

Dalla vs Nanhu on 5 December, 2018

Author: Jaspreet Singh

Bench: Jaspreet Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

A.F.R.

RESERVED

Case :- SECOND APPEAL No. - 223 of 1991

Appellant :- Dalla

Respondent :- Nanhu

Counsel for Appellant :- Awadhesh Kumar, Ravi Sinha

Counsel for Respondent :- S.N.Waseem

Hon'ble Jaspreet Singh,J.

The present second appeal assails the judgment and decree dated 18.04.1991 passed by Shri R.P. Rai, IV Additional District Judge, Sitapur, whereby he allowed the plaintiff-respondent's appeal and set aside the judgment and decree dated 15.05.1989 passed by V Additional Munsif, Sitapur, who dismissed the plaintiff's suit for possession.

The above appeal was admitted vide order dated 02.04.1992, however, at the time of admission, no substantial question of law was formulated. Now at the time of hearing of the above appeal, the Court formulated the following substantial questions of law:-

(a) Whether the alleged sale-deed executed by Angney in the year 1970 though unregistered could be used for collateral purposes to prove title by the

plaintiff-appellant ?

(b) Whether the judgment and decree passed by the lower appellate Court dated 18.04.1991 is unsustainable for non-compliance of Order XLI Rule 31 CPC ?

Briefly the facts relevant for deciding the above second appeal are being mentioned as under.

The plaintiff-respondent instituted a suit for ejectment of the defendant-appellant from the disputed Ahata situated at Gram Barchanpur, Pargana Machchrehta, Tehsil Misrikh, District Sitapur. It was the case of the plaintiff-respondent that he purchased the disputed land from one Angney son of Makhan by means of a deed dated 28.07.1970 for consideration of Rs.90/- who delivered the possession to the plaintiff over the same. It was also stated that the plaintiff constructed two rooms and a "Chhapar" on the disputed land and was using the same to put cattle pegs. Since, the defendant who had dispute with his father was turned out of his house and he required accommodation. Thus, he was given accommodation on the disputed Kothari and the defendant had to vacate the same within one month. However, he failed to do so and this led to the dispute and filing of the suit bearing R.S. No.484 of 1987.

The defendant-appellant contested the suit on the allegation that he acquired the land on 12.01.1987 through an auction sale held by the Gaon Sabha. He after purchase of the land constructed three rooms and planted a neem tree and thus he being the owner thereof, the plaintiff had no right over the same and thus, the suit filed by the plaintiff was based on false allegations.

The trial court upon consideration of the entire evidence by means of its judgment and decree dated 15.05.1989 dismissed the suit of the plaintiff recording a finding that the plaintiff was unable to establish its title over the property in question, and was not entitled to the possession/ejectment of the defendant from the disputed Ahata.

The plaintiff preferred a regular civil appeal bearing No.90 of 1989 before the District Judge, Sitapur under Section 96 CPC, which has been allowed by the impugned judgment dated 18.04.1991. While allowing the appeal with costs, the lower appellate Court has decreed the suit of the plaintiff and held that he was entitled to get the possession of the same through the Court. It is this judgment of reversal, which has been assailed before this Court under Section 100 CPC.

As indicated above, at the time of admission, the substantial questions of law were not formulated. However, since the appeal before this Court relates to the year 1991, thus, at the time of hearing, this Court formulated the substantial questions of law as mentioned above. It is also relevant to mention here that the second substantial question of law formulated by this Court relating to the non-compliance of the Order XLI Rule 31 CPC was not incorporated or taken in the memo of appeal by the appellant but at the time of hearing, the same was pressed by learned counsel for the appellant Shri Awadhesh Kumar. Accordingly, in terms of Section 100, sub-section (4) CPC, the above question was also formulated.

So far as the first substantial question of law is concerned, it was argued by Shri Awdhesh Kumar, learned counsel for the appellant that even though the sale-deed dated 28.07.1970 by which the disputed property was purchased by Nanhu from Angney and though it was unregistered, it was inadmissible and could not be seen even for collateral purposes and, therefore, the reversal of the finding by the first appellate court that the plaintiff had established his title was an erroneous exercise of jurisdiction by the first appellate court.

