U. Manjunath Rao vs U. Chandrashekar on 4 August, 2017

Equivalent citations: AIR 2017 SUPREME COURT 3591, 2017 (15) SCC 309, (2017) 3 PAT LJR 441, AIR 2017 SC (CIV) 2515, (2017) 5 CAL HN 1, (2018) 1 RECCIVR 59, (2017) 3 ALL RENTCAS 8, (2017) 3 JLJR 409, (2017) 177 ALLINDCAS 26 (SC), (2018) 3 CIVLJ 168, (2017) 2 WLC(SC)CVL 442, (2017) 8 SCALE 488, (2017) 3 CGLJ 537, (2017) 6 MAD LJ 489, (2018) 1 MAD LW 451, (2017) 3 CURCC 424, (2017) 4 KCCR 3545, (2017) 4 CIVILCOURTC 572, (2017) 4 ICC 484, (2017) 2 CLR 486 (SC), (2017) 124 ALL LR 585

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Bench: A.M. Khanwilkar, Dipak Misra

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9951 OF 2017
(Arising out of S.L.P. (Civil) No. 27646 of 2014)

U. Manjunath Rao — Appellant(s)

Versus

U. Chandrashekar & Anr. — Respondent(s)

JUDGMENT

Dipak Misra, J.

The challenge in this appeal, by special leave, is to the legal acceptability of the judgment and decree dated 06.06.2014 passed by the High Court of Karnataka at Bangalore in Regular First Appeal No. 1626 of 2010 whereby the learned single Judge has declined to interfere in the appeal preferred by the first defendant questioning the defensibility of the judgment and decree dated 21.06.2010 passed by the learned XXVIII Additional City Civil Judge, Mayohall, Bangalore in O.S. No. 16950 of 2004.

2. The narration of facts as is evincible from the impugned judgment are that the first defendant was aggrieved as he was directed by the trial Court to execute a rectification deed in respect of property

description No. 2 in B-schedule in the partition deed dated 01.04.1981 which was registered on 28.07.1981 and brought on record as Ex.P-1 and further granted permanent injunction restraining the defendants from interfering with the possession of the plaintiff in respect of the property in question. It was contended before the High Court that the trial Court had erred in law in decreeing the suit as the registered deed of partition had not been proved in accordance with law and further the schedule property formed part of the joint family property. That apart, it was urged that the said property was purchased by the defendant No. 1 from his own sources and his name had been recorded in the record of rights and there was no material on record to come to a conclusion that there existed a joint family which possessed sufficient nucleus to purchase the schedule property. A ground was taken that the partition deed had not seen the light of the day for more than 22 years and when its genuineness was questioned on the basis of materials brought on record, the said issue had not been appositely addressed.

3. The High Court, as the impugned judgment reveals, noted some of the contentions and posed the question whether the trial Court was justified in directing the defendants to execute a rectification deed to correct the error in stating the site number in the partition deed dated 01.04.1981 marked in evidence as Ex.P-1. It took note of the fact that in the said partition deed site No. 25, which was allotted to the plaintiff, was erroneously described as site No. 35 and hence, relief of the rectification of the error in the deed had been granted by the trial Court. Thereafter the learned single Judge, as is vivid, copiously quoted from the judgment of the trial Court and held that he did not find any infirmities in the findings recorded by the trial Court and certain documents brought on record showed that the plaintiff was in possession of the site No. 25. On the aforesaid basis, the High Court dismissed the appeal preferred by the defendant No. 1.

4. Despite service of notice, there has been no appearance on behalf of the respondents.

5. We have heard Mr. R.S. Hegde, learned counsel for the appellant. Criticising the judgment, he has submitted that the High Court has dismissed the first appeal without appreciating the oral and documentary evidence brought on record and further not adverting to the assailment by the appellant therein as regards the findings recorded by the trial Court. It is canvassed by him that when the plaintiff had not adduced any evidence to prove the existence of the joint family, the question of placing reliance on the deed of partition presuming that the property in dispute was a joint family property and, therefore, the partition deed required to be rectified as an error has been crept in, is absolutely fallacious. Learned counsel would submit that quoting from the trial Court judgment and confirming the same in a cryptic manner is not a lawful delineation of the first appeal preferred under Section 96 of the Code of Civil Procedure (CPC) and, therefore, the impugned judgment can be stamped as an unreasoned one and should be set aside with a direction to the High Court to dispose of the appeal on appreciation of facts and the law in correct perspective.

