K.N.Nagarajappa vs H.Narasimha Reddy on 9 September, 2021

Equivalent citations: AIR 2021 SUPREME COURT 4259, AIRONLINE 2021 SC 705

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Bench: Uday Umesh Lalit, S. Ravindra Bhat, Bela M. Trivedi

1

REP

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 5033-5034 OF 2009

K.N. NAGARAJAPPA & ORS. …APPELLAN

VERSUS

H. NARASIMHA REDDY ...RESPON

JUDGMENT

S. RAVINDRA BHAT, J.

1. In these appeals by Special Leave, a common judgment - in two second appeals1 rendered by the Karnataka High Court- reversing the decree of the first appellate court, has been challenged.

2. The facts relevant for the purposes of this case are that the registered sale deeds were executed on 28.05.1973 in respect of distinct parcels of land. On the same day, one of the transactions related to the sale of three parcels, which is survey no. 36/1 (28 guntas); survey no.37 (1 acre 30 guntas) and survey no.28/2 (13 guntas)- collectively called “the suit lands” by common sale deed – exhibited as Ex-1 before the trial court. This document is not in dispute. In OS No.20/1985, the plaintiff/respondent and purchaser herein filed a suit for declaration of title and recovery of possession as well as mesne profits in relation to the suit properties (hereafter called “the first suit”). The claim was Dated 31.07.2008 in RSA Nos. 368/2002 and 736/2002 premised on the fact that the plaintiff/respondents had purchased the suit properties by the registered sale deed from the appellants (defendants in the suit). It was contended that though the appellants had put the plaintiff/ respondents in possession, later, upon developing ill will, they moved the Land Tribunal seeking occupancy rights and proceeded to dispossess them, i.e. the plaintiff/respondents from the

suit property. The Land Tribunal initially ruled in favor of the appellants; however, those findings were set aside by the High Court in W.P. 12662/1981. The question was remanded to the Land Tribunal for fresh consideration. This time round, the Land Tribunal directed the parties to approach the Civil Court for adjudication of disputes. The plaintiff/respondent therefore filed the first suit, for declaration and possession. The appellants defended the first suit and denied the claims.

3. The appellants filed another suit – (OS 22/1985 hereafter referred to as the "second suit"). In the second suit, it was alleged that the sale deed Ex-1 in favour of the respondent (defendant in second suit) was a nominal one and was executed as a security for the loan advanced by the respondent. The appellants relied upon a document which they claimed was an agreement of sale under which allegedly the respondent had agreed to execute or reconvey the suit properties to the appellants. In terms of this agreement, the appellants were to pay 9000/- to the respondent within three years. Alleging that the respondent did not execute the sale deed, despite having received full payment of 9000/- with interest @ 15% per annum, the appellants filed the second suit for declaration, of title and permanent injunction and in the alternative, specific performance of the agreement of sale dated 28.05.1973. The appellants also urged and claimed that they were in possession of the suit properties.

4. The Trial Court framed issues with respect to the title, possession and specific performance and proceeded to record the common evidence. The trial court held that the respondent was absolute owner of the suit properties by virtue of sale deed – (a registered document) and also concluded that the appellants who had filed the second suit were in illegal possession of the suit properties. With respect to the disputes in the second suit, the trial court held that the appellants failed to establish execution of the agreement for which they had sought specific performance. The issue was decided on the basis of evidence relied upon by the parties. As a result, the respondent's suit, i.e. the first suit for declaration, title and possession was decreed, in his favour. The appellants' suit, however, was dismissed.

5. Aggrieved by the dismissal of the second suit as well as the decree in favour of the respondent in the first suit, appeals were filed by the appellant before the Additional District Judge. Both the appeals were considered together

- as in the case of a common judgment by the trial court. The first appellate court gave credence to the submissions of the appellants and allowed their plea. As a result, it was held that the sale deed in favour of the respondents was a nominal one and not meant to be acted upon. It was also held that the appellants had proved the agreement to sell and were entitled to a decree for specific performance.

