C.Venkata Swamy vs H.N. Shivanna (D) By Lr. Etc. on 4 December, 2017

Equivalent citations: AIR 2017 SUPREME COURT 5604, 2018 (1) SCC 604, 2018 (1) AKR 392, (2018) 1 CIVILCOURTC 319, (2018) 1 PAT LJR 87, (2018) 138 REVDEC 630, AIR 2018 SC (CIV) 606, (2018) 2 ANDHLD 16, (2018) 1 RECCIVR 158, (2018) 4 ICC 762, (2018) 1 WLC(SC)CVL 276, (2018) 1 JLJR 12, (2018) 1 JCR 232 (SC), (2018) 1 KCCR 330, (2018) 126 ALL LR 453, (2018) 1 CAL HN 155, (2018) 3 MAH LJ 669, (2018) 2 MPLJ 585, (2017) 14 SCALE 14, (2018) 1 ALL RENTCAS 49, (2018) 2 CIVLJ 786, (2017) 4 CURCC 499, 2018 (181) AIC (SOC) 1 (SC), (2018) 2 BOM CR 93

Author: Abhay Manohar Sapre

Bench: Navin Sinha, Abhay Manohar Sapre

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.670-671 OF 2011

C. Venkata Swamy ….Appellant(s)

VERSUS

H.N. Shivanna(D) by
L.R. & Anr. Etc. …Respondent(s)

JUDGMENT

Abhay Manohar Sapre, J.

1. These appeals are filed by the plaintiff against the final judgment and order dated 02.11.2006 passed by the High Court of Karnataka at Bangalore in Regular First Appeal Nos.158 and 159 of 2005 whereby the High Court dismissed the appeals filed by the appellant herein

2. The facts of the case lie in a narrow compass. Even the issue arising in these appeals is a short one. It would be clear from the facts mentioned hereinbelow.

3. The appellant is plaintiff in O.S. No. 6640/1996 and defendant in O.S. No. 2150 of 1992 whereas the respondents are defendants in O.S. No. 6640/1996 and plaintiffs in O.S. No. 2150 of 1992 in the suits out of which these appeals arise.

4. The appellant filed a suit being O.S. No. 6640/1996 in the Court of City Civil Judge, Bangalore against the respondents for a declaration and permanent injunction in relation to the land described in detail in the plaint (hereinafter referred to as "suit land") whereas original respondent No.1 also filed a cross suit being O.S. No. 2150 of 1992 against the appellant in relation to the suit land.

5. Both the suits were clubbed together for their disposal because both were between the same parties and pertained to same subject matter.

6. Parties contested the suits and adduced evidence. The Trial Court, by common judgment/decree dated 04.12.2004 dismissed the suit filed by the appellant, i.e., O.S. No. 6640/1996 and decreed the suit filed by respondent No.1, i.e., O.S. No. 2150/1992.

7. The plaintiff in O.S. 6640/1996 felt aggrieved and filed two first appeals under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”) before the High Court of Karnataka. By impugned judgment/decree, the Single Judge dismissed both the first appeals and affirmed the judgment/decree of the Trial Court, which has given rise to filing of the present appeals by special leave by the plaintiff in O.S. No. 6640/1996 in this Court.

8. Heard Ms. Kiran Suri, learned senior counsel for the appellant and Mr. Rajesh Mahale, learned counsel for the respondents.

9. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeals, set aside the impugned judgment and remand the case to the High Court for deciding both the first appeals afresh on merits in accordance with law.

10. The need to remand the case to the High Court has occasioned for the reason that the Single Judge dismissed the appeals very cursorily and without undertaking any appreciation of evidence, dealing with various issues arising in the case and discussing the arguments raised by the parties in support of their case. In other words, the disposal of the two first appeals could not be said to be in conformity with the requirements of Section 96 read with Order 41 Rule 31 of the Code.

11. It is a settled principle of law that a right to file first appeal against the decree under Section 96 of the Code is a valuable legal right of the litigant. The jurisdiction of the first Appellate Court while hearing the first appeal is very wide like that of the Trial Court and it is open to the appellant to attack all findings of fact or/and of law in first appeal. It is the duty of the first Appellate Court to appreciate the entire evidence and arrive at its own independent conclusion, for reasons assigned, either of affirmance or difference.

12. Similarly, the powers of the first Appellate Court while deciding the first appeal are indeed well defined by various judicial pronouncements of this Court and are, therefore, no more res integra. It

is apposite to take note of the law on this issue.

13. As far back in 1969, the learned Judge – V.R. Krishna Iyer, J (as His Lordship then was the judge of Kerala High Court) while deciding the first appeal under Section 96 of the Code in Kurian Chacko vs. Varkey Ouseph, AIR 1969 Kerala 316, reminded the first Appellate Court of its duty to decide the first appeal. In his distinctive style of writing with subtle power of expression, the learned judge held as under:

> "1. The plaintiff, unsuccessful in two Courts, has come up here aggrieved by the dismissal of his suit which was one for declaration of title and recovery of possession. The defendant disputed the plaintiff's title to the property as also his possession and claimed both in himself. The learned Munsif, who tried the suit, recorded findings against the plaintiff both on title and possession. But, in appeal, the learned Subordinate Judge disposed of the whole matter glibly and briefly, in a few sentences.
>
> 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. Although there is furious contest between the counsel for the appellant and for the respondent, they appear to agree with me in this observation....." (Emphasis supplied)

14. This Court also in various cases reiterated the aforesaid principle and laid down the powers of the Appellate Court under Section 96 of the Code while deciding the first appeal.

15. We consider it apposite to refer to some of the decisions.

16. In Santosh Hazari vs. Purushottam Tiwari (Deceased) by L.Rs. (2001) 3 SCC 179, this Court held (at pages 188-189) as under:

> ".....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....."

17. The above view was followed by a three-Judge Bench decision of this Court in Madhukar & Ors. v. Sangram & Ors.,(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.

18. In H.K.N. Swami v. Irshad Basith,(2005) 10 SCC 243, this Court (at p. 244) stated as under:

> (SCC 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."

19. Again in Jagannath v. Arulappa & Anr., (2005) 12 SCC 303, while considering the scope of Section 96 of the Code, this Court (at pp. 303-04) observed as follows:

> "2. A court of first appeal can reappreciate the entire evidence and come to a different conclusion....."

20. Again in B.V Nagesh & Anr. vs. 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:

> "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:
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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
>
> (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 at p. 188, para 15 and Madhukar v. Sangram, (2001) 4 SCC 756 at 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."

21. The aforementioned cases were relied upon by this Court while reiterating the same principle in State Bank of India & Anr. vs. Emmsons International Ltd. & Anr., (2011) 12 SCC 174 and Union of India vs. K.V. Lakshman & Ors. (2016) 13 SCC 124.

22. In the light of foregoing discussion, we have no option but to allow these appeals, set aside the impugned judgment and remand the case to the High Court for deciding the appeals afresh on merits in accordance with law keeping in view our observations made supra.

23. We, however, make it clear that we have refrained from making any observation on merits of the controversy having formed an opinion to remand the case to the High Court. The High Court would, therefore, decide the appeals uninfluenced by any of the observations in accordance with law. Since the appeals are quite old, we request the High Court to ensure expeditious disposal of the appeals.

24. The appeals are accordingly allowed. Impugned judgment is set aside with the aforesaid directions.

.....J. [ABHAY MANOHAR SAPRE] .....

.....J. [NAVIN SINHA] New Delhi;

December 04, 2017