NC: 2026:KHC-D:5729
RSA No. 100186 of 2018

HC-KAR

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 17TH DAY OF APRIL 2026

BEFORE

THE HON'BLE MRS JUSTICE GEETHA K.B.

R

REGULAR SECOND APPEAL NO. 100186 OF 2018 (POS)

BETWEEN:

1. SHRI. SWAMI VIVEKANANDA
EDUCATION SOCIETY, HALIYAL,
R/BY ITS CHAIRMAN,
SRI. VENKATESH
S/O DAMODAR HEGDE,
AGE/A: 78 YEARS,
R/O: SUBHASH ROAD, HALIYAL,
DIST: UTTARA KANNADA- 581329.

2. SHRI. SWAMI VIVEKANANDA
EDUCATION SOCIETY, HALIYAL,
R/BY ITS SECRETARY,
R/O: KHAJI GALLI, HALIYAL,
TQ: HALIYAL,
DIST: UTTARA KANNADA- 581329.

...APPELLANTS

(BY SRI. G.B. SHASTRY, ALONG WITH
SRI. DINESH M. KULKARNI, ADVOCATE)

AND:

SHRI. TULJA BHAVANI SOCIAL
EDUCATIONAL AND CHARITABLE TRUST,
HALIYAL, R/BY ITS CHAIRMAN,
SHRI. RAGHUNATH
S/O VISHWANTHRAO DESHPANDE,
R/O: V.R. DESHPANDE ROAD,
HALIYAL, TQ: HALIYAL,
DIST: UTTARA KANNADA- 581329.

...RESPONDENT

(BY SRI. HARSH DESAI, ADVOCATE FOR SOLE RESPONDENT)

THIS REGULAR SECOND APPEAL FILED UNDER SECTION 100 OF CPC, PRAYING TO, AGAINST THE JUDGEMENT & DECREE PASSED IN R.A. NO. 42/2015 DATED 31.01.2018 BY THE COURT OF I ADDITIONAL DISTRICT AND SESSIONS JUDGE, UTTAR-KANNADA, SITTING AT SIRSI CONFIRMING THE JUDGMENT AND DECREE IN O.S. NO. 31/2011 DATED 18.08.2015 PASSED BY THE SENIOR CIVIL JUDGE, YALLAPUR SITTING AT HALIYAL AS NULL AND VOID, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL, COMING ON FOR DICTATING JUDGMENT, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MRS JUSTICE GEETHA K.B.

ORAL JUDGMENT

(PER: THE HON'BLE MRS JUSTICE GEETHA K.B.)

1. This is the appeal filed under Section 100 of C.P.C. by appellants/defendants No.1 and 2 praying for setting aside the judgment and decree dated 31.01.2018 passed in R.A.No.42/2015 on the file of I Additional District and Sessions Judge, U.K. Karwar Sitting at Sirsi (for short, ‘First Appellate Court’) by confirming the judgment and decree dated 18.08.2015 passed in O.S.No.31/2011 on the file of Senior Civil Judge, Yellapur Sitting at Haliyal (for short, ‘Trial Court’) and

to set aside the judgment and decree of Trial Court also.

2. Parties would be referred with their ranks as they were before Trial Court for the sake of convenience and clarity.

3. Plaintiff-Trust has filed the suit before Trial Court praying for possession of suit schedule property bearing CTS No.1522 Situated at Khazigalli Ward within the limits of Town Panchayath, Haliyal Taluk; to direct defendants to pay arrears of leave and license fee of ₹36,000/- with interest at 12% per annum from the date of suit till repayment; direct defendants to pay *mesne* profits of ₹10,000/- per month from the date of suit till delivery of vacant possession of suit property; for courts costs and for such other reliefs.