The first appellate Court while considering the aforesaid aspect has clearly considered the pleadings as well as the evidence on the aforesaid point and held that the aforesaid document was for a consideration less than value of Rs.100/- and on the date of its execution i.e. on 28.07.1970, it was not required to be compulsory registered. Though this position changed after the amendment in the year 1976, thus, the immovable property could have been transferred by delivery of possession. The fact remains that the plaintiff purchased the property by means of document bearing paper No.9 on record and the factum of sale was proved by PW-2 Jagannath, who is the witness of the sale as well as PW-4 Shri R.P. Tiwari, Advocate, who was scribe. It is not disputed that at the relevant time a deed below the value of Rs.100/- could be executed and the property could be transferred without compulsory registering the document.

Moreover, the specific case of the defendant was that he had purchased the property in a public auction held by Gaon Sabha, but failed to produce any document including the certificate of auction. The only solitary evidence filed by him was paper No.30C which did not reveal any plot number or area or boundary regarding the land transferred by the Gaon Sabha. There was no material brought on record which could establish that in what circumstances the Gaon Sabha transferred the land in a public auction. Transfer of land by public auction by Gaon Sabha requires compliance of process of law, resolutions and a complete formal process has to be adopted and only after complying with the same, the land could be transferred, if at all, thus the version of the defendant did not find favour with the first appellate Court while the plaintiff was successful in establishing his title on the basis of the deed.

Since, the document of title did not require registration, therefore, the question whether it could be used for collateral purpose is redundant. Even though the Hon'ble Supreme Court in the case reported in 2010 (5) SCC Page 403 S. Kaladevi vs. V.R. Somasundaram & Ors., while considering Section 49 of the Registration Act, held as under:-

"The main provision in Section 49 provides that any document which is required to be registered, if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. Proviso, however, would show that an unregistered document affecting immovable property and required by 1908 Act or the Transfer of Property Act. By virtue of proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs. 100/- and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an

unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of 1908 Act."

Thus, from the above, it would be clear that even an unregistered document could be tendered in evidence for collateral purpose, however, in the present case though the document itself i.e. sale-deed dated 28.07.1970 was not required to be registered, hence it is not hit by Section 49 of the Registration Act. Accordingly, the question of considering the same for collateral transaction does not arise, thus, the first submission of the learned counsel for the appellant fails.

Coming to the second substantial question of law regarding the judgment passed by the first appellate Court to be invalid for want of compliance of the Order XLI Rule 31 CPC, learned counsel for the appellant Shri Awdhesh Kumar cited the following judgments, reported in 2017 (35) LCD Page 2226 Kuldeep Saxena vs. Smt. Archana Saxena and others; 2017 (35) LCD Page 2285 Smt. Sarojni Devi & Ors. vs. Dharampal & Ors., Sadanand Singh & Ors. vs. Devideen & Ors., 2017 (35) LCD Page 1150; Lakhan Saran vs. Shiv Saran 2018 (36) LCD Page 64 and 2017 (35) LCD Page 2260 (SC) - U. Manjunath Rao vs. U. Chandrashekar & Anr., to buttress his submissions.

On the strength of the aforesaid judgments, it has been argued that the first appellate Court has not complied with the provisions of Order XLI Rule 31 CPC which has been held to be mandatory and more particularly no point of determination has been framed. It has also been argued that the reasons have not been disclosed and thus, the first appellate Court has failed in its duty while disposing of the first appeal under Section 96 CPC and has not rendered the judgment in terms of Order XLI Rule 31 CPC. Accordingly, the said judgment impugned deserves to be set aside.

In order to appreciate the submissions of the learned counsel for the appellant, it will be necessary to consider the provisions of Order XLI Rule 31 CPC, which is being reproduced hereinbelow:-

"Order XLI. Appeals from Original Decrees 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 appellate is entitled, and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein."

From the reading of the provision, it would indicate that the provisions of Order XLI Rule 31 CPC are salutary in nature and object thereof is to focus on the contention of the parties and the appellate

court in understanding in adjudicating the rival claims. Thus, the provisions, therefore, must be complied with, however, non-compliance with the provisions of Rule 31 of Order XLI CPC may be an irregularity of serious nature, but, it would not amount to illegality and would not vitiate the judgment and make it wholly void, if there is substantial compliance with the provisions and the Court is satisfied that the justice has not suffered thereby it would be valid and operative.

