side of Tarawati Devi is as under:-
>
> Dhanukdhari Sahay Tarawati Devi Laxmi Devi Raxn Devi Baidya Nath (Defendant)

3. The first respondent-Plaintiff Shailendra Prasad Srivastava filed a suit praying for declaration of his title with respect to suit property in Khasra No. 123, 124, 269, 274, 997 and 959 of Khata No. 31 of village Bairiya and village Koloha Pagambarpur Schedule I and Schedule II properties respectively against the second respondent-Defendant Baidya Nath Prasad Verma alleging that the suit property detailed in Schedule I and II belonged to Girish Chandra Prasad. Case of the plaintiff is that in the Revisional Survey of Records, Tarawati Devi, the widow of Girish Chandra Prasad got the property recorded in the name of her grandson Umashanker Prasad. The said Umashanker Prasad died during the lifetime of Tarawati Devi in the year 1965. The first respondent-Plaintiff further alleged that he, being the only male member of the family, used to stay with Tarawati Devi and did all the ceremonies after her death. Further case of the first respondent-Plaintiff is that when he was working at Bhillai, he learnt that the second respondent-Defendant is trying to obtain revenue receipt in collusion with Anchal Karmachari. The first respondent-Plaintiff went to the office of the Circle Office Kanti and got cancellation of revenue receipt in the name of defendant. The second respondent-Defendant Baidya Nath Prasad filed mutation appeal. When the first respondent-Plaintiff came to know that the second respondent-Defendant is trying to claim title over the suit property through Tarawati Devi alleging that the suit property belonged to Tarawati Devi, the first respondent-Plaintiff being the agnate of Tarawati Devi filed a suit for declaration of his title.

4. Resisting the suit, second respondent-Defendant filed a written statement refuting all claims of the first respondent-Plaintiff and contending that the disputed property belonged to one Mr. Dhanukdhari Sahay. The said Dhanukdhari Sahay had one son named Mr. Vasudev Prasad, who further had a son and three daughters, namely, Ms. Tarawati Devi, Ms. Lakshmi Devi and Ms. Ranjan Devi. Ms. Ranjan Devi died during the lifetime of her father. Second respondent-Defendant further pleaded that the suit property has been sold to various parties and the suit filed by the first respondent-Plaintiff against the second respondent-Defendant is liable to be dismissed. After the death of son Vasudev Prasad and others, the disputed property came to be vested in Ms. Tarawati Devi's name. The second respondent-Defendant was the closest legal heir of Dhanukdhari Sahay and after the death of Ms. Tarawati Devi in 1985, as per Section 15(2) of the Hindu Succession Act, the property devolved upon second respondent- Defendant by succession and mutation was effected in his name and he started paying revenue in respect of the suit property which was mutated in his name.

5. On the above pleadings, nine issues were framed in the trial court. Number of witnesses were examined on the side of the first respondent- Plaintiff as well as second respondent-Defendant. Upon consideration of oral and documentary evidence, the trial court held that the first respondent-Plaintiff has not produced any documents to show that the property belonged to the family of Tej Pratap Narayan. The trial court held that after the death of her father Dhanukdhari Sahay, Tarawati Devi became the sole legal heir of the disputed property and as per Section 15(1)(b) of Hindu Succession Act, if the deceased woman has acquired the property from her parents, it will be inherited by the successors of the parents of the deceased. It was further held that there is no record to show that Tarawati Devi got the disputed property from her husband or father-in-law. The trial court dismissed the suit holding that the first respondent-Plaintiff has not produced the necessary documents to prove his title to the suit property.

6. On appeal, the High Court reversed the findings of the trial court and held that as per the Revisional Survey Record of Right, property was recorded in the name of Umashanker Prasad, grandson of Girish Chandra Prasad and on the death of Girish Chandra Prasad, his widow Tarawati Devi became the absolute owner of the property and on her death in 1985, the property devolved on her agnate-the first respondent-Plaintiff. After referring to oral evidence and also the rent receipts produced by the first respondent-Plaintiff in his name and in the name of Girish Chandra Prasad (Ex.1-1/J and Ex. 1/K-1/M), it was held that the first respondent- Plaintiff's case about his agnate relationship with Girish Chandra Prasad stood proved and thus the Plaintiff proved his title to the suit property. On those reasonings, the High Court reversed the findings of the trial court and allowed the first appeal and decreed the Plaintiff's suit.

