

Ummed Mal and anr Vs. Mool Chand and ors

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Court : Rajasthan Jodhpur

Decided On : Apr-23-2014

Appellant : Ummed Mal and anr

Respondent : Mool Chand and ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :

JUDGMENT

: S.B.CIVIL REGULAR FIRs.APPEAL NO.1/1990 Umaid Mal versus Tej Raj & ORS.Date of Judgment :: 23rd April, 2014 PRESENT HON'BLE Mr.JUSTICE ARUN BHANSALI Mr.Pradhuman Singh, for the appellant.

Mr.Jitendra Chopra, for the respondents.

---- BY THE COURT: This appeal under Section 96 CPC is directed against judgment and decree dated 18.11.1989 passed by District Judge, Balotra, whereby, the suit filed by the plaintiffs has been dismissed.

The facts in brief may be noticed thus: the plaintiffs filed a suit for declaration and possession, inter alia, with the averments that they were members of joint Hindu family; plaintiff No.1 is the widow of late Basti Ram alias Basti Mal and plaintiff No.2 is his adopted son; plaintiff No.2 is having his business in the south (Deshawar) and plaintiff No.1 mostly resides at her village Saila and often visits Siwana; in village Siwana (Padru Ka Bas, Hanutpura) the plaintiffs have got their

patta-sud plot admeasuring 40x40 yards described in para 2 of the plaint; the Patta is in the name of late Shri Basti Ram and after his death, plaintiffs are owners and they remained in uninterrupted and peaceful possession of the plot upto the end of year 1982; in Samwat 2037 Harakchand owner of the plot on 2 the southern side of the suit plot raised wall and its 50% expenses were borne by the plaintiffs; likewise Dhanraj neighbour on the northern side build a wall in Samwat 2038 and its 50% expenses were also borne by the plaintiffs; in Samwat 2038 itself the plaintiffs placed stone slabs on the eastern and western sides of their plot and also unloaded three trucks of stones, to which, the defendants did not raise any objection; the plaintiffs applied for permission to raise construction from the Municipal Board, Siwana on 05.01.1983 when they learnt that defendant No.1 has unauthorizedly and illegally obtained permission to raise construction on the suit plot by claiming plot of his ownership and possession; the defendant No.1 has obtained the said permission by giving a false affidavit; the plot was never sold to the defendants and its possession was never delivered to them, the Patta of the suit plot was also not in the name of defendants; it was then claimed in the plaint that as plaintiff No.2 is doing business in the south, the plaintiff No.1 sold southern half portion of the suit plot to Sumer Mal and northern portion to Bhanwar Lal and executed agreements to sell in their favour; application was made with the Municipal Board, Siwana, which declined to deposit the surcharge vide its letter received on 01.08.1983 on account of the objections raised by Mool Chand; the defendants have unauthorizedly and illegally committed trespass over the suit plot on 26.09.1983; when an application was filed before the Collector, Barmer, an FIR was also lodged with the police; the defendants are bent upon committing breach of peace and, therefore, proceedings under Section 145 Cr.P.C.were initiated and proceedings were 3 filed in the Court of Sub Divisional Magistrate, Balotra; the police inspected the site on 30.09.1983 and prepared its report; on 21.10.1983 the plaintiff No.1 got unloaded lime in the suit plot, whereafter, the defendants put a lock on the door and also posted a person in the suit plot and have thus deprived the plaintiffs from using the suit plot; the agreements to sell entered into by the plaintiff No.1 with Sumer Mal and Bhanwar Lal have been cancelled by the purchaseRs.it was stated that the defendants have illegally and unauthorizedly taken possession of the plaintiffs' suit plot and they were liable to be evicted from

the same; it was prayed that the plaintiffs be declared to be the owners of the suit plot and possession be delivered to them from the defendants.

The defendants contested the averments made in the plaint by filing their written statement; it was, inter alia, claimed that late Basti Ram executed agreement to sell the suit plot on 23.09.1948 in favour of defendant No.1 Mool Chand and the agreed consideration was also received by him; the possession of plaintiffs over the suit plot until 1982 was denied; unloading of stones and putting up of stone slabs was also denied; it was claimed that defendant No.1 has raised construction over the suit plot after obtaining permission from the Municipal Board; the FIR lodged with the police on 30.09.1983 was false and that proceedings initiated before the Sub Divisional Magistrate have also been dismissed on 05.11.1983; it was claimed that the defendants were in continuous possession of the suit plot for last over 35 years and they have fixed stone slabs on its boundary; the stones and the lime lying on the suit plot 4 belonged to them.

