

**HIGH COURT OF GUJARAT****Bench: JUSTICE ILESH J. VORA****Date of Decision: 03 November 2023**

R/SECOND APPEAL NO. 297 of 2023  
CIVIL APPLICATION (FOR STAY) NO. 1 of 2023  
R/SECOND APPEAL NO. 297 of 2023

**GORDHANBHAI RANCHODBHAI PATEL****Versus****DINESHBHAI LAXMANBHAI PATEL**

Legislation:

Section 100, Order 41 Rule 31 of the Code of Civil Procedure (CPC)

Subject: Civil Procedure – Second Appeal – Challenge to judgment and decree of lower courts – Substantial question of law raised regarding the appellate court’s compliance with Order 41 Rule 31 of the CPC – Failure of the first Appellate Court to independently assess evidence, frame proper points for determination, and provide sufficient reasons for its decision – Impugned judgment and decree set aside, and the matter remanded to the first Appellate Court for proper adjudication within a specified time frame.

Headnotes:

Second Appeal – Admissibility of Second Appeal – Consideration of substantial questions of law raised by appellant – Assessment of whether the judgment and decree passed by the first Appellate Court are vitiated due to non-framing and deciding the appropriate points for determination required under Order 41 Rule 31 of the CPC. [Para 5, 11]

Property Possession – Unauthorized Possession – Trial Court’s direction for appellant to hand over possession upheld by First Appellate Court – Trial Court’s decree based on sufficient reasoning on the issues – Appellant’s claim of lawful possession and authority disputed. [Para 3, 10]

Appellate Procedure – Requirement for Independent Assessment – First Appellate Court’s duty to independently assess evidence, with mandatory reasons for its decision on each point – Apex Court’s guidelines on the scope of Order 41 Rule 31 and need for detailed evidence consideration by the first Appellate Court emphasized. [Para 7, 12, 13]

Decision – First Appellate Court’s approach in concurring with the Trial Court without detailed reasoning – First Appellate Court’s judgment and decree challenged for lack of independent assessment of evidence and insufficient reasoning – Matter requires further consideration in Second Appeal. [Para 8, 12]

**Referred Cases:**

- Siddiqui (dead by Lrs.) Vs. A. Gambling, AIR 2011 SC 1492
- Thakur Sukhpal Singh v. Thakur Kalyan Singh and Anr., AIR 1963 SC 146
- Girijanandini Devi and Ors. V. Bijendra Narain Choudhary, AIR 1967 SC 1124
- G. Amalorpavam and Ors. V. R.C. Diocese of Madurai and Ors., (2006) 3 SCC 224
- Shiv Kumar Sharma v. Santosh Kumari, AIR 2008 SC 171
- Gannmani Anasuya and Ors. V. Parvatini Amarendra Chowdhary and Ors., AIR 2007 SC 2380
- B.V. Nagesh and Anr. V. H.V. Sreenivasa Murthy, (2010) 10 SCC 55
- Santosh Hazari v. Purushottam Tiwari, AIR 2001 SC 965
- Madhukar and others v. Sangram and others, AIR 2001 SC 2171
- G.Amalorpavam Vs. R.C. Diocese of Madurai, 2006-0-AIJEL-SC-36975

**Representing Advocates:**

MR YATIN OZA, SR. ADVOCATE WITH MR PINAKIN M RAVAL(2495) for the Appellant(s) No. 1

MR SANDIP H MUNJYASARA(10781) for the Respondent(s) No. 1,2

MS NAISARGI N CHAVDA(11670) for the Respondent(s) No. 1,2

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**ORAL ORDER**

1. This Second Appeal under Section 100 of the Code of Civil Procedure, has been filed against the judgment and decree dated 09.06.2023 passed by the learned 3<sup>rd</sup> Additional District Judge, Gandhinagar in Regular Civil Appeal No. 73 of 2018 arising out of the judgment and decree dated 23.10.2018 passed by the learned 3<sup>rd</sup> Additional Senior Civil Judge, Gandhinagar in Civil Suit No. 60 of 2016.
2. The appellant is the original defendant who has lost his case from both the courts below. The respondent herein filed a suit for permanent injunction, declaration and possession of the suit property i.e. plot No. 511 admeasuring 400 sq.mt. of the GIDC, Gandhinagar.
3. The plaintiffs had filed a suit against the appellant herein inter-alia alleging that, he has no right, title or interest in the suit property and therefore, his

possession is illegal. The suit was contested by the appellant. In the written statement, it was pleaded that, they have purchased the suit property and pursuant to the sale transaction, they are in possession and occupation of the suit property. The trial Court after considering the pleading framed the issue at Exh. 11. The issue no. 2 with respect to unauthorized possession of the suit property is answered in favour of the plaintiffs and accordingly, the trial Court held that, the possession of the defendant is illegal and unauthorized. The Civil Court vide judgment and decree dated 23.10.2018 by partly allowing the suit, directed the appellant defendant to handover peaceful and vacant possession of the suit property to the respondents plaintiffs within 60 days.