7. Learned counsel for the appellants submitted that though the suit filed by the first respondent-Plaintiff was for declaration of title, no documents of title pertaining to the suit property had been produced before the court and the documents produced were merely rent receipts and mutation record and on these documents, there could be no presumption of title and while so, the High Court was not right by treating those documents as if they were documents of title and reversing the judgment of the trial court. It was submitted that in his cross-examination, first respondent-Plaintiff (PW-3) admitted that Tarawati Devi had purchased the suit property two acres and fifteen decimals of land and this admission made by the first respondent-Plaintiff was not properly appreciated by the High Court. Further contention of the appellants is that the High Court failed to appreciate that in view of proviso to Section 34 of the Specific Relief Act, the suit for declaration of title without any consequential relief of possession was not maintainable. Main contention of the appellants is that while the High Court impleaded the appellants as parties in the first appeal, the High Court being the first appellate court, ought to have afforded an opportunity to the appellants to file their documents and submissions and the judgment of the High Court is in violation of principles of natural justice in not giving opportunity to the appellants who are bona fide purchasers for consideration.

8. Per contra, learned senior counsel for the first respondent-Plaintiff submitted that the record of rights (Ex. 13 series) stood in the name of Umashanker Prasad, the grandson of Girish Chandra Prasad and this record of right was corroborated by the rent receipts which were in the name of Girish Chandra Prasad as well as the first respondent-Plaintiff himself. It was further submitted that apart from the documentary evidence, the oral evidence of PW-3, PW-4, PW-10, PW-13 and PW-14 established that the suit property belonged to Girish Chandra Prasad. It was contended that Girish Chandra Prasad was the owner of the property and as per Section 15 of the Hindu Succession Act, first respondent-Plaintiff, being the agnate of Tarawati Devi, inherited the suit property and upon appreciation of oral and documentary evidence, High Court rightly declared the first respondent-Plaintiff's title by reversing the judgment of trial court. It was further contended that in spite of opportunities afforded, the second respondent- Defendant did not produce the sale deeds executed by him in favour of the appellants which clearly shows that the appellants are not bona fide purchasers for value and the High Court rightly held that the appellants cannot have a better title than that of the second respondent-Defendant.

9. The question falling for consideration is whether the property belonged to Girish Chandra Prasad and after his death, his wife-Tarawati Devi succeeded to the property of her husband and after her death devolves upon her agnate first respondent-Plaintiff; or whether it belonged to Dhanukdhari Sahay, father of Tarawati Devi from whom Tarawati Devi inherited and as per Section 15(2) of the Hindu Succession Act whether the second respondent-Defendant is entitled to succeed to the same.

10. The High Court has specifically dealt with two core issues:- one relating to the genuineness of the genealogical table contained in the plaint and the other relates to ascertainment of title of the first respondent-Plaintiff over the suit scheduled property by the documents- record of rights and rent receipts filed by the first respondent-Plaintiff. Contention of the appellants is that the High Court, while arriving at the conclusion, did not properly analyse the materials on record, in particular, the evidence adduced by the second respondent-Defendant. Further contention of the appellants is that the High Court being the first appellate court, being the final court of facts, was bound to analyse the evidence and record its reasonings, especially while it reversed the findings of the trial court.

11. As per Order XLI Rule 31 CPC, the judgment of the first appellate court must explicitly set out the points for determination, record its reasons thereon and to give its reasonings based on evidence. Order XLI Rule 31 CPC reads as under:

> "Order XLI Rule 31: Contents, date and signature of judgment. – The judgment of the Appellate Court shall be in writing and shall state – the points for determination;
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> the decision thereon;
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> the reasons for the decision; and 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 propounded be signed and dated by the Judge or by the Judges concurring therein." It is well settled that the first appellate court shall state the points for determination, the decision thereon and the reasons for decision. However, it is equally well settled that mere omission to frame point/points for determination does not vitiate the judgment of the first appellate court provided that the first appellate court records its reasons based on evidence adduced by both the parties.

