G. AMALORPAVAM AND ORS. A

v.

R.C. DIOCESE OF MADURAI AND ORS.

MARCH 6, 2006

[ARIJIT PASAYAT AND TARUN CHATTERJEE, JJ.] B

Code of Civil Procedure, 1908; O.41 R.31 and Section 100:

Appellate Court—Judgment—Order 41 Rule 31—Implication of—Held: Object of the Rule is to focus attention of the Court on rival contentions to C *provide the parties opportunity in understanding the ground upon which decision founded and to avail the remedy of second appeal, if they so desire—Since first Appellate Court on consideration of the entire evidence came to the finding supported by reasons, it amounts to substantial compliance of the provisions under O.41 R.31—Since High Court, while affirming the* D *judgment of the trial Court, categorically recorded that the first Appellate Court had arrived at its finding on the basis of evidence led by the parties and furnished detailed reasons thereof, orders of the Courts below do not suffer from any infirmity.*

The respondent filed a suit for possession of the property in dispute E **for recovery of arrears of rent and damages. The Trial Court decreed the suit. Aggrieved, the appellants preferred an appeal, which was dismissed by the first Appellate Court. Appellants preferred Second Appeal, which was dismissed by the High Court. Hence the present appeals.**

Appellants contended that the points for determination were not F **specifically indicated by the First appellate Court and, therefore, the judgment was non-est; and that the High Court did not keep in view the true scope and ambit of Order 41 Rule 31 CPC.**

Dismissing the appeals, the Court

G

HELD: 1.1. 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 points have not been framed by the appellate Court there is substantial compliance with the provisions of

H

A **Order 41 Rule 31 CPC and the judgment is not in any manner vitiated by the absence of a point of determination. [902-F, G]**

1.2. 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 B **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. [903-A, B]**

C *Girijanandini Devi and Ors.* **v.** *Bijendra Narain Choudhary,* **AIR (1967) SC 1124 and** *Santosh Hazari* **v.** *Purshottam Tiwari (Deceased) by Lrs.,* **[2001] 3 SCC 179, relied on.**

1.3. It has been categorically recorded by the High Court that the First Appellate Court had considered the evidence led on behalf of the D **parties and has given finding to come to the conclusions arrived at. It noted that the lower appellate Court had independently considered the evidence and had given different findings on the issues framed by the trial Court and on the basis of the arguments which were advanced before it. It was further noted that there was detailed discussion giving reasons for** E **affirming the order of the trial Court. However, the High Court would not consider it necessary to go into the argument of the appellant that the plaintiff was the diocese represented by its procurator, and therefore, he is not entitled to any relief since this point was not urged before it. Judged in the background of these legal principles, the judgment of the High Court does not suffer from any infirmity. [904-H; 905-A-C]**

F

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 894-895 of 2002.

From the Final Judgment and Order dated 4.9.2000 of the Madras High Court in Second Appeal No. 932/2000 and CMP No. 8275/2000.

G

Sundaravaradan, Senthil Jagadeesan and V. Ramasubramanian for the Appellants.

T.L.V. Iyer and N. Annapoorani for the Respondents.

H

The Judgment of the Court was delivered by A

ARIJIT PASAYAT, J. These two appeals are directed against the orders of a learned Single Judge of the Madras High Court. A Second Appeal was dismissed and the review petition filed was also dismissed.

Learned Single Judge of the Madras High Court dismissed the Second B Appeal filed by the appellants under Section 100 of the Code of Civil Procedure, 1908 (in short the 'CPC'). The Second Appeal was filed by the defendants 1 to 3 i.e. the present appellants against the judgment and decree made in A.S. No.2 of 1993 on the file of Subordinate Judge, Periakulam confirming the judgment and decree dated 18.3.1992 made in O.S. No.597 of 1982 on the file of District Munsif Court, Periakulam. The respondent in C the Second Appeal filed the suit for possession of the suit property as well s the recovery of arrears of rent and damages. The learned District Munsif, Periakulam, on consideration of the facts decreed the suit. Aggrieved by the said judgment and decree, the appellants herein preferred an appeal before the Sub Court, Periakulam. The learned Sub Judge also confirmed the findings D of the learned District Munsif and dismissed the appeal. A Second Appeal was filed before the High Court.