In the additional pleas, it was stated that Basti Ram and defendant No.1 Mool Chand were distant brothers. Basti Ram was having his business at Madurai and, therefore, his local work was being looked after by defendant No.1; the suit plot was purchased by defendant No.1 for Basti Ram and its Patta was obtained in his name; Basti Ram gave right to sell the suit plot to defendant No.1; the maternal uncle of defendants wanted to purchase the suit plot and, therefore, the defendant No.1 got Patta of the suit plot from Basti Mal and got executed an agreement dated 23.09.1948 through Narsingh Mal Kanugo; the agreement was sent to Basti Ram by defendant No.1 for signatures and as per the instructions of Basti Ram the price of the plot was sent to his village Saila, the price of the plot was not paid by defendant No.1's maternal uncle and he also did not want to retain the plot and, therefore, the sale could not be registered; however, ever since the said agreement the suit plot continues to be in uninterrupted possession of the defendants as owners and based on the possession the defendant No.1 got his name entered in the house tax record of the Municipal Board in 1979-80; the defendants requested plaintiff No.1 for getting the transfer registered but she asked them to return the Patta; in 1981, three persons intervened in the matter and as the defendants were not in possession of the agreement, the said

intervener asked the defendants to return the Patta to plaintiff No.1 for the time being and it was decided that in case defendant No.1 was able to satisfy about existence of the agreement within 12 months, sale deed would be registered in 5 defendants' favour and Patta would be returned to them; in June, 1982 the agreement was located alongwith letters of Basti Ram and on that basis plaintiff No.1 was requested to get the sale registered; the intervener also directed the plaintiffs to get the sale registered and return the Patta, which direction was not complied with; the agreement to sell executed by plaintiff No.1 was alleged to be a make belief document and ultimately it was submitted that the plaintiffs have instituted a false case and the defendants are, therefore, entitled to special damages and that they are entitled for return of the Patta and also get the sale deed registered.

The plaintiffs filed replication, inter alia, stating that Basti Ram never executed agreement to sell the suit plot to defendant No.1; the suit plot could not have been transferred without the registered sale deed and even as per the contents of the agreement, Basti Ram merely had an intention to sell the plot; the defendants never sought specific performance of the agreement and even that remedy is time barred; the possession of the defendants was denied and it was stated that the agreement was forged one and that the intervener were not appointed as arbitrators to decide the dispute.

On the basis of the above pleadings, the trial court framed the following eleven issues:- 1.

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5 " On behalf of the plaintiffs five witnesses were examined and in the rebuttal evidence one more witness was examined and 14 documents were exhibited; on behalf of the defendants also six witnesses were examined and 33 documents were exhibited.

After hearing the parties, the trial court by its impugned judgment decided issue Nos.1, 2, 6, 7, and 8 together and decided issue Nos.1 and 2 against the plaintiffs and issue Nos.6, 7 and 8 in favour of the defendants; issue No.3 in view of decision on issue Nos.1, 2, 6, 7 and 8 was decided against the plaintiffs and in view of decision on issue Nos.2, 6 and 7 it was held that the plaintiffs were not entitled to mesne profit and permanent injunction; issue No.9 relating to the intervener/ arbitrators being necessary parties was not pressed by the defendants; the defendants were held entitled to special costs of Rs.1,000/- and, consequently, dismissed the suit filed by the plaintiffs and in view of its decision on issue No.8 in favour of the defendants, it was directed that the defendants would be entitled to the original Patta within two months from the plaintiffs.

During the pendency of the appeal, respondent No.1 Mool Chand died on 29.04.1990 and his legal representatives were brought on record; appellant No.1 Tammu Bai also died on 20.06.1990 and, therefore, name of appellant No.1 was deleted from the array of parties.

It was submitted by learned counsel for the appellant at the outset that a bare look at the judgment impugned would reveal that the trial court has decided five issues together, however, a bare reading of the said judgment reveals that nothing has been decided by the trial court and a finding has been recorded without any

reasons and, therefore, the judgment deserves to be set aside on the said count alone; the trial court committed serious error of law and fact in deciding issue Nos.1, 2 against the plaintiffs and issue Nos.6, 7 and 8 in favour of the defendants; the findings on all the aforesaid issues are contrary to the evidence on record and are not sustainable; the ownership and possession of the plaintiffs was clearly proved on record and, therefore, the trial court was bound to decree the suit in favour of the appellants; it was claimed that the alleged agreement Exhibit-A/12 said to have been executed by Basti Ram in favour of defendant No.1 and his maternal uncle is a forged document; it was contended that even as per the averments made in the proceedings, Basti Ram only unauthorized defendant No.1 to dispose of the plot and never sold the same to Mool Chand (defendant No.1) and though it was claimed in the written statement that the agreement was executed in favour of defendant No.1's maternal uncle, who later on refused to keep the plot and it was not even the case of defendant No.1 that the agreement was executed in his favour and that in pursuance of the said agreement, he was in possession of the plot; in absence whereof, the trial court fell in error in deciding issue Nos.6 and 7 in favour of the defendants; it was also submitted that no counter claim was filed by the defendants seeking delivery of the original Patta and in absence whereof the issue No.8 could not have been decided in favour of the defendants.

