Union Of India vs K.V. Lakshman & Ors on 29 June, 2016

Equivalent citations: AIR 2016 SUPREME COURT 3139, 2016 (13) SCC 124, 2016 (3) AKR 519, (2016) 3 ICC 753, (2016) 3 ALL RENTCAS 3, (2016) 3 JCR 302 (SC), (2016) 2 WLC(SC)CVL 444, (2016) 164 ALLINDCAS 56 (SC), (2016) 117 ALL LR 904, (2016) 3 CURCC 260, (2016) 133 REVDEC 152, (2016) 6 SCALE 146, (2016) 4 CIVILCOURTC 242, (2016) 4 CAL HN 1, (2016) 2 LANDLR 273, (2016) 6 ALLMR 969 (SC), (2016) 3 UC 2221, (2016) 4 KCCR 2977, (2016) 5 ALL WC 4693, (2017) 2 CALLT 11, (2016) 122 CUT LT 834, (2016) 5 MAD LJ 504, (2016) 4 PAT LJR 40, (2016) 5 ANDHLD 38, (2016) 3 RECCIVR 1019, (2016) 3 JLJR 365, (2016) 2 CLR 300 (SC)

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Bench: Ashok Bhushan, Abhay Manohar Sapre

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 920 OF 2008

Union of India Appellant(s)

VERSUS

K.V. Lakshman & Ors. Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1) This appeal is filed against the final judgment and order dated 24.06.2003 of the High Court of Karnataka at Bangalore in R.F.A. No. 933 of 2002 whereby the High Court dismissed the appeal filed by the appellant herein, in consequence, affirmed the judgment and decree dated 11.12.2001 passed by the Ist Additional City Civil and Sessions Judge, Bangalore in O.S. No. 5588 of 1976.

2) In order to appreciate the controversy involved in the appeal, which lies in a narrow compass, it is necessary to state few relevant facts.

3) The appellant - Union of India (Divisional Railway Manager, Bangalore) is the plaintiff whereas the respondents are the defendants in the suit.

4) The dispute in this case relates to a plot of land situated near Krishnarajapuram Railway Station, which is around 14 KMs away from Bangalore city- details of which are mentioned in the plaint (herein after referred to as "the suit land").

5) The appellant filed the suit bearing Civil Suit No. 5588/1976 against the respondents in the Court of Ist Additional City Civil and Session Judge, Bangalore for a declaration that they (appellant) are the owners of the suit land and that the respondents whose ancestral claims to have interest in the suit land have no right, title and interest in the suit land. The appellant in order to prove their title over the suit land filed certain documents.

6) The respondents filed their written statements and while denying the appellant's title asserted their own title over the suit land through their predecessors. According to them, their predecessors acquired occupancy rights under the State Tenancy Laws over the suit land in revenue proceedings. It was contended that by virtue of these proceedings, their ancestral acquired superior title over the suit land to the exclusion of every one including the appellant and the same devolved on them after the death of their predecessor in title. The respondents also raised a plea that the suit is barred by limitation. The Trial Court on the basis of the pleading framed issues arising in the civil suit. Parties adduced evidence.

7) Therefore, the dispute that essentially arose between the parties was who is the owner of the suit land-the appellant (Union of India-Railways) or the respondents' predecessor in title?

8) The Trial Court vide judgment/decree dated 11.12.2001 dismissed the suit on two grounds. It was held that the suit is barred by limitation. It was further held that the plaintiff (the appellant) failed to prove their title over the suit land for want of adequate evidence whereas the defendants (respondents) were able to prove their title over the suit land.

9) The appellant, felt aggrieved, filed first appeal before the High Court. In the appeal, the appellant filed an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") and sought permission to adduce additional evidence in support of their case. The additional evidence inter alia consisted of documents issued by the State Land Revenue department in relation to the suit land. According to the appellant, these documents were relevant and material for deciding the ownership issue and if properly examined along with the documents already filed in the suit, would establish the appellant's title over the suit land to the exclusion of every one including the respondents. It was further alleged that the appellant was not able to file these documents in the Trial Court because firstly, these documents were old; Secondly, the appellants came to know of these documents after the decision was rendered in the civil suit; and lastly, since the documents were traced recently with great difficulty and being in the nature of public documents, the appellant be allowed to file them so as to enable the Court to properly decide the issue of ownership in relation to the suit land.