12. An appellate court is the final court of facts. The judgment of the appellate court must therefore reflect court's application of mind and record its findings supported by reasons. The law relating to powers and duties of the first appellate court is well fortified by the legal provisions and judicial pronouncements. Considering the nature and scope of duty of first appellate court, in Vinod Kumar v. Gangadhar (2015) 1 SCC 391, it was held as under:-

> "12. In Santosh Hazari v. Purushottam Tiwari (2001) 3 SCC 179, this Court held as under: (SCC pp. 188-89, 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 appellate court must, therefore, reflect its conscious application of 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." The above view has been followed by a three-Judge Bench decision of this Court in Madhukar v. Sangram (2001) 4 SCC 756, wherein it was reiterated that sitting as a court of first appeal, it is the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings.

13. In H.K.N. Swami v. Irshad Basith (2005) 10 SCC 243, this Court stated as under: (SCC p. 244, para 3) "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 as also on facts and the first appellate court is required to address itself to 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."

14. Again in Jagannath v. Arulappa (2005) 12 SCC 303, while considering the scope of Section 96 of the Code of Civil Procedure, 1908, this Court observed as follows: (SCC p. 303, para 2)

15. Again in B.V. Nagesh v. H.V. Sreenivasa Murthy (2010) 13 SCC 530, this Court taking note of all the earlier judgments of this Court reiterated the aforementioned principle with these words: (SCC pp. 530-31, paras 3-5) "3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41 CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:

> (a) the points for determination;
>
> (b) the decision thereon;
>
> (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.

4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The 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 appellate court must, therefore, reflect its conscious application of 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. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide Santosh Hazari v. Purushottam Tiwari (2001) 3 SCC 179, SCC p. 188, para 15 and Madhukar v. Sangram (2001) 4 SCC 756 SCC p. 758, para 5.)

5. In view of the above salutary principles, on going through the impugned judgment, we feel that the High Court has failed to discharge the obligation placed on it as a first appellate court. In our view, the judgment under appeal is cryptic and none of the relevant aspects have even been noticed. The appeal has been decided in an unsatisfactory manner. Our careful perusal of the judgment in the regular first appeal shows that it falls short of considerations which are expected from the court of first appeal. Accordingly, without going into the merits of the claim of both parties, we set aside the impugned judgment and decree of the High Court and remand the regular first appeal to the High Court for its fresh disposal in accordance with law."

13. The points which arise for determination by a court of first appeal must cover all important questions involved in the case and they should not be general and vague. Even though the appellate court would be justified in taking a different view on question of fact that should be done after adverting to the reasons given by the trial judge in arriving at the finding in question. When appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by trial court; expression of general agreement with reasons given by trial court would ordinarily suffice. However, when the first appellate court reverses the findings of the trial court, it must record the findings in clear terms explaining how the reasonings of the trial court is erroneous.

14. In the light of the above, when we consider the present case, we find that in terms of Order XLI Rule 31 CPC, the High Court has neither framed the points for determination nor discussed the evidence adduced by the defendants. The High Court seemed to have only considered two aspects:- (i) genealogical table produced by the first respondent-Plaintiff; (ii) documentary evidence adduced by the first respondent-Plaintiff that is Exhibit 13 series-entry in Survey Record of Rights and Rent receipts (Ex. 1/J and Ex. 1/K to 1/M) filed by the first respondent-Plaintiff. The documentary evidence adduced by the first respondent-Plaintiff has been refuted by the second respondent-Defendant. To support his defence plea, second respondent-Defendant has adduced oral evidence by examining number of witnesses. That apart, second respondent-Defendant mainly relied upon the following evidence of first respondent-Plaintiff (PW-3):-

> "Tarawati Devi had purchased total two acres and fifteen decimals of land. I cannot tell the number of sale deeds. I don't have the knowledge about the resignation of her name on the said land. Till the time of her death, the land purchased by her remained with Tarawati Devi. The land in dispute in two acre and fifteen decimals in area. The land in dispute in the present suit is the land purchased by Tarawati Devi." The High Court does not seem to have examined the above admission of the first

> respondent-Plaintiff nor considered the oral evidence adduced by the second respondent-Defendant. Being the first appellate court, the final court on facts, the High Court should have considered the evidence adduced by the first respondent-Plaintiff as well as the evidence adduced by the second respondent-Defendant. But the High Court seems to have considered only the evidence adduced by the first respondent-Plaintiff and not the evidence adduced by the second respondent-Defendant and the alleged inherent contradictions in the statement of first respondent-Plaintiff.