I am fortified in my above view in light of the judgment of Hon'ble the Supreme Court, reported in *G. Amalorpavam and others vs. R.C. Diocese of Madurai & others*, (2006) 3 SCC Page 224 wherein after taking into consideration the law laid down by the Hon'ble Apex Court in the case of *Santosh Hazari vs. Purushottam Tiwari* (2001) 2 SCC Page 179, it interpreted the provisions of Order XLI Rule 31 CPC held as under:-

"The question whether in a particular case there has been a substantial compliance with the provisions of Order 41 Rule 31 CPC has to be determined on the nature of the judgment delivered in each case. Non-compliance with the provisions may not vitiate the judgment and make it wholly void, and may be ignored if there has been substantial compliance with it and the second appellate Court is in a position to ascertain the findings of the lower appellate Court. It is no doubt desirable that the appellate court should comply with all the requirements of Order 41 Rule 31 CPC. But if it is possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not thereby suffered, that would be sufficient. Where the appellate court has considered the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate Court there is substantial compliance with the provisions of Order 41 Rule 31 CPC and the judgment is not in any manner vitiated by the absence of a point of determination. Where there is an honest endeavour on the part of the lower appellate court to consider the controversy between the parties and there is proper appraisal of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifest by the perusal of the judgment of the lower appellate court, it would be a valid judgment even though it does not contain the points for determination. The object of the Rule in making it incumbent upon the appellate court to frame points for determination and to cite reasons for the decision is to focus attention of the Court on the rival contentions which arise for determination and also to provide litigant parties opportunity in understanding the ground upon which the decision is founded with a view to enable them to know the basis of the decision and if so considered appropriate and so advised to avail the remedy of Second Appeal conferred by Section 100 CPC."

It has been repeatedly held by this Court as well as by Hon'ble Supreme Court that the first appeal is a valuable right of the parties and unless restricted by law, the whole case therein is open for re-hearing 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.

This issue was also considered by Hon'ble the Supreme Court in the case of Laliteshwar Prasad Singh and others vs. S.P. Srivastava, reported in (2017) 2 SCC Page 415, wherein considering the provisions of Order XLI Rule 31 CPC, Hon'ble the Supreme Court held as under:-

"12. 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:

"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 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."

The Hon'ble Supreme Court in the case of G. Saraswathi and another vs. Rathinammal and others, reported in (2018) 3 SCC Page 340 had the occasion to consider the scope and applicability of Order XLI Rule 31 CPC and held as under:-

"10. Time and again, this Court has emphasized on the Courts the need to pass reasoned order in every case which must contain the narration of the bare facts of the case of the parties to the lis, the issues arising the case, the submissions urged by the parties, the legal principles applicable to the issues involved and the reasons in support of the findings on all the issues in support of its conclusion. It is really unfortunate that the Division Bench failed to keep in mind this principle while disposing of the appeal and passed a cryptic and unreasoned order. Such order undoubtedly caused prejudice to the parties because it deprived them to know the reasons as to why one party has won and other has lost. We can never countenance the manner in which such order was passed by the High Court which has compelled

us to remand the matter to the High Court for deciding the appeal afresh on merits."

Thus what can be culled out from the decisions of the Hon'ble Apex Court is that the judgment of the first appellate Court must confirm to the mandate of Order XLI Rule 31 CPC as it is a duty cast on the first appellate Court to follow and perform.

The spirit of the provision is to ensure that the appellate Court must record reasons for the decisions and is to focus attention of the Court to rival contentions of the parties which arise for determinations and also to offer the litigating parties an opportunity of knowing and understanding the grounds upon which the decision is founded in a view to enable them to know the basis of decision and if they think proper and so advised to avail the remedy of second appeal conferred by Section 100 CPC.

Applying the ratio of the aforesaid judgments as mentioned above, if the judgment passed by the lower appellate court is perused, it indicates that the lower appellate Court has discussed the narration of facts of the case of the parties to the lis, the submission urged by the parties, the legal principles applicable and involved and has also given its finding in support of its conclusions.

In its judgment, the lower appellate Court has also recorded as under "The main question involved for decision is whether the plaintiff is the owner of the disputed land."

This shows that even the point for determination was recorded. Significantly there is no phraseology which determines the manner and language which may be employed by the Court to frame such point of determination, except that from the judgment it should be clear that the Appellate Court is conscious of the points arising in the appeal for determination and so it be reflected in its consideration while recording reasons for its judgments. Thus, it cannot be said that there is non-compliance of Order XLI Rule 31 CPC.

This matter also needs to be seen from another angle inasmuch as Section 99 CPC provides as under:-

"99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.-No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder or non-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the court:

Provided that nothing in this section shall apply to non-joinder of a necessary party."