4. The case of plaintiff before Trial Court in nutshell is that;

4.1. Plaintiff is the absolute owner of suit schedule property by virtue of registered Gift Deed dated 15.02.1997 executed by His Holiness Shri Siddhahandi Bhadanganathamath Swamiji of Kumbarada. After such gift, name of plaintiff is entered in CTS records. Plaintiff has taken possession of the property and thereafter constructed a building thereon. Said building is also recorded in the name of plaintiff in the concerned assessment register maintained by the local authority.

4.2. In the year 2000, defendants approached the plaintiff and requested to permit him to carry out its educational activities in suit schedule property. Accordingly, plaintiff permitted defendants to conduct educational activities in the suit schedule property for a limited period on leave and license basis subject to payment of regular license fee as intimated by the plaintiff.

Said leave and license fee being oral in nature is from month to month terminable by 15 days notice. However, defendants agreed to make payment of leave and license fees annually. But from the date of induction, defendants have never paid license fee to plaintiff in spite of repeated requests and demands. Hence, plaintiff got issued legal notice dated 14.09.2010 terminating the leave and license of plaintiff over suit schedule property by the end of 31.12.2010 and called upon the defendants to hand over vacant possession on or before 31.12.2010 with arrears of leave and license fee.

4.3. After service of said notice, defendants have given untenable reply dated 05.10.2010. Hence, the suit for appropriate reliefs.

4.4. Plaintiff valued the suit for arrears of leave and license at ₹1,000/- per month restricting only for 3 years preceding to file the suit at ₹36,000/-

and also prayed for *mesne* profits. It is stated in the plaint that the market value of suit schedule property is more than ₹10,00,000/- for pecuniary jurisdiction of the suit and it valued suit under Section 41(2) of Karnataka Court Fees and Suits Valuation Act, 1958 (for short hereinafter referred to as 'the Act, 1958') at ₹12,000/- for the relief of possession and at ₹36,000/- for arrears of rent and paid the Court fee accordingly.

5. After filing the suit, defendant-Society appeared through its counsel and filed written statement, wherein it contended that;

5.1. Plaintiff has filed the suit with oblique motive and shown the address of defendants at Tilak Road, Haliyal, but defendants address is at Khazigalli, Haliyal. A registered lease deed dated 03.02.1967 was executed in respect of suit schedule property in favour of Sri Basayya

Chennmalayya Yellapurmath for a period of 51 years with annual rent of ₹50/-. Thus, the aforesaid lessee was in possession and enjoyment of the property. These facts are suppressed by the plaintiff. Said lease was in force. Hence, the suit is not maintainable without impleading lessee as party to the proceedings.

5.2. The alleged Gift Deed in favour of plaintiff is not valid and it does not confer any title over the suit schedule property. The defendant is a registered Society under Societies Registration Act, 1860 in the year 1987. Said Trust (ought to be called as Society) is not properly described in the plaint. Secretary is ought to have been made as party to the suit and thus, suit is not maintainable.

5.3. Defendant - Society is running primary and high school in suit schedule property since 2000. Earlier to it, this Society was running its school in C.T.S.No.1232. The said space was not adequate to cater the growing needs of the Society and hence, Sri R.V. Deshpande, the then Minister in the Government prevailed over members of the defendant-Society to construct a building in the suit schedule property. He also assured financial assistance to construct the building. The defendants, with the permission of heirs of original lessee of the property, have constructed the school building in the suit schedule property by investing ₹32,00,000/- collected by way of grant, loan and donations. Thus, plaintiff has no right, title and interest in or over the building and cannot claim any relief over the same.

5.4. Plaintiff claims to be the owner of the suit schedule property based on Gift Deed, but said Gift Deed is invalid and illegal not in accordance with law. Plaintiff very well knows about construction of building in the suit schedule property, but has not raised any objection at the time of construction and at the time of running the school. 600-700 students are studying in the school. The defendants acting on the representation of plaintiff have changed its position to its advantage. Thus, plaintiff is estopped from claiming any right over the property.