Per contra, it was submitted by learned counsel for the respondents that the judgment and decree passed by the trial court is perfectly justified in the facts and circumstances of the case and the same do not call for any interference; it was submitted that from the record it is apparent that ever since 1948 the defendants are in possession of the suit plot and suddenly in the year 1982 it dawned upon the plaintiffs to claim ownership and possession of the suit property, when they started claiming title on the suit property; the plaintiffs have failed to indicate any act on their part between the period 1948 to 1982 claiming title/possession of the suit plot, even the 9 original Patta was in possession of the defendants and only on account of intervention by three arbitrators the same was handed over to the plaintiff No.1, which conclusively goes to show the title and possession of the respondents and, therefore, the suit was rightly dismissed by the trial court; it was further submitted that the document Exhibit-A/2 is duly proved and the defendants

are entitled to protection under Section 53A of the Transfer of Property Act, 1882 ('the Act') and the suit filed by the plaintiffs is ex facie barred by limitation; the direction to return the original Patta has been issued by the trial court in the facts and circumstances of the case and it cannot be said that any counter claim for the said purpose was necessary; ultimately, it was prayed that the appeal filed by the appellants be dismissed with costs.

I have considered the rival submissions made by learned counsel for the parties.

A bare perusal of the impugned judgment reveals that the trial court observed that issue Nos.6, 7 and 8 and issue Nos.1 and 2 are in fact by way of counter to each other and, therefore, they should be decided together and whereafter went on to notice the pleadings, contentions, judgments cited, quoted certain parts of the oral evidence and abruptly without indicating any reasons recorded findings on issue Nos.1, 2, 6, 7 and 8 by deciding issue Nos.1 and 2 against the plaintiffs and issue Nos.6, 7 and 8 in favour of the defendants; even with the assistance of learned counsel for the parties on attempting to decipher the reasons for the findings recorded by the trial court, the reasons for the findings are totally missing in the judgment; 10 learned counsel for the respondents, in whose favour the findings have been recorded by the trial court, was pointedly asked to indicate the reasons in the judgment impugned, in answer to which, the counsel conceded that though specific reasons have not been recorded, in view of the findings they have to be assumed in favour of the defendants.

In the firm opinion of this Court, such handling of the issues by the trial court, wherein, without recording any reasons, the Court has arrived at findings, cannot be sustained.

Order XX, Rule 4(2) and Order XX, Rule 5 CPC read as under:- (2) Judgment of other Courts.- Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

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Court to state its decision on each issue.- In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issue is sufficient for the decision of the suit.

A bare reading of the said provisions would reveal that the provisions mandate the Court that the judgment shall contain a concise statement of the case, points for determination, the decision therefor and the reasons for such decision.

Further, Order XX, Rule 5 CPC re-enforces the requirements contained in Order XX, Rule 4(2) CPC requiring that in suits, in which, issues have been framed, the Court shall state its finding or decision with the reasons therefor, upon each separate issue, unless finding upon anyone or more of the issue is sufficient for the decision of the suit.

Though despite mandate of deciding the issues separately, if the Court comes to the conclusion that 11 certain issues need to be decided together, there is no bar to do the same.

A clear distinction has to be drawn between the findings and the reasons, which is apparent from the language of Order XX, Rule 5 CPC, which clearly provides that the Court is required to state its findings and record reasons; unquestionably findings and reasons are totally two different aspects, whereas, the findings would be the conclusions drawn, the reasons are as to why such a conclusion has been arrived at and in absence of recording reasons by the Court and jumping on to findings would be contrary to the express requirement of Order XX, Rule 5 CPC and would clearly vitiate the judgment.

The Hon'ble Supreme Court in Income-Tax Officer v.

Murlidhar Bhagwandas : AIR 1965 SC342 considered the above aspect and in para 9 of the said judgment posed a question as to 'what does the expression

finding.

mean?.' and while observing that finding has not been defined in the Income Tax Act, quoted Order XX, Rule 5 CPC and observed as under:- 9.....Under this Order, a "finding" is, therefore, a decision on an issue framed in a suit.

The second part of the rule shows that such a finding shall be one which by its own force or in combination with findings on other issues should lead to the decision of the suit itself.

That is to say, the finding shall be one which is necessary for the disposal of the suit.

The scope of the meaning of the expression "finding" is considered by a Division Bench of the Allahabad High Court in Pt.

Hazari Lal v.