It would indicate that a decision of a Court cannot be upset merely based on technical or immaterial defects. The Rules of procedure are made to sub-serve the ends of justice. The object of Section 99 CPC is to prevent technicalities from overcoming the ends of justice and from operating as a means of circuitry of litigation where the decision is correct on merits and is within the jurisdiction of the Court, no error or defect or irregularity which does not go to the root of the matter will vitiate the

order or invalidate the action. (See Mohammad Husain Khan vs. Babu Kishva Nandan Sahai, AIR 1937 PC 233 and Kiran Singh and others vs. Chaman Paswan and others, AIR 1954 SC 340).

Section 108 CPC provides that the provisions of this part relating to appeals from original decrees shall, so far as may be, apply to appeals from appellate decrees. It is in pursuance thereof that Order XLII Rule 1 CPC has been incorporated which is being reproduced as under:

"Order XLII. Procedure.-The rules of Order XLI shall apply, so far as many be, to appeals from appellate decrees."

Thus, it would be seen that where a judgment passed by the first appellate Court though otherwise conforms to the requirements as provided under Order XLI Rule 31 CPC, that is to say that the first appellate Court has made a narration of facts of the case of the parties to the lis, the issues arising in the case and submissions urged by the parties, the legal principles applicable to the issues and reasons in support of the findings in support of its conclusion, it would substantially comply with the provisions of Order XLI Rule 31 CPC and merely by not stating the points of determination in so many words, it would not make the judgment wholly void.

In the case of Jagdish Singh vs. Amresh and another, reported (2018 (36) LCD Page 2729, in Para-13, this Court held as under:-

"So far as the contention of learned counsel for the appellant that there is no statutory compliance of Order XLI Rule 31 CPC is concerned, suffice is to observe that the Apex Court in a recent judgment dated 4.8.2017 passed in Civil Appeal No. 9951 of 2017; U. Manjunath Rao vs. U. Chandrashekhar and Anr., has held that the compliance of Order XLI Rule 31 CPC will depend in the facts and circumstances of the case and in case there is substantial compliance of Order XLI Rule 31 no illegality can be attributed. In the present case there is substantial compliance of Order XLI Rule 31 CPC as such the contention raised has no force."

In order to successfully canvass the point of non-compliance of Order XLI Rule 31 CPC, it is not mere non framing of points of determination alone, but consequent failure of justice must also be established occasioned to a party.

The purpose and object of incorporating Section 99 CPC is to prevent mischief, which may be caused by the reversal of the decree in a case of this kind. Thus, unless and until the non-compliance of Order XLI and Rule 31 CPC is of such a nature that it affects the merits of the case or the jurisdiction of the Court or the soul of the provision is robbed by not discussing the bare facts, issues arising therefrom, the rival points urged and recording of reasons upon which the judgment is based, till then minor infraction of the aforesaid provision will not give a latitude to a party to assail a judgment and seek its reversal only on this infraction under Section 100 CPC.

Needless to say that Rules of procedure though couched in a mandatory format must be given a reasonable construction so that it may not cause an ultimate failure of justice. Thus, merely

non-framing of the point of determination without any consequent failure of justice and if the judgment otherwise complies with the mandate of narration of facts, consideration of submissions and recording of reasons as required in law will not cause the aforesaid issue to be termed as a substantial question of law.

Thus, taking a holistic view of the matter and from reading of the judgment of the lower appellate court, there is absolutely no doubt that there has been a consideration of the factual narration, issues involved and the evidence led by the parties, the submissions have been recorded and thus the findings recorded by the lower appellate court even though of reversal, being pure findings of fact cannot be interfered with by this Court while exercising jurisdiction under Section 100 CPC.

Learned counsel for the appellant has not been able to indicate any perversity in the judgment of the first appellate court nor could he point out as to how mere non-framing of point of determination has caused any miscarriage of justice to the appellant.

Thus, in view of the reasons recorded above and in light of the judgments rendered by the Hon'ble Supreme Court in the case of G. Saraswathi and another vs. Rathinammal (supra); G. Amalorpavam (supra) and Jagdish Singh vs. Amresh and another (supra) coupled with the mandate of Section 99 CPC read with Section 108 CPC, the second submission of the learned counsel for the appellant that the judgment of the lower court is bad for want of compliance of Order XLI Rule 31 CPC also has no force and is accordingly rejected.

Thus, the second appeal lacks merit and is accordingly dismissed. The judgment passed by the lower appellate court dated 18.04.1991 by the Additional District Judge, Sitapur is affirmed.

Costs are made easy.

Order Date :- 5th December, 2018 Rakesh/-