5.5. Defendants deny the existence of licensor and licensee relationship between plaintiff and defendants. Thus, there is no question of terminating the so called license. It is defendant - Trust has constructed the building and not plaintiff as alleged in the plaint. The Court fee paid is not proper. The plaintiff has not valued the suit property properly. Court fee is to be paid on market value of the suit land. As plaintiff valued the suit land more than ₹10,00,000/-, plaintiff has to pay Court fee on said amount and it cannot value the suit for purpose of Court fee and market value differently, as the land in dispute is not agricultural property. Hence, prayed for dismissal of suit.

6. Based on the above pleadings, the Trial Court has framed the following issues:

"ISSUES

1. Whether the plaintiff proves the description of the suit property?

2. Whether the plaintiff proves that he is the owner of the suit property?

3. Whether the plaintiff further proves that he has permitted the defendant to occupy the suit property on leave and license basis?

4. Whether the plaintiff further proves that the said leave and license is terminated?

5. Whether the plaintiff is entitled for the possession of the suit property?

6. Whether the plaintiff is entitled for the arrears of leave and license free of Rs.36.000-00 with interest thereon at the rate of Rs.12% p.a. from the date of the suit till realization?

7. *Whether the plaintiff is entitled for the future mesne profits at Rs.10.000-00 p.m. till date of the delivery of the suit property?*

8. *Whether the defendant proves that the suit is not maintainable without impleading Shri.Basayya Channamallayya Yallapurmath as a party to the proceedings?*

9. *Whether the defendants proves that the suit is not maintainable against the defendant Society without making the Secretary as a party to the suit?*

10. *Whether the defendant proves that the building in the suit property is constructed by the defendant Society?*

11. *Whether the defendant proves that the Gift Deed executed by his holiness Sri. Siddhahandibhadaganath Swamiji of Kumbarda in favour of the plaintiff is not legal and valid?*

12. *Whether the defendant proves that the plaintiff is estoped from claiming any rights over the suit property?*

13. *Whether the defendant proves that the valuation of the suit property and court fee paid is not proper and correct?*

14. To what reliefs the plaintiff is entitled for?

15. What decree or order?”

7. During pendency of the suit, the Secretary of defendant - Society was impleaded as defendant No.2.

8. After recording the evidence of both sides and hearing arguments of both sides, the Trial Court has decreed the suit of plaintiff with costs directing defendant-Society to hand over vacant possession of suit schedule property by holding that the suit valued under Section 41(2) of the Act, 1958 is proper and thereby decreed the suit.

9. Aggrieved by the said judgment and decree of Trial Court, defendants/appellants have preferred the first appeal.

10. After hearing arguments of both sides, the First Appellate Court has dismissed the appeal with costs by confirming the judgment and decree of Trial Court.

11. Aggrieved by the same defendants/appellants are before this Court.

12. At the time of admitting the appeal, the following substantial questions of law would arise for consideration:

i) Whether the Trial Court was justified in holding that the Court fee valued under Section 41 of the Karnataka Court Fees and Suits Valuation Act, 1958 is proper, when admittedly there was no landlord–tenant relationship between the parties, and consequently whether the Court fee paid is sufficient in law?

ii) Whether the suit is hit by Section 60(b) of Indian Easement Act, 1882?

13. Heard arguments of both sides.

14. Learned Counsel Sri G.B.Shastry appearing on behalf of learned counsel for the appellants Sri.Dinesh M. Kulkarni would submit his arguments that;

14.1. The suit as filed in present form is not maintainable in law. Trustees to the suit are not made as parties to the suit. There is no pleading in the plaint that Chairman of plaintiff - Trust is authorized to file the suit and thus, suit itself is not maintainable in law.

