

Ajit Ojha Vs. Lallan Ojha and ors.

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Court : Patna

Decided On : Oct-24-2005

Judge : J.N. Bhatt, C.J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100 - Order 41, Rule 31

Appeal No. : S.A. No. 441 of 1999

Appellant : Ajit Ojha

Respondent : Lallan Ojha and ors.

Advocate for Pet/Ap. : Rakesh Ojha, Adv.

Disposition : Appeal dismissed

Judgement :

J.N. Bhatt, C.J.

1. By this Second Appeal by invocation of the provision of Section 100 of the Code of Civil Procedure, 1908 (the Code) the challenge made by the appellant-original plaintiff, has been against the judgment and decree dated 1-6-1999 and 16-6-1999, respectively, passed in Title Appeal No. 116 of 1992, whereby, the first appellate Court set aside the judgment and decree passed, on 30-6-1992, by the 7th Sub-ordinate Judge, Bhojpur, Ara, in Title Suit No. 84 of 1985, by which the suit came to be decreed, on contest, with regard to properties shown in Schedules

'Kha' and 'Ga' of the suit (suit properties).

2. The present appellant is the original ' plaintiff who being aggrieved by the judgment and decree passed in Title Appeal has come up before this Court, inter alia, contending that the first appellate Court has committed grave legal wrong and serious error. It is further submitted on behalf of the appellant-original plaintiff that there is a 'substantial question of law.'

3. According to the original plaintiff, the following is the 'substantial question of law':

Whether the learned appellate Court has committed serious error of law in not formulating the point of consideration which arises on the finding of the trial Court.

4. At the admission stage, learned Counsel appearing for the appellant has been extensively heard. The entire record is examined. The main grievance is that the provisions of Order XLI, Rule 31 of the Code have not been complied with and, therefore, there is a 'substantial question of law'. For that it has been alleged that the mandatory requirement in Clause (a) of Rule 31 of Order XLI of the Code has not been observed and considered. Prima facie, this may appear to be alluring but not acceptable in the light of the relevant proposition of law enunciated so far.

5. Order XLI, Rule 31 of the Code reads as, hereunder:

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 pronounced be signed and dated by the Judge or by the Judges concurring therein.

6. It can very well be visualised from the aforesaid provision that the Parliament has provided as to how and what the judgment of the appellate Court shall include. It is true, even in Order XLI, Rule 31, Clause (a) of the Code provides that there should be points for determination, which is strongly relied upon by learned Counsel for the appellant. However, the contention that merely because there is a failure to observe the provision of Clause (a) of the aforesaid Rule 31 of Order XLI of the Code, in not writing the judgment mentioning the points for determinations would vitiate the judgment, does not appear to be sustainable. The procedure for writing the judgment has been prescribed. Four aspects are emphasised in Order XLI, Rule 31 of the Code.

7. Let it be mention that ordinarily, the points and the provisions made in Clauses (a) to (d) in Order XLI, Rule 31 of the Code are required to be observed before writing and signing the judgment. However, the said provisions are procedural in nature. Apart from the issue as to whether they are mandatory or directory, it is not necessary to be gone into in this Second Appeal since there is substantial compliance and without any prejudice to anyone.

8. A simple issue which comes up for consideration at this juncture is as to whether non-mentioning of points precisely for determination in the judgment when the entire judgment includes all relevant points required to be taken for writing effective and effectual judgment could be said to be fatal Obviously, the answer would be in the negative.

9. Procedural law is designed and devised to advance cause of justice and not to retard it. The trial Court, ordinarily, is obliged to consider all the aspects enumerated in Clauses (a) to (d) of the aforesaid Rule. However, failure to specifically mention points for consideration and determination, would not vitiate the entire judgment when over all compliance in judgment is manifested. This proposition is very much enunciated and settled in catena of judicial pronouncements.

10. Referring such points in the judgment could not be said to be in any way affecting the merits of the decision. No procedural law could be interpreted, ordinarily, to thwart the substantive right of the party. In the case on hand, it is, also, noticed that the first appellate Court had taken into consideration all points as propounded in judgment, without specific mention of them. Therefore, the contention that the failure to mention the points for determination as provided in Clause (a) of Rule 31 of Order XLI of the Code, is fatal warranting interference with the impugned judgment and decree recorded by the first appellate Court in Title Appeal as a substantial question of law, cannot be accepted.

11. The scope of jurisdiction sweep of the Second Appeal in terms of the provision of Section 100 of the Code, is, also, very much settled and defined. With a view to exercise the power by the Second Appellate Court, it must be shown to the satisfaction of the Court dealing with such an appeal that there has been a 'substantial question of law' which, of course, may not be of public importance but there must be an element of 'substantial question of law' being involved which would enable the Court to decide the controversy.

12. Section 100 of the Code is being referred time and again. However, shortly, Section 100 of the Code deals with the provisions to conduct appeals from the appellate decrees. It reads here as under:

Second appeal- (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by the Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such questions:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.

13. It is, therefore, obvious and clear that unless and until a substantial question of law is shown to have been involved in the Second Appeal, there would not arise any question of interference by the Second Appellate Court against the order of the First Appellate Court and the judgment and decree recorded thereof. Simply because some part of the procedural law has not been specifically or precisely observed or fulfilled, 'ipso facto', would not lead to a justification for interference in exercise of powers in Second Appeal in terms of the provision of Section 100 of the Code.

14. After having viewed from any perspective over all factual spectrum and the provisions of Order XLI, Rule 31, Clauses (a) to (d) it would, clearly, indicate that in order to succeed in a Second Appeal it has to be shown to the satisfaction of the Court that there was involvement of an element of 'substantial question of law'.

15. The substantial question of law sought to be placed and branded, as such, in this appeal is not the substantial question of law. It has to be shown to the satisfaction of the Court. Nothing has been found or spelt out from the judgment warranting interference, in exercise of powers in Second Appeal by this Court in terms of the provisions of Section 100 of the Code with the result this Court is of the clear opinion that there is no substantial question of law in this Second Appeal.

16. There is, also, no involvement of an element of any other substantial question of law to be considered for adjudication by the Second Appellate Court, in Section 100 of the Code with its proviso.

17. This Second Appeal shall, accordingly, stand summarily dismissed at the admission stage itself.

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