At the time of admission of the Second Appeal the following question was framed for determination:

E

> "Whether the lower appellate court is correct in deciding the appeal without any points for determination as contemplated under Order 41 Rule 31 of CPC?"

It was contended before the High Court that Order 41 Rule 31, C.P.C. is mandatory and compliance is necessary. When the points of determination F have not been specifically indicated the appellate judgment becomes vulnerable. Stand of the respondent before the High Court was that there has been a substantial compliance with the provisions of Order 41 Rule 31, CPC and, therefore, the appeal was without any merit.

The High Court accepted the stand of the respondent. Though some G questions framed related to merits, as noted the dispute was restricted to the alleged non-compliance of Order 41 Rule 31 CPC. Accordingly, the Second Appeal was dismissed. Review Petition was also dismissed.

In support of the appeals, learned counsel for the appellants submitted H

A that the High Court did not keep in view the true scope and ambit of Order 41 Rule 31 CPC. Points for determination were not specifically indicated by the First appellate Court and, therefore, the judgment was non-est.

Learned counsel for the respondents on the other hand supported the impugned judgment.

B

Order 41 Rule 31 CPC reads as follows:

"Contents, date and signature of judgment- The judgment of the Appellate court shall be in writing and shall state-

C (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 D pronounced be signed and dated by the Judge or by the Judges concurring therein."

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 E 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 F 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 G 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 appraisement of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on H 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.

At this juncture it would be relevant to note what this Court said in *Girijanandini Devi and Ors.* v. *Bijendra Narain Choudhary* AIR (1967) SC 1124. In para 12 it was noted as follows:

> " .....It is not the duty of the appellate court when it agrees with the view of the Trial Court on the evidence either to restate the effect of the evidence or to 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."

The view was reiterated in *Santosh Hazari* v. *Purshottam Tiwari (Deceased) by Lrs.* [2001] (3) SCC 179). In para 15 it was held with reference to *Girijanandini Devi's* case (supra) as follows:

> "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 (*Girijanandini Devi* v. *Bijendra Narain Choudhary,* AIR (1967) SC 1124). 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

A for shirking the duty cast on it. While writing a judgment of reversal the appellate court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial court must weigh with the appellate court, more so when the findings are based on oral evidence recorded by the same Presiding Judge who authors the judgment. This certainly does not mean that B when an appeal lies on facts, the appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate court is entitled to interfere C with the finding of fact. (*Madhusudan Das* v. *Narayanibai,* [1983] 1 SCC 35 : AIR (1983) SC 114). The rule is - and it is nothing more than a rule of practice - that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial D Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lie, the appellate court should not interfere with the finding of the trial Judge on a question of fact. (*Sarju Pershad Ramdeo Sahu* v. *Jwaleshwari Pratap Narain Singh,* AIR (1951) SC 120) Secondly, while reversing a finding of E 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 F 100 substituted in the Code. The first appellate court continues, as before, to be a final court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate court is also a final court of law in the sense that its decision on a question of law even if erroneous may not be G 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 be a substantial one."

H It has been categorically recorded by the High Court that the First

appellate Court had considered the evidence led on behalf of the parties and has given finding to come to the conclusions arrived at. It noted that the lower appellate Court had independently considered the evidence and had given different findings on the issues framed by the trial Court and on the basis of the arguments which were advanced before it. It was further noted that there was detailed discussion giving reasons for affirming the order of the trial Court. Learned counsel for the appellants had urged that the suit filed by the plaintiff was not maintainable as the plaintiff was the diocese represented by its procurator. It was submitted that the plaintiff is not entitled to any relief as was prayed for in the suit. This point was not urged before the High Court and, therefore, it would not consider necessary to go into that aspect. Judged in the background of legal principles set out above the judgment of the High Court does not suffer from any infirmity.

In that view of the matter the appeals are without merit and are dismissed. Costs made easy.

S.K.S. Appeals dismissed.