14.2. Learned Counsel would further submit that, at the time of execution of Gift deed in favour of plaintiff, the lease in favour of Basayya Chennmalayya Yellapurmath was in force and thus, possession ought not to have been handed over to plaintiff by the original owner and thus, the gift was invalid. Furthermore, Court fee paid on the suit is not proper. The Court fee was valued by the plaintiff under Section 41(2) of the Act, 1958. Only when there is landlord and tenant relationship between parties, Section 41 of the Act, 1958 applies, but as per plaint pleadings, the relationship between parties is licensor and licensee and not landlord and tenant. Hence, valuation of Court fee under

Section 41(2) of the Act, 1958 is improper. Under those circumstances, the suit ought to have been valued under Section 29 of the Act, 1958. Furthermore, plaintiff has not mentioned the actual market value of suit schedule property in the plaint and hence, there is no proper valuation and payment of Court fee.

14.3. The learned counsel would further submit that the First Appellate Court has not framed the proper points for determination; points for consideration ought to have been raised on all issues of law and fact and thus, the judgment passed by the First Appellate Court is not in accordance with law. Furthermore, defendant-Society has constructed 1st floor in the suit schedule property, which is admitted by P.W.1. Hence, if defendant- Society is licensee under plaintiff, then, as per Section 60(b) of the Indian Easements Act, 1882 (in short, the Act, 1882), it became irrevocable license and thus, plaintiff cannot claim possession of suit schedule property from defendants.

14.4. Learned counsel would further submit that the plaintiff's chairman is not examined. Only the Administrator of plaintiff - Trust was examined as a S.P.A. holder who does not know anything about the case. Hence, his evidence cannot be looked into for any purpose and thus, decreeing the suit based on his evidence is not proper. The defendants have not taken contention in the written statement that plaintiff - Trust is not properly represented, but in the First Appellate Court and also before this Court, those contention was raised and as this is the point of law, it can be raised at any stage of proceedings. Appeal is nothing but continuation of the suit. Defendants can take inconsistent pleas. The First Appellate Court has not considered the contention of payment of Court fee and valuation made for the purpose of Court fee and First Appellate Court has not considered the legal point regarding plaintiff - Trust is not properly represented. Hence, prayed for allowing the appeal and to set aside the judgments passed by both the First Appellate Court and Trial Court.

14.5. In this regard learned counsel for appellants relied on the following citations:

i) ***Ram Sarup Gupta (dead) by L.Rs., Vs. Bishun Narain Inter College and Others*** reported in ***AIR 1987 SC 1242***

ii) ***Janki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd., and others*** reported in ***AIR 2005 SC 439.***

iii) ***Atmaram Ranchhodbhai Vs. Gulamhusein Gulam Mohiyaddin and another*** reported in ***1972 SCC OnLine Guj 10.***

iv) ***M/s. Band Box Private Limited Vs. Estate Officer, Punjab and Sind Bank***

and another reported in ***AIR 2014 SC 1602.***

v) ***Baldev Singh and others Vs. Manohar Singh and another*** reported in ***(2006) 6 SCC 498.***

vi) ***Malluru Mallappa (dead) through legal representatives Vs. Kuruvathappa and others*** reported in ***(2020) 4 SCC 313.***

15. Learned counsel for respondent Sri.Harsh Desai has submitted his arguments orally and also submitted his written submissions wherein he contended that;

15.1. If this Court comes to the conclusion that Court fee is not properly valued and plaintiff has to pay deficient Court fee, then as per Section 11(4) of the Act, 1958, this Court can give some time to plaintiff to pay the deficit Court fee and if he has not paid the said amount within the prescribed period, then, the Court may take suitable action against plaintiff for recovery of the deficit Court fee as arrears of land revenue and for non-payment of deficit Court Fee, the suit cannot be dismissed in limine.

15.2. Learned counsel would further submit that when First Appellate Court is concurring with the findings of Trial Court, it need not give detailed reasons for each and every issue and even the summary judgment is permissible. Learned counsel for respondents would further submit that defendant - Society has not admitted that it is licensee under plaintiff and not admitted the title of plaintiff and also not set up title with it. Under those circumstances, when he has not admitted the ownership of plaintiff as well as plaintiff as licensor, Section 60(b) of the Act, 1882 is not applicable to the facts and he cannot claim the benefit under Section 60(b) of the Act, 1882. Only if the licensee acting upon the license has put up any permanent structure on the property in question, the Section 60(b) of the Act, 1882 applies and the license became irrevocable. However in the present case defendants have not admitted this license or licensee relationship. Hence, he is estopped from claiming the benefit under Section 16(b) of the Act, 1882.