4. Being aggrieved with the said judgment and decree, the appellant has preferred Regular Civil Appeal No. 73 of 2018 before the District Court at Gandhinagar. Learned first Appellate Court after hearing the parties, was pleased to dismiss the appeal vide its judgment and decree dated 09.06.2023. The learned first Appellate Court while dismissing the Appeal, has recorded general expression of the concurrence of the trial Court judgment.
5. Being dissatisfied with and aggrieved by the aforesaid judgment and decree dated 09.06.2023 passed by the first Appellate Court, the appellant – original defendant has preferred present appeal on the following substantial question of law:.. *Substantial Question of Law*
  - A) *Whether the order of First Appellant Court is illegal, arbitrary, and against the settled principal and law and therefore the same is not sustainable in the eye of law?*
  - B) *Whether the Learned District Judge have very hurriedly decided the Appeal only on the hearing of Exhibit - 5 Application whereby very crucial right of the appellant herein is defeated?*
  - C) *Whether the Learned District Judge have failed to appreciate the fact that as per evidence of GIDC the ultimate ownership of any plot remains with GIDC only and in such circumstances holding the present appellant as unauthorised occupant in the said subject land is without taking into consideration such relevant and admissible evidence more particularly when respondent is claiming his rights by way of unregistered documents only?*

- D) *Whether that Learned Trial Court and First Appellate Court both have failed to consider the Provisions of Transfer of Property Act and Registration Act?*
- E) *Learned Trial Court and First Appellate Court have failed to consider and appreciate the material documents in form of the agreement to sale, MOU, power of attorney given by Prabhudas Kashiram along with the possession of the suit land to the present appellant which is continuing from year 1994 till date with the appellant?*
- F) *Whether the Learned District Judge have hurriedly decided the appeal only on the hearing of Exhibit - 5 Application whereby very crucial right of the appellant herein is defeated?*
- G) *Whether the Learned District Judge have failed to appreciate the fact that as per the evidence of GIDC the ultimate ownership of any plot remains with GIDC only and in such circumstances holding the present appellant as unauthorised occupant in the said subject and is without taking into consideration such relevant and admissible evidence more particularly when respondent is claiming his rights by way of unregistered documents only?*
- H) *Whether the Judgment and Order passed by Lower Appellant Court is vitiated by not framing and deciding appropriate points for determination as required under the provisions of Order 41 R-31 of CPC?*
- I) *Whether the Lower Appellant Court has materially erred in not undertaking the exercise of independent appreciation of entire evidence and thereupon recording independent findings in the appeal?*
- J) *Whether in view of the findings recorded on issue no.1 by the trial court, the plaintiff had any locus to file the suit for the relief as claimed?*
- K) *Whether the suit filed by the Plaintiffs is clearly barred by Non-joinder of necessary parties?*
- L) *Whether the suit of the parties in view of the established facts on record is clearly barred by Limitation?*
- M) *Whether the continuance of possession of the defendant over the suit land in question can be treated to be illegal and unauthorised particularly*

*when the initial induction of the defendant in the land in question was lawful and under the valid authority?*

6. In the aforesaid factual background facts, this Court has heard learned Senior Counsel Mr. Yatin Oza, assisted by Mr. P.M. Raval, learned advocate appearing for and on behalf of the appellant and Mr. Sandip H. Munjyasara, learned advocate appearing for the respondents.
7. Learned Senior Counsel Mr. Oza assailing the judgment and decree passed by the first Appellate Court has submitted that, the first Appellate Court has committed an error while deciding the Appeal in a cursory manner, without framing the point for determination. Referring to Order 41 Rule 31 of the CPC, he submitted that, the first Appellate Court is the last court of facts and it is mandatory for the court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication. That, in the facts of present case, the first Appellate Court without framing the point for determination, expressing general expression of concurrent with the trial Court judgment, passed an order of dismissal of the appeal, as a result, the judgment and decree is vitiated and on this ground, the Second Appeal deserves consideration and it may be admitted.
8. On the other hand, countering to the submissions, learned counsel Mr. Sandip Munjyasara, has submitted that there is no substantial question of law raised by the appellant – defendant in this Second Appeal and urged to dismiss the Appeal. He would further submit that, in the instant case, the first Appellate Court has considered all the aspects of the matter and submissions made by the learned counsel for the parties and therefore, though the first Appellate Court framed only one point for determination, which itself may not vitiate the judgment.
9. Having heard the learned counsel for the respective parties and on perusal of the findings recorded by the courts below, the only question that falls for my consideration is whether present Second Appeal involves any substantial question of law?
10. It is no doubt true that the cause of action to file the suit by the respondent was the judgment and decree dated 29.02.2016 passed in Special Civil Suit No. 1090 of 2013 wherein, the appellant, respondents and others were parties to the suit. Pursuant to said decree, the present suit i.e. Special Civil Suit No. 60 of 2016 was filed to recover the possession of the suit property from the

appellant. The learned trial Court while decreeing the suit, by sufficient reason on the issues, directed the appellant to handover the possession of the suit property. The matter was carried further in Appeal before the District Court, Gandhinagar. The first Appellate Court without framing the point for determination, expressing general concurrence with the judgment of the trial Court, dismissed the appeal.