6. The aggrieved respondents approached the High Court with two second appeals, i.e. RSA No. 368/2002 and RSA No. 736/2002. The respondents contended that the dismissal of their suit on the one hand and the decree of the second suit in favour of the present appellants by the first appellate court, on the other, was in error of law. The Karnataka High Court framed the following question of law for consideration:

"Whether the lower appellate Court was justified in granting the decree in favor of the respondent on the basis of Exb-3"

7. The High Court noted that the principal ground was in regard to the genuineness and veracity of the agreement to sell relied upon by the appellant, i.e. Ex D-3. After noting that the findings of the trial court were in favour of the respondent, which stood reversed by the first appellate court, the High Court proceeded to consider whether Ex.D-3 could be considered as a genuine document, having regard to the materials on record. The High Court noted that the trial court's findings were based upon several factors. The first, was the manner of writing in Ex.D-3, which was different from the manner of writing in Ex P-1 (the admitted registered sale deed). It was specifically noticed that Ex.D-3 did not contain any particulars with respect to lands situated and part of the suit (i.e. Survey Nos.36-38) as well as the extent of land in those survey numbers and the other relevant particulars. On a comparison of the alleged agreement to sell (Ex.D-3) with the admitted sale deed (Ex.P-1) along with the other documents, the High Court noted that the trial court did not accept the contention of the appellants that Ex.D-3 was executed the same day as Ex.P-1. The second reason which the High Court noted for rejection of Ex D- 3 by the trial court was that the document contained no condition regarding payment of interest on the sale consideration amount which was allegedly a loan. The evidence of the appellants, on the other hand, was that 15% interest was agreed to be paid and that they had paid 2700/- as interest along with the sale amount or loan amount to the respondent. This contradiction between the pleading and documents on the one hand, and the oral evidence on the other hand, was held to constitute a factor against the present appellant. Thirdly, it was noted that the appellants did not produce any evidence to establish that the interest was in fact paid, or as a matter of fact that the principal amount of 9000/- was paid back. In this regard, the omission to record a receipt and produce it before the court was also held to be fatal to their case. It was lastly held by the trial court that the claim in the second suit for specific performance was also barred since it was a specific contention of the appellant that the time for repayment of 9000/- was three years which had long since passed. The other findings too were noted by the High Court.

8. The High Court, after noting these facts and also considering Ex.D-3, held that the trial court's judgment and decree, based on an overall consideration of the findings before it, was sound and justified. The High Court was of the opinion that in the course of a trial, the court could examine a document under Section 73 of the Evidence Act. Since the respondent had not admitted his signatures on Ex.D-3, the Court acted within its powers to examine the admitted document, i.e. Ex.P-1 and compare the signatures on it with that of the disputed documents, Ex.D-3. Another important circumstance which weighed with the High Court was that the appellants did not claim themselves to be owners despite executing Ex. P-1 because in their application before the Land Tribunal (filed after executing Ex.P-1), they had admitted that the respondents were the owners of the suit lands. In fact the appellants' plea was that they were tenants of the respondent. The High Court held that there was no reason for the appellants to put forward such a contention before the Tribunal had Ex.P-1 been merely a nominal document. The High Court noted that the trial court had also considered other evidence, such as the revenue records Ex.P- 4 and Ex.P-5 in which the respondents were shown as khatedars. The High Court reasoned that had Ex.P-1 been only a nominal sale deed, the appellants would not have permitted the revenue authorities to change the

names of owners of land by allowing the respondent's name to be replaced on the record. Contentions of the parties

9. It is urged on behalf of the appellants, that the High Court fell into error, in interfering with the first appellate court's decree. Pointing to Section 100 of the Code of Civil Procedure (CPC) it was urged that in a second appeal, the High Court's jurisdiction is limited to examining only substantial questions of law; in this case, the court proceeded to appreciate the evidence, and differ with the findings of the first appellate court, which is the final court of facts. Furthermore, examination of the documents, particularly Ex.D-3 was a purely factual aspect, which could not be, by any stretch of the imagination, considered a legal issue, much less a substantial question of law.