10) The learned Single Judge, by impugned judgment running into 50 pages, dismissed the appellant's first appeal in limine and, in consequence, upheld the judgment/decree of the Trial Court. The learned Single Judge also dismissed the application filed by the appellant under Order 41 Rule 27 of the Code holding that firstly, the cause mentioned in the application as to why the additional evidence could not be filed in the civil suit before the Trial Court is not sufficient cause and secondly, the additional evidence sought to be tendered is neither material nor relevant. Felt aggrieved, the plaintiff has filed this appeal by way of special leave before this Court.

11) Heard Mr. S.N. Terdal, learned counsel for the appellant and Mr. P.P. Singh, learned counsel for the respondents.

12) Learned counsel for the appellant while assailing the legality and correctness of the impugned judgment urged several grounds and submitted that the High Court (Single Judge) erred in dismissing the appellant's first appeal in limine, so also erred in dismissing the application filed under Order 41 Rule 27 of the Code.

13) Firstly, learned counsel urged that the appeal being in the nature of first appeal under Section 96 of the Code should have been admitted for final hearing almost as of right unlike the second appeal which is not admitted for final hearing unless it involves some substantial question of law. Learned counsel urged that had the appeal been admitted for final hearing, then the High Court would have been able to go into all questions of facts and law in its first appellate jurisdiction by party and come to a conclusion different from that of the Trial Court.

14) Secondly, learned counsel urged that since a right to file the first appeal is a valuable legal right, such right could not be taken away by the High Court in a casual manner by dismissing the appellant's first appeal in limine.

15) Thirdly, learned counsel urged that both the Courts below erred in dismissing the appellant's suit on the ground of limitation and on the ground of insufficiency of evidence adduced by the appellant to prove their ownership over the suit land. Both the findings, according to learned counsel, are factually and legally unsustainable and against the record of the case.

16) Fourthly, learned counsel urged that the High Court further erred in rejecting the application made by the appellant under Order 41 Rule 27 of the Code. According to learned counsel, the application made under Order 41 Rule 27 deserved to be allowed on the grounds set out therein as also keeping in view the nature of documents filed along with the application. Learned counsel pointed out that the additional evidence sought to be adduced was relevant for deciding the issue of ownership of the parties over the suit land and hence, the same should have been taken on record of the case for determining the ownership rights of the parties in accordance with law.

17) Fifthly, learned counsel pointed out that the approach of the High Court while dismissing the application was faulty because the High Court while considering the application virtually appreciated the additional evidence on merits and found that the documents were not relevant. Such approach according to learned counsel was not permissible at the time of considering the

application.

18) In reply, learned counsel for the respondents supported the impugned judgment and prayed for its upholding. According to learned counsel, no case was made out to interfere in the impugned judgment.

19) Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submissions urged by the learned counsel for the appellant.

20) As rightly argued by the learned counsel for the appellant, the High Court should not have dismissed the appeal in limine but in the first instance should have admitted the appeal and then decided finally after serving notice of the appeal on the respondents.

21) We also find from the record that on the one hand, the learned Judge observed that the appeal has “absolutely no arguable point" and on the other hand to support these observations, the learned Judge devoted 50 pages. This itself indicated that the appeal involved arguable points.

22) 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 may come to a conclusion different from that of the Trial Court.

23) 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.

24) 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 CPC 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.
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> 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)

25) 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.

26) We consider it apposite to refer to some of the decisions.

27) 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....."

28) 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.

29) 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."

30) Again in Jagannath v. Arulappa & Anr., (2005) 12 SCC 303, while considering the scope of Section 96 of the Code of Civil Procedure, 1908, this Court (at pp. 303-04) observed as follows: (SCC para 2) "2. A court of first appeal can reappreciate the entire evidence and come to a different conclusion....."

31) 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:

(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.

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."

32) 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.

33) This takes us to the next question in relation to the application filed under Order 41 Rule 27 of the Code. In our considered view, the High Court committed another error when it rejected the

application filed by the appellant under Order 41 Rule 27 of the Code. This application, in our opinion, should have been allowed for more than one reason.