15.3. Learned counsel would further submit that initially, defendants have not taken the plea that plaintiff - Trust is not properly represented. As per Order XXXI Rule 1 of C.P.C., the trustee, executor or administrator shall represent the plaintiff and it shall not ordinarily be necessary to make all of them as parties to the suit. P.W.1 even though Special power of attorney holder of plaintiff is fully aware about facts of the case and hence, his evidence is admissible under Order III Rule 2 of C.P.C.

15.4. Learned counsel would also submit that defendant - Society not being owner or not establishing any title on itself, cannot claim that the Gift Deed in favour of plaintiff is invalid and illegal and it can be questioned only by the donor and donee and none of them have disputed this Gift Deed. Furthermore, the legal representatives of permanent lessee have filed the suit which was dismissed as withdrawn and then, the said lease was terminated in accordance with law. Hence, the Gift Deed in favour of plaintiff is valid.

15.5. For these reasons the learned counsel for respondent prays for dismissal of the appeal with costs throughout, but fairly submitted that the Court may grant reasonable time to defendants to evict the suit schedule property as it is running a school in the suit schedule property.

16. After hearing arguments of both sides and verifying the appeal records along with First Appellate Court

and Trial Court records, finding of this Court on the above substantial question of law No.1 in the AFFIRMATIVE and substantial question of law No.2 in the NEGATIVE for the following:

REASONS

17. Plaintiff has produced the certified copy of Gift Deed as per Ex.P.23 to show that Shri Siddhahandi Bhadanganathmath Swamiji has gifted the suit schedule property in favour of plaintiff - Trust. Said Gift Deed is acted upon. Based upon it, revenue entries were mutated into the name of plaintiff in City Survey Records maintained by the concerned Town Municipal Authorities. These facts are established by plaintiff by producing relevant documents.

18. As far as lease in favour of Basayya Chennmalayya Yellapurmath is concerned, plaintiff has produced certified copies of plaint, order sheet and orders on I.A.No.1 in O.S.No.9/1997 filed by the legal

representatives of original lessee. These records reveal that said suit filed by legal representatives of original lessee was withdrawn as settled out of Court. Subsequently, Ex.P.6 was executed by the said legal representatives of permanent lessee in favour of plaintiff - Trust and thus, the lease was terminated in accordance with law. Hence, the Gift Deed coupled with these documents establishes the ownership of plaintiff over suit schedule property.

19. The defendant - Society has not set up title on it. But, it claims to be in possession of suit schedule property with permission of original lessee. Defendant - Society failed to establish the said fact. Hence, Defendant - Society being not claiming ownership over suit schedule property is estopped from contending that plaintiff is not owner of suit schedule property, that too, when its original owner and the legal representatives of permanent lessee do not disputes the ownership of plaintiff based on Gift Deed.

20. As far as Special Power of Attorney executed by plaintiff in favour of P.W.1 is concerned, P.W.1 is working in the said institution since from 2004 and he has deposed that, he is having personal knowledge and also knowledge based on records pertaining to the facts of the case. Hence, his evidence cannot be discarded in toto. Only if Special Power of Attorney holder does not have knowledge about the facts of the case, then, he cannot depose on those facts.

21. In this regard, learned counsel for appellants relied on the judgment of the Hon'ble Apex Court in ***Janki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd., and others***[1], wherein, it is held as follows:

> *"The power of attorney holder does not have the personal knowledge of the matter of the appellants and therefore he can neither depose on his personal knowledge nor can he*

[1] AIR 2005 SC 439

be cross-examined on those facts which are to the personal knowledge of the principal.