10. Counsel for the respondent urged this court not to interfere with the impugned judgment, and submitted that the High Court endorsed the findings of the trial court, which were in consonance with law and the evidence on the record. It was submitted that the trial court having regard to the evidence led noted several important features about Ex.D-3, such as lack of any details of the land, or such like particulars, or any mention about the interest payable; all of which rendered it suspect. Furthermore, the so-called agreement to sell (Ex. D-

3) was contradicted by other evidence on the record.

Analysis and conclusions

11. It is evident from the above discussion that the respondent, in the first suit, claimed possession on the basis of the registered sale deed, Ex.P-1. That document is not denied. The rival case set-up in defence by the appellants as well as the claim in the second suit was that Ex.P-1 was nominal and in fact meant as a security; the appellants also contended that the suit land were to be re-conveyed after receiving full payment of 9000, which was in effect made over to the respondent. It is a matter of record that the appellants had applied for and were granted occupancy rights under the Karnataka Land Reforms Act. On the order of the Land Tribunal, the respondent was dispossessed. The Tribunal's order was set aside by the High Court which remanded the application for re-consideration afresh. In the second round, the Tribunal relegated the parties to the Civil Court. In these circumstances, the two suits were filed.

12. The trial court rejected the appellant's defence and decreed the suit, disbelieving the agreement to sell (Ex.D-3). Its conclusions were based upon several reasons. As noted previously, Ex.D-3 neither spelled out the details of the suit lands, nor did it state any payment of interest, as was the position too by the appellants. Furthermore, the trial court also examined the documentary evidence in the form of the application for occupancy rights which clearly disclosed the respondents as owners and claimed that the appellants were tenants under them. Lastly, it was held that the writings on Ex.D-3 which was allegedly executed on the same day as Ex.P-1 (the admitted sale deed) were not the same. The respondent had denied Ex.D-3. The first appellate court faulted the trial court for not believing Ex.D-3 and proceeded to hold that it was genuine. The substantial question of law framed by the High Court was with respect to the interpretation of Ex.D-3 by the first appellate court.

13. The impugned judgment has recounted the reasons which persuaded the trial court to reject Ex.D-3 and approved them. At the same time, the High Court found fault with the first appellant court in ignoring the important reasons, which were rooted in the facts of the case, based upon the record which had resulted in rejection of Ex.D-3 and the decree for possession. The appellants' theme song is that in second appeal, the High Court could not have interfered with what are termed as pure findings of fact. It is submitted that an examination of Ex.D-3 cannot be termed as substantial question of law, but rather amounts to pure appreciation of facts.

14. Undoubtedly, the jurisdiction which a High Court derives under Section 100 is based upon its framing of a substantial question of law. As a matter of law, it is axiomatic that the findings of the first appellate court are final. However, the rule that sans a substantial question of law, the High Courts cannot interfere with findings of the lower Court or concurrent findings of fact, is subject to two important caveats. The first is that, if the findings of fact are palpably perverse or outrage the conscience of the court; in other words, it flies on the face of logic that given the facts on the record, interference would be justified. The other is where the findings of fact may call for examination and be upset, in the limited circumstances spelt out in Section 103 CPC.

15. Section 103 CPC reads as follows:

> "103.Power of High Court to determine issues of fact In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,-
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> (a) which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or
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> (b) which has been wrongly determined by such Court or Courts reason of a decision on such question of law as is referred to in section 100."

16. In the judgment reported as Municipal Committee, Hoshiarpur v. Punjab State Electricity Board2 , this court held as follows:

> "26. Thus, it is evident that Section 103 CPC is not an exception to Section 100 CPC nor is it meant to supplant it, rather it is to serve the same purpose.

Even while pressing Section 103 CPC in service, the High Court has to record a finding that it had to exercise such power, because it found that finding (s) of fact recorded by the court (s) below stood vitiated because of perversity. More so, such power can be exercised only in exceptional circumstances and with circumspection, where the core question involved in the case has not been decided by the court(s) below.

