

CASE NO.:
Appeal (civil) 2918 of 2001

PETITIONER:
MADHUKAR AND ORS,

RESPONDENT:
SANGRAM AND ORS.

DATE OF JUDGMENT: 20/04/2001

BENCH:
DR. A.S. ANAND CJI & R.C, LAHOTI & BRIJESH KUMAR

JUDGMENT:
JUDGMENT

2001 (3) SCR 138

The following Order of the Court was delivered : Leave granted.

Respondents-plaintiffs filed a suit for declaration that they along with defendant No. 1 were the joint owners in possession of the suit property and also for a declaration that gift deed bearing No. 3042/65 and the two sale deeds dated 28.02.1989 were ineffective insofar as the rights of the plaintiffs are concerned. Suit was dismissed by the Trial Court. A perusal of the order of the Trial Court shows that suit was dismissed inter-alia on the ground (1) of limitation and (2) on the ground that decision in an earlier suit, being OS No. 93/71 operated as res judicata against defendant No. 1 only. Before the Trial Court, documentary evidence was led, including placing on record copies of entries of public records and decision of the earlier suit (O.S: No: 93/71).

Against the dismissal of the suit a first appeal was filed by the plaintiffs-respondents in the High Court. The High Court, after noticing some details from the judgment of the Trial Court as also pleadings of the parties, opined that the questions to be decided in the appeal were:

"(1) Whether the relationship claimed by the parties are true'. (2) Whether the plaintiff is entitled to declaration as prayed for?"

After deciding these questions in favour of the plaintiffs-respondents, the High Court set aside the judgment and decree of the trial court and allowed the first appeal. Aggrieved, this appeal has been filed by special leave by the appellants-contesting defendants

We have carefully perused the judgment and decree of the High Court in the first appeal. We find that substantial documentary evidence had been placed before the trial court including certified copies of certain public records besides copy of the judgment and decree of the earlier suit (O.S. No. 93/71). Oral evidence had also been led by the parties before the trial court, which was noticed and appreciated by the trial court. However, the impugned judgment in the first appeal, is singularly silent of any discussion either of documentary evidence or oral evidence. Not only that, we find that though trial court had dismissed the suit on ground of limitation as also on the ground that the decision in the earlier suit (O.S. No. 93/71) operated as res judicata against defendant No. 1 only the High Court has not even considered, much less discussed, correctness of either of the two grounds on which the trial court had dismissed the suit. Sitting as a Court of first 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. It has failed to discharge the obligation placed on a first appellate court. The judgment under appeal is so cryptic that none of the relevant aspects have even been noticed. The appeal has been decided in a very unsatisfactory manner. 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:

In *Santosh Hazari v, Purshottam Tiwari* (Dead) by L. Rs JT (2001) 2 SC 407 this court opined:

"The Appellate Court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing 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."

"While reversing a finding of fact the Appellate Court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the First Appellate Court had discharged the duty expected of it."

The salutary principle referred to above in *Santosh Hazari's* case (supra) have been respected in their breach.

Our careful perusal of the judgment in the first appeal shows that it hopelessly falls short of considerations which are expected from the court of first appeal. We, accordingly, set aside the impugned judgment and decree of the High Court and remand the first appeal to the High Court for its fresh disposal in accordance with law.

We wish to clarify that nothing said hereinabove shall be construed as any expression of opinion on the merits of the case; We request the High Court to dispose of the appeal expeditiously after notice to the parties.

The appeal is disposed of in the above terms. Parties shall bear their own costs.