15. Learned counsel for the appellants has submitted that yet another issue that arose for consideration was the maintainability of the suit in view of the proviso to Section 34 of the Specific Relief Act, 1963. Learned counsel for the appellants submitted that the suit had been filed by the first respondent-Plaintiff for declaration of title to the suit properties which belonged to Tarawati Devi without any further consequential relief for possession or injunction and the suit was barred in view of the proviso to Section 34 of the Specific Relief Act, 1963. Proviso to Section 34 of the Specific Relief Act, 1963 is as under:-

> "Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so." Drawing our attention to the above proviso to Section 34 of the Specific Relief Act, 1963, the learned counsel for the appellants submitted that on this plea, issue No. 6 was specifically framed by the trial court and even though the trial court decided the issue in favour of the first respondent- Plaintiff and the same being raised in the first appellate court, the High Court should have considered the arguments advanced by the appellants on the maintainability of the suit.

16. The appellants are the purchasers of various extent of plots in the suit property from the second respondent-Defendant under various sale deeds dated 22.11.19958, 29.09.1995, 29.03.1996, 07.08.1995, 20.11.2008 and 03.07.2007. The appellants moved I.A. No. 5250/2010 in F.A. No. 230/2007 before the High Court for their impleadment under Order I Rule 10 of CPC and the said application was allowed by the High Court vide order dated 02.08.2010. After the appellants were impleaded as parties in the appeal, the appellants were not given any opportunity to adduce any evidence or make their submission. The High Court has only referred to the evidence adduced by the first respondent-Plaintiff and simply held that failure on the part of second respondent-Defendant to establish his title over the suit properties precludes the appellants from claiming any title or interest over the suit scheduled properties, as they had derived the title from the defendants. We are of the view that having impleaded the appellants as parties to the first appeal, it seems inappropriate to record such a finding without affording an opportunity to the appellants and without examining the claim of the present appellants. After impleading them as parties, without affording an opportunity to the appellants, the High Court skirted the claim of the appellants by observing that the appellants having purchased the suit property subsequent to filing of the suit and if the second respondent-Defendant had no title then there is no question of transferring any title or interest or possession by the second respondent-Defendant to the transferee arises. We find substance in the contention of the appellants that having been impleaded as parties in the High Court, they ought to

have been given an opportunity to adduce additional evidence and make their submission to substantiate their claim that they are bona fide purchasers for value. In our view, having impleaded the appellants, in terms of Order XLI Rule 27 CPC, the High Court ought to have given an opportunity to the appellants to adduce additional evidence and make their submission.

17. Learned senior counsel for the first respondent-Plaintiff submitted that the second respondent-Defendant has stated in paragraph (15) of the written statement that he had sold different portions of the suit land to different persons. It was submitted that on application filed by the first respondent-Plaintiff, the trial court passed an order on 27.10.2005 directing the second respondent-Defendant to produce the sale deeds in question within fifteen days or otherwise he would have no right to produce the same. The learned Senior counsel for the plaintiffs submitted that in spite of the said order, second respondent-Defendant did not produce any of the sale deeds and while so, the appellants are precluded from raising the plea of non-affording of opportunity to the appellants and the High Court rightly held that the appellants cannot claim a better title than that of the second respondent-Defendant. Before the trial court, only the second respondent-Defendant was the party. Any order passed by the trial court against the second respondent-Defendant cannot preclude the appellants from putting forth their plea by filing additional documents.

18. As discussed earlier, the High Court has not considered the evidence adduced by the defendants. Having impleaded the appellants as parties in the first appeal, in terms of Order XLI Rule 27, the High Court ought to have afforded an opportunity to the appellants to adduce oral and documentary evidence and make their submissions.

19. In the result, the impugned judgment of the High Court in First Appeal No. 230 of 2007 dated 30.07.2007 is set aside and the matter is remitted back to the High Court for consideration of the matter afresh. First respondent-Plaintiff, being the appellant before the High Court, is directed to take steps for impleading the legal representatives of the deceased second respondent-Defendant. The High Court shall afford sufficient opportunity to both the parties to adduce additional evidence, both oral and documentary and further afford sufficient opportunity of hearing to both the parties. Since the suit is of the year 1994, we request the High Court to dispose the appeal expeditiously in accordance with law. We make it clear that we have not expressed any opinion on the merits of the matter.

.....J. [R.K. AGRAWAL] .....J. [R. BANUMATHI] New Delhi;

December 15, 2016