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B.V. NAGESH & ANR.

v.

H.V. SREENIVASA MURTHY
(Civil Appeal No. 8259 of 2010)

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SEPTEMBER 24, 2010

[P. SATHASIVAM AND DR. B. S. CHAUHAN, JJ.]

CODE OF CIVIL PROCEDURE, 1908:

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s.96, O. 41, r.31 – Regular first appeal – Decision in –
Held: Order 41 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) reasons for the
decision; and (d) where the decree appealed from is reversed
or varied, the relief to which the appellant is entitled – The first
appeal is a valuable right of the parties and unless restricted
by law, the whole case therein is open for re-hearing and
parties have a right to be heard 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 appellate court has jurisdiction
to reverse or affirm the findings of the trial court – Sitting as a
court of 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 – In the instant case, the High Court,
after narrating the pleadings of both parties, without framing
points for determination and considering both facts and law
set aside the judgment and decree of the trial court and
modified the same without proper discussion and assigning
adequate reasons – The High Court has failed to discharge
the obligation placed on it as a first appellate court – The
judgment under appeal is cryptic and none of the relevant

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aspects have even been noticed – The appeal has been decided in an unsatisfactory manner – The judgment in the regular first appeal shows that it falls short of considerations which are expected from the court of first appeal – Accordingly, the impugned judgment and decree of the High Court are set aside and the matter is remanded to it for disposal of the regular first appeal afresh in accordance with law.

Santosh Hazari .Vs. Purushottam Tiwai (Dead) By Lrs. 2001 (1) SCR 948 = 2001 (3) SCC 179 = 2001 (2) JT 407 = 2001 (1) SCALE 712; and Madhukar & Ors. Vs. Sangram & Ors. 2001 (3) SCR 138 = 2001 (4) SCC 756, referred to.

Case Law Reference:

2001 (1) SCR 948 referred to para 4

2001 (3) SCR 138 referred to para 4

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8259 of 2010.

From the Judgment & Order dated 10.11.2008 of the High Court of Karnataka at Bangalore in R.F.A. No. 1601 of 2003.

Basava Prabhu S. Patil, B. Subrahmanya Prasad, Ajay Kumar M., Rajendra Prasad B., V.N. Raghupawthy for the Appellant.

H.V. Sreenivasa Murthy, Respondent-In-Person.

The following Order of the Cour was delivered

ORDER

1. Leave granted.

2. Heard learned senior counsel for the appellants and respondent appearing in person.

A 3. The impugned judgment passed by the High Court arose
 out of regular first appeal filed under Section 96 CPC. It is the
 grievance of the appellants that the High Court, without
 adverting to all the factual details and various grounds raised,
 disposed of the appeal in a cryptic manner. In the light of the
 B above assertion, we verified the impugned judgment of the High
 Court. The High Court, after narrating the pleadings of both
 parties, without framing points for determination and
 considering both facts and law set aside the judgment and
 decree of the trial Court and modified the same without proper
 C discussion and assigning adequate reasons.

4. How regular first appeal is to be disposed of by the
 appellate Court/High Court has been considered by this Court
 in various decisions. Order XLI of C.P.C. deals with appeals
 from original decrees. Among the various rules, Rule 31
 D mandates that the judgment of the appellate Court shall state:

(a) the points for determination;

(b) the decision thereon;

E (c) reasons for the decision; and -

(d) where the decree appealed from is reversed or varied,
 the relief to which the appellant is entitled.

F 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 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
 G 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 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
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avaluable 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 vs. Purushottam Tiwari*, (2001) 3 SCC 179 = JT (2001) 2 SC 407 and *Madhukar and Others vs. Sangram and Others*, (2001) 4 SCC 756]

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.

6. Inasmuch as the first appeal is pending from 2003, we request the High Court to dispose of the same as expeditiously as possible. The civil appeal is disposed of accordingly.

R.P.

Appeal disposed of.