

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8259 OF 2010

(@ SPECIAL LEAVE PETITION (CIVIL) NO. 20146 OF 2009)

B.V. Nagesh & Anr.

.... Appellant (s)

Versus

H.V. Sreenivasa Murthy

.... Respondent(s)

ORDER

- 1) Leave granted.
- 2) Heard learned senior counsel for the appellants and respondent appearing in person.
- 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 advertng to all the factual details and various grounds raised, disposed of the appeal in a cryptic manner. In the light of the 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 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 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 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 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 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** 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.

.....J.
(P. SATHASIVAM)

.....J.
(DR. B.S.CHAUHAN)

NEW DELHI;
SEPTEMBER 24, 2010.