27. There is no prohibition on entertaining a second appeal even on a question of fact provided the court is satisfied that the findings of fact recorded by the courts below stood vitiated by non-consideration of relevant evidence or by showing an erroneous approach to the matter i.e. that

the findings of fact are found to be perverse. But the High Court cannot interfere with the concurrent findings of fact in a routine and casual manner by substituting its subjective satisfaction in place of that of the lower courts. (Vide Jagdish Singh v. Natthu Singh [(1992) 1 SCC 647]; Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un-Niswan [(1999) 6 SCC 343] and Dinesh Kumar v. Yusuf Ali [(2010) 12 SCC 740].)

28. If a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the finding is rendered infirm in the eye of the law. If the findings of the Court are based on no evidence or evidence which is thoroughly unreliable or evidence that suffers from the vice of procedural irregularity or the findings are such that no reasonable person would have arrived at those findings, then the findings may be said to be perverse. Further if the findings are either ipse dixit of the Court or based on conjecture and surmises, the judgment suffers from the additional infirmity of non-application of mind and thus, stands vitiated. (Vide Bharatha Matha v. R. Vijaya Renganathan [(2010) 11 SCC 483]" (2010) 13 SCC 216

17. In a recent judgment of this court, Narayan Sitaramji Badwaik (Dead) Through Lrs. v Bisaram & Ors3 this court observed as follows, in the context of High Courts' jurisdiction to appreciate factual issues under Section 103 IPC:

> "11. A bare perusal of this section clearly indicates that it provides for the High Court to decide an issue of fact, provided there is sufficient evidence on record before it, in two circumstances. First, when an issue necessary for the disposal of the appeal has not been determined by the lower Appellate Court or by both the Courts below. And second, when an issue of fact has been wrongly determined by the Court(s) below by virtue of the decision on the question of law under Section 100 of the Code of Civil Procedure."

18. In the opinion of this court, in the present case, the High Court recorded sound and convincing reasons why the first appellate court's judgment required interference. These were entirely based upon the evidence led by the parties on the record. The appreciation of evidence by the first appellate court was on the basis of it having overlooked material facts, such as appreciation of documentary and oral evidence led before the trial court, that the execution of Ex.D-3 was denied. In these circumstances, the burden was upon the appellants to establish that the registered sale deed was a nominal document. The findings of the trial court –as was duly noticed by the High Court recorded five cogent reasons why the appellants' pleas could not be accepted. The deposition with respect to repayment of 9000/- apart from being bereft of particulars, was also contrary to the provisions inasmuch as there was no averment with respect to payment of interest @ 15%. Furthermore, the appellants' application for occupancy rights made after the sale deed and the alleged agreement to sell were executed claimed that the appellants were tenants under the respondent. Eventually, the order of the Land Tribunal was set aside; upon remand the Land Tribunal was of the opinion that it did not have the jurisdiction to decide the 2021 SCC OnLine SC 319 issue and left it to the trial court to do so. These important aspects appeared to have been not

appreciated – and their import were overlooked. As a consequence, the first appellate court fell into error in overlooking important evidence and appreciating the record in its true perspective and reversed the decree of the trial court. Moreover, the High Court, in second appeal proceeded to examine the documents in light of the evidence led and corrected the findings as it were under Section 103. If the appellants' arguments were to prevail, the findings of fact based upon an entirely erroneous appreciation of facts and by overlooking material evidence would necessarily have to remain and bind the parties, thereby causing injustice. It is precisely for such reasons that the High Courts are empowered to exercise limited factual review under Section 103 CPC. However, that such power could be exercised cannot be doubted. The impugned judgment does not expressly refer to that provision. In the circumstances of the case, it is evident that the High Court exercised the power in the light of that provision. Furthermore, we are also of the opinion that having regard to the overall circumstances, the impugned judgment does not call for interference in exercise of special leave jurisdiction (which is available to this Court – even at the stage of final hearing).

19. In view of the foregoing discussion, it is held that there is no merit in the appeals which are accordingly dismissed. There shall be no order as to costs.

.....J [L. NAGESWARA RAO] .....J [S. RAVINDRA BHAT] NEW DELHI.

SEPTEMBER 09, 2021.