34) First, there was no one to oppose the application. In other words, the respondents were neither served with the notice of appeal and nor served with the application and hence they did not oppose the application. Second, the appellant averred in the application as to why they could not file the additional evidence earlier in civil suit and why there was delay on their part in filing such evidence at the appellate stage. Third, the averments in the application were supported with an affidavit, which remained un-rebutted. Fourth, the application also contained necessary averment as to why the additional evidence was necessary to decide the real controversy involved in appeal. Fifth, the additional evidence being in the nature of public documents and pertained to suit land, the same should have been taken on record and lastly, the appellant being the Union of India was entitled to legitimately claim more indulgence in such procedural matters due to their peculiar set up and way of working.

35) It was for all these reasons, we are of the view that the application filed by the appellant under Order 41 Rule 27 of the Code deserved to be allowed and is accordingly allowed by permitting the appellant to file additional evidence.

36) Learned counsel for the respondents, however, contended that the additional evidence is not relevant for deciding the appeal/suit. He also urged that the appellant has not pleaded any cause as required under Order 41 Rule 27 to file such evidence at the appellate stage. We are not impressed by this submission in the light of the reasons given supra. This submission is accordingly rejected.

37) Order 41 Rule 27 of the Code is a provision which enables the party to file additional evidence at the first and second appellate stage. If the party to appeal is able to satisfy the appellate Court that there is justifiable reason for not filing such evidence at the trial stage and that the additional evidence is relevant and material for deciding the rights of the parties which are the subject matter of the lis, the Court should allow the party to file such additional evidence. After all, the Court has to do substantial justice to the parties. Merely because the Court allowed one party to file additional evidence in appeal would not by itself mean that the Court has also decided the entire case in his favour and accepted such evidence. Indeed once the additional evidence is allowed to be taken on record, the appellate Court is under obligation to give opportunity to the other side to file additional evidence by way of rebuttal.

38) Coming to the case, since we have allowed the application made by the appellant under Order 41 Rule 27 of the Code and has permitted the appellant to file additional evidence then as a necessary consequence, the impugned order has to be set aside and respondents are granted an opportunity to file additional evidence in rebuttal, if they so wish to file.

39) The other inevitable consequence is that the case has to be remanded either to the High Court for deciding the appeal afresh on merits or to the Trial Court for deciding the civil suit afresh on merits in accordance with law.

40) Having regard to the nature of controversy and the manner in which the suit/appeal was decided, we consider it appropriate, in the interest of parties, to remand the case to the Trial Court (District and Sessions Judge, Bengaluru) for deciding the civil suit afresh on merits in accordance with law.

41) In view of foregoing discussion, the appeal succeeds and is allowed. The impugned judgment and also the judgment/decree passed by the Trial Court are set aside.

42) The civil suit is now restored to its file. The Trial Court, i.e., District and Sessions Judge Bengaluru, is directed to retry the civil suit on merits. The additional evidence filed by the appellant is taken on record. The respondents are afforded an opportunity to file additional evidence in support of their case in rebuttal. The parties are at liberty to amend their pleadings in case, if they so wish and further adduce additional oral evidence in support of their respective case in addition to what has already been adduced and prove the documents filed at the appellate stage.

43) While trying the civil suit, the Court may in its discretion or at the instance of any party, as the case may be, consider appointing Court Commissioner preferably any retired government revenue official by taking recourse to the provisions of Order 26 of the Code to undertake spot inspection of the suit land with a view to verify its exact location, area, boundaries etc. keeping in view the evidence on record in relation to the suit land.

44) The Trial Court shall decide the civil suit strictly in accordance with law on the basis of pleadings and the evidence adduced by the parties uninfluenced by any observations, reasoning and the findings of the two Courts below which stand now set aside.

45) We may also clarify that we have refrained from recording any finding either way on the merits.

46) Since the civil suit is quite old, we direct the District and Sessions Judge Bengaluru to decide the civil suit expeditiously and preferably within 6 months from the date of party's appearance before him. Parties to appear before the District and Sessions Judge Bengaluru on 01.08.2016.

47) The original record of the case, if requisitioned, be sent forthwith to the Trial Court (District and Sessions Judge, Bengaluru) so as to reach to the Court concerned before the date of parties appearance.

48) No costs.

.....J. [ABHAY MANOHAR SAPRE] .....J. [ASHOK BHUSHAN] New Delhi, June 29, 2016.