11. The appellant herein raised the substantial question of law that, the judgment and decree of the first Appellate Court is vitiated, by not framing and deciding the appropriate points for determination, as required under Order 41 Rule 31 of the CPC.

12. This Court is of considered view that, the first Appellate Court must not record general expression of concurrence with the trial Court judgment. The court ought to have give reasons for its decision on each point independently. The point is how to deal with the issue by the first Appellate Court. There must

be a discussion, appreciation, reasons and categorically findings on the issues as to why the findings of lower court be upheld or reversed. Order 41 Rule 31 cast an obligation on the first Appellate Court to state their points for determination, the decision thereon, the reasons for the decision. In the facts of the present case, the point for determination framed by the Appellate Court is to whether the findings recorded by the trial Court on the issues framed are required to be interfered with or not?. It is not legal requirement that, whatever the issue framed by the Civil Court should again framed by the Appellate Court. The legal requirement is to appreciation of the evidence, discussion and reasons thereof, so as to arrive at the conclusion to upheld or reverse the judgment and decree of the trial Court. In the present case, in a single determination of the issue, the first Appellate Court did not have weighed the evidence with sufficient reasons for concurring with the findings of the Civil Court.

13. The Apex Court has considered the scope of Order 41 Rule 31 in **Siddiqui (dead by Lrs.) Vs. A.Gambling, AIR 2011 SC 1492** and held as under:

*“18. The said provisions provide guidelines for the appellate court as to how the court has to proceed and decide the case. The provisions should be read in such a way as to require that the various particulars mentioned therein should be taken into consideration. Thus, it must be evident from the judgment of the appellate court that the court has*

*properly appreciated the facts/evidence, applied its mind and decided the case considering the material on record. It would amount to substantial compliance of the said provisions if the appellate court's judgment is based on the independent assessment of the relevant evidence on all important aspect of the matter and the findings of the appellate court are well founded and quite convincing. It is mandatory for the appellate court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final court of fact, the first appellate court must not record mere general expression of concurrence with the trial court judgment rather it must give reasons for its decision on each point independently to that of the trial court, Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of the said provisions and the court must proceed in adherence to the requirements of the said statutory provisions.*

*(Vide: Thakur Sukhpal Singh v. Thakur Kalyan Singh and Anr., AIR 1963 SC 146; Girijanandini Devi and Ors. v. Bijendra Narain Choudhary, AIR 1967 SC 1124; G. Amalorpavam and Ors. v. R.C. Diocese of Madurai and Ors., (2006) 3 SCC 224; Shiv Kumar Sharma v. Santosh Kumari, AIR 2008 SC 171; and Gannmani Anasuya and Ors. v. Parvatini Amarendra Chowdhary and Ors., AIR 2007 SC 2380).*

*19. In B.V. Nagesh and Anr. v. H.V. Sreenivasa Murthy, (2010) 10 SCC 55, while dealing with the issue, this Court held as under:*

*"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 v. Purushottam Tiwari, AIR 2001 SC 965 and  
Madhukar and others v. Sangram and others, AIR 2001 SC 2171]."*

*Thus, it is evident that the First Appellate Court must decide the  
appeal giving adherence to the statutory provisions of Order XLI Rule  
31 CPC."*

14. The principle discernable from the case law referred to above is that, it is mandatory for the first Appellate Court to independently assess the evidence of the parties and consider the relevant point, which arise for adjudication and the bearing of the evidence on those points. The first Appellate Court, being a final court of facts, must not record general expression of concurrence with the trial Court judgment and must assigned reasons for its decision on the issue and entire evidence must be considered and discussed in detail.
  
15. In light of the aforesaid law and applying to the facts of the present case, this court finds merits in the contentions raised by the counsel appearing for the appellant and thus, therefore, this Court comes to conclusion that, it is a case of non-compliance with the provision of Order 41 Rule 31 of the CPC. The contentions raised by learned counsel for the respondent that mere a noncompliance of the provisions may not vitiated the judgment, when the findings of the first Appellate Court established the requirement of the mandatory provision. In this aspect, it is beneficiary to refer to the case of **G.Amalorpavam Vs. R.C. Diocese of Madurai, 2006-0-AIJEL-SC-36975**, the Apex Court in para-8 and 9 of the judgment held that, the question whether in a particular case, there has been a substantial compliance of provision of Order 41 Rule 31 of the CPC, has to be determined on the nature of judgment delivered in each case and non-compliance with the provisions, may not vitiate the judgment and make it wholly void and may be ignored if there has been substantially compliance with it. In the present case, the first Appellate Court failed in recording proper reasons on the issue and therefore, the very object to frame point for determination and to cite the reasons thereof are missing in the facts of the present case.
  
16. For the reasons recorded, without entering into the merits of the case, the impugned judgment and decree passed by the first Appellate Court in Civil Appeal No. 73 of 2018 is hereby set aside. The matter is remanded to the first



Appellate Court to decide the said first appeal in accordance with law within four months from the date of receipt of this order.

17. The present Second Appeal is disposed of accordingly. Interim relief granted earlier stands vacated.
  
18. In view of the order passed in Second Appeal, no order in Civil Application and is disposed of accordingly.

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