Income-Tax Officer, Kanpur : (1960)39 ITR265All).There, the learned Judges pointed out: The word "finding", interpreted in the sense indicated by us above, will only cover material questions which arise in a particular case for decision by the authority hearing the case or the appeal which, being necessary for passing the final order or giving the final decision in the appeal, has been the subject of controverRs.between the interested parties or on which the parties concerned have been given a hearing.

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12 We agree with this definition of "finding".....

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Whereafter it was concluded by the Hon'ble Supreme Court as under:-
.....Therefore, the expression "finding" as well as the expression "direction" can be given full meaning, namely, that the finding is a finding necessary for giving relief in respect of the assessment

Hon'ble Supreme Court in Swaran Lata Ghosh v.

Harendra Kumar Banerjee : AIR 1969 SC1167 held and observed as under:- 6.

Trial of a civil dispute in Court is intended to achieve, according to law and the procedure of the Court, a judicial determination between the contesting parties of the matter in controversy.

Opportunity to the parties interested in the dispute to present their respective cases on questions of law as well as fact, ascertainment of facts by means of evidence tendered by the parties, and adjudication by a reasoned judgment of the dispute upon a finding on the facts in controversy and application of the law to the facts found, are essential attributes of a judicial trial.

In a judicial trial the Judge not only must reach a conclusion which he regards as just, but, unless otherwise permitted, by the practice of the Court or by law, he must record the ultimate mental process leading from the dispute to its solution.

A judicial determination of a disputed claim where substantial questions of law or fact arise is satisfactorily reached, only if it be supported by the most cogent reasons that suggest themselves to the Judge; a mere order deciding the matter in dispute not supported by reasons is no judgment at all.

Recording of reasons in support of a decision of a disputed claim serves more purposes than one.

It is intended to ensure that the decision is not the result of whim or fancy, but of a judicial approach to the matter in contest: it is also intended to ensure adjudication of the matter according to law and the procedure established by law.

A party to the dispute is ordinarily entitled to know the grounds on which the Court has decided against him, and more so, when the judgment is subject to appeal.

The Appellate Court will then have adequate material on which it may determine whether the facts are properly ascertained, the law has been correctly applied and

the resultant decision is just.

It is unfortunate that the learned Trial Judge has recorded no reasons in support of his conclusion, and the High Court in appeal merely recorded that they thought that the plaintiff had sufficiently proved the case in the plaint.

(emphasis supplied) From the above, it is apparent that while delivering a judgment the trial court was required to record its reasons for arriving at findings on issue Nos.1, 2, 6, 7 and 8; however, as noticed hereinbefore, the trial court merely noted the contentions, pleadings, the judgments cited, excerpts there from and a part of the evidence from the various witnesses examined by the parties and that also in a jumbled up manner without indicating as to whether the same was being considered for deciding the aspect relating to possession, delivery of Patta, entering into agreement to sell, the plea of adverse possession raised by the defendants etc. and without recording any reason whatsoever on any of the issues, arrived at the findings and decided the issues; merely quoting/indicating the contentions, citations and part of the pleadings without indicating as to out of the two versions, for what reasons one version has been accepted and other rejected; merely recording a finding does not fulfill basic requirement of a judgment and, therefore, in absence of any reasons, the findings arrived at by the trial court on issue Nos.1, 2, 6, 7 and 8 cannot be sustained and the same are, therefore, set aside; the findings on issue Nos.3, 4, 5 and 10 are merely based on the finding of the trial court on issue Nos.1, 2, 6, 7 and 8 and, therefore, they also cannot be sustained.

In view thereof, the judgment and decree passed by the trial court deserve to be set aside and the suit deserves to be remanded back to the trial court with a direction to rehear the parties and re-decide the suit based on the oral and documentary evidence available on record; as the suit pertains to the year 1983, it is expected that the trial court would decide the suit within a period of six months on receipt of the record from this Court.

As during pendency of this appeal, the appellant-plaintiff No.1 Tammu Bai has died and her name has been deleted from the array of parties and defendant-respondent No.1 Mool Chand has died and his legal representatives have been taken on record, the said parties would get substituted in the suit as well and amended cause title would be filed by the plaintiffs before the trial court and it would not be required of the plaintiffs to take fresh proceedings for bringing on record the legal representatives in the suit.

Consequently, the appeal is allowed; the judgment and decree dated 18.11.1989 is set aside and the suit is remanded back to the Court of District Judge, Balotra with a direction to rehear and re-decide the suit in terms of the directions contained hereinbefore; the parties are directed to remain present before the District Judge, Balotra on 12.05.2014; the record be remitted back to the trial court alongwith copy of this judgment forthwith.

(ARUN BHANSALI).J.

A.K.Chouhan/-

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