

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3406 OF 2011
(@ SPECIAL LEAVE PETITION(C)NO.24818 OF 2009)

B.M.NARAYANA GOWDA

APPELLANT

VERSUS

SHANTHAMMA(D) BY LRS AND ANR.

RESPONDENTS

O R D E R

Leave granted.

We have heard learned counsel for the parties.

The High Court, in the instant appeal, while deciding the First Appeal under Section 96 of the Code of Civil Procedure has allowed the appeal and set aside the judgment and decree of the trial Court without properly examining the facts and law.

This Court has observed in a number of cases that the first appeal is a valuable right of the appellant and therein all questions of fact and law decided by trial court are open for reconsideration. In a case where the High Court found the trial court judgment is unsatisfactory and wanted to set aside the judgment, the High Court ought to have carefully examined the facts and the law and given cogent reasons for setting aside the trial court judgment.

The legal position in law is no longer *res integra*. This Court had repeatedly said that in first appeal the High Court needs to decide questions of fact and law comprehensively by giving full-dressed hearing.

Learned counsel for the appellant has drawn our attention

to a judgment of this Court in Sanjay Singh Rawat and Others Vs. National Small Industries Corpn. Ltd. and Others, (2005) 12 SCC p.146, the relevant portion of the judgment i.e. paras 3 and 4, reads as under :

"3. Having heard the learned counsel for the parties, we are satisfied that the first appeal filed in the High Court did raise questions of fact and law which called for a full-dressed hearing. First appeal is a valuable right of the appellant and therein all the questions of fact and law decided by the trial court are open for reconsideration. In our opinion, the disposal of the appeal by the High Court, in the manner in which it has been done, is not satisfactory.

4. The appeal is allowed. The impugned order of the High Court dismissing the appeal summarily is set aside. The appeal is remanded to the High Court for hearing and decision afresh and in accordance with law."

Learned counsel for the appellant also placed reliance on another judgment of this Court in H.K.N.Swami Vs. Irshad Basith (Dead) by Lrs., (2005) 10 SCC p.243, relevant portion of the judgment i.e. para 3, reads as under :

"3. The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title. The order of the High Court is cryptic and the same is without assigning any reason."

Learned counsel for the appellant also placed reliance on yet another judgment of this Court in Rama Pulp & Papers Ltd. Vs. Maruti N.Dhotre, (2005) 12 SCC p.186. In this judgment, this Court observed that in first appeal the High Court has to

properly consider the evidence on record or for that matter even the arguments and the grounds raised in support of their case. We are constrained to observe that in the impugned judgment the High Court has not followed the settled legal position crystallized by a number of judgments of this Court. Consequently, we set aside the impugned judgment and remit the matter to the Division Bench of the High Court for fresh consideration in accordance with law. We request the High Court to dispose of the appeal as expeditiously as possible.

We direct the parties to maintain status quo, as of today, till the disposal of the appeal by the High Court.

With these observations, the appeal is disposed of, leaving the parties to bear their own costs.



.....J.
(DALVEER BHANDARI)

JUDGMENT

.....J.
(DEEPAK VERMA)

NEW DELHI;
20TH APRIL, 2011