6. To appreciate the submissions of Mr. Hegde, we have perused the impugned judgment passed by the High Court. It is clearly demonstrable that the High Court has neither analysed the evidence brought on record nor has it answered the issues raised in law. Stating the facts and thereafter reproducing few passages from the trial Court and ultimately referring to certain exhibited documents in a cryptic manner, we are disposed to think, will not convert an unreasoned judgment

to a reasoned one. In fact, as we notice, the learned Judge has posed the question about the defensibility of the ultimate direction by the trial Court and thereafter proceeded to quote paragraphs from the trial Court judgment. Posing a question which is relevant for adjudication of the appeal is not enough. There has to have been proper analysis of the same. That apart, there are other issues they deserved to be dealt with. Therefore, the obvious conclusion is that the judgment passed by the High Court is not a reasoned one.

7. It is well settled in law that the reason is the life of law. It is that filament that injects soul to the judgment. Absence of analysis not only evinces non-application of mind but mummifies the core spirit of the judgment. A Judge has to constantly remind himself that absence of reason in the process of adjudication makes the ultimate decision pregnable. While dealing with the first appeal preferred under Section 96 CPC, the Court in State of Rajasthan v. Harphool Singh (dead) through his LRs1 took note of the exception to the judgment passed by the first appellate court by observing that there was no due or proper application of mind or any critical analysis or objective consideration of the matter, despite the same being the first appellate court.

8. A three-Judge Bench in Santosh Hazari v. Purushottam Tiwari (deceased) by LRs2, while discussing about power of the first appellate court, has opined that it is the final court of facts and, therefore, pure findings of fact remain immune from challenge before the High Court in 1 (2000) 5 SCC 652 2 (2001) 3 SCC 179 second appeal. It is necessary to note that the Court had also held thus:

> "... 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. The task of an appellate court affirming the findings of the trial court is an easier one. The appellate court agreeing with the view of the trial court need not restate the effect of the evidence or reiterate the reasons given by the trial court; expression of general agreement with reasons given by the court, decision of which is under appeal, would ordinarily suffice (See Girijanandini Devi v. Bijendra Narain Choudhary3). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate court for shirking the duty cast on it. ..." [Emphasis supplied] The aforesaid passage has to be appositely understood.
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> While reversing the finding and conclusions of the trial Court, the duty of the first appellate court is different than while affirming a judgment. Be it stated, the Court has also held that it is a final court of law in the sense that its

3 AIR 1967 SC 1124 decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be

available to correct the errors of law or the erroneous findings of the first appellate court even on questions of law unless such question of law is a substantial one. In the said case, the Court, after referring to the decision in Sarju Pershad Ramdeo Sahu v. Jwaleshwari Pratap Narain Singh4, has further opined that:

> "... 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. We need only remind the first appellate courts of the additional obligation cast on them by the scheme of the present Section 100 substituted in the Code. ..." The purpose of referring to the said decision is to highlight the responsibility cast on the first appellate court or a court hearing the first appeal.
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> 9. In Madhukar and others v. Sangram and others5, the Court noticed that the High Court has framed two

4 AIR 1951 SC 120 5 (2001) 4 SCC 756 questions and thereafter had set aside the judgment and decree of the trial court and allowed the first appeal. Discussing about the duty of the first appellate court, the Court had referred to the decision in Santosh Hazari (supra) and reiterated the principles stated therein.

10. In H.K.N. Swami v. Irshad Basith (dead) by LRs6, the two-Judge Bench ruled:

> "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. The order of the High Court is cryptic and the same is without assigning any reason." The said principle has been reiterated in State Bank of India and another v. Emmsons International Limited and another7. Thus, in the first appeal the parties have right to be heard both on the questions of facts as well as on 6 (2005) 10 SCC 243 7 (2011) 12 SCC 174 law and the first appellate court is required to address itself to all the aspects and decide the case by ascribing reasons.

11. In this context, we may usefully refer to Order XLI Rule 31 CPC which reads as follows:

> "Order XLI. Appeals from Original Decrees
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> 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."

12. 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 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 (supra), 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 (supra). 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 (supra) has to be borne in mind.

13. In this regard, a three-Judge Bench decision in Asha Devi v. Dukhi Sao and another8 is worthy of noticing, 8 AIR 1974 SC 2048 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 and arrive at the conclusion that the appeal is devoid of merit.

14. In the case at hand, as we have noted earlier, the learned Judge has really not ascribed any reason. There has been no analysis of facts or law. There is no discussion with regard to the points urged. While agreeing with the general approval of reasons to support the conclusions of the judgment in appeal, the High Court has to keep in view the language employed in Order XLI Rule 31

CPC and the view expressed in Santosh Hazari (supra). Analysis and reason are to be manifest. When that is not done, needless to say, the judgment of the High Court becomes indefensible.

15. In view of the aforesaid premises, we allow the appeal, set aside the impugned judgment and decree passed by the High Court and remit the matter for fresh disposal in accordance with law. The High Court is requested to dispose of the appeal within six months. There shall be no order as to costs.

.....J. (Dipak Misra) .....J. (A.M. Khanwilkar) New Delhi.

August 04, 2017