Order III, Rules 1 and 2, CPC, empowers the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order III, Rules 1 and 2, CPC, confines only in respect of "acts" done by the power of attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined."

22. In the aforesaid citation, it is specifically held that, if the power of attorney holder does not have personal knowledge about the facts of the case, then, he can neither depose on his personal knowledge nor can be

cross- examined on those facts which are in personal knowledge of the principal. Hence, his evidence cannot be the basis to pass any judgment. However, in the instant case, as discussed earlier, P.W.1 has categorically deposed that he is having personal knowledge and also knowledge based on records about facts of the present case. Furthermore, the documents relied upon by him are certified copies of Court records and the registered Gift Deed. They cannot be disputed by defendants. Hence, in that context, the evidence of P.W.1 cannot be discarded in toto and it can be looked into about the part of his evidence, wherein he is having personal knowledge and knowledge based on records.

23. With this background, the other contentions raised by the appellants are to be looked into.

24. Learned counsel for appellants vehemently submitted his arguments that the First Appellate Court has not framed the proper points of law for determination.

25. On the point of non-formulating proper points for determination by the fact, the learned counsel for appellants relied on the following citations:

25.1. The judgment of Hon'ble Apex Court in Malluru Mallappa (dead) through legal representatives Vs. Kuruvathappa and others[2] wherein at paragraph Nos.13, 15, 16 and 18 held as follows:

> ***13.*** *It is a settled position of law that an appeal is a continuation of the proceedings of the original court. Ordinarily, the appellate jurisdiction involves a rehearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the trial court are open for reconsideration. Therefore, the first appellate*

[2] (2020) 4 SCC 313

court is required to address itself to all the issues and decide the case by giving reasons. The court of first appeal must record its findings only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious application of mind and record findings supported by reasons on all issues and contentions [see: ***Santosh Hazari v. Purushottam Tiwari*** *reported in* ***(2001) 3 SCC 179****,* ***Madhukar v. Sangram*** *reported in* ***(2001) 4 SCC 756****,* ***B.M. Narayana Gowda v. Shanthamma*** *reported in* ***(2011) 15 SCC 476****,* ***H.K.N. Swami v. Irshad Basith*** *reported in* ***(2005) 10 SCC 243*** *and* ***Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar*** *reported in* ***(1980) 4 SCC 259****].*

15. *Order 41 Rule 31 CPC provides the guidelines for the appellate court to decide the matter. For ready reference Order 41 Rule 31 CPC is as under:*

> ***"31. 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."

16. *In* ***Vinod Kumar v. Gangadhar*** *reported in* ***(2015) 1 SCC 391*** *this Court has reiterated the principles to be borne in mind while disposing of a first appeal, as under: (SCC p. 395. para 15)*

"15. Again in ***B.V. Nagesh v. H.V. Sreenivasa Murthy*** *reported in* ***(2010) 13 SCC 530****, this Court taking note of all the earlier judgments of this Court reiterated the aforementioned principle with these words: (SCC pp. 530-31, paras 3-4)*

'3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41 CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court 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.

4. 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 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. 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. 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*** *reported in* ***(2001) 3 SCC 179****, SCC p. 188, para 15 and* ***Madhukar v. Sangram*** *reported in* ***(1969) 2 SCC 74****, SCC p. 758, para 5.) "*

18. *It is clear from the above provisions and the decisions of this Court that the* *judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons. Even when the first appellate court affirms the judgment of the trial court, it is required to comply with the requirement of Order 41 Rule 31 and non-observance of this requirement leads to infirmity in the judgment of the first appellate court. No doubt, when the appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by the trial court. Expression of a general agreement with the reasons given by the trial court would ordinarily suffice."*

26. In this regard, learned counsel for respondent relied on the following citations:

26.1. The judgment of Hon'ble Supreme Court in ***Nopany Investments (P) Ltd.,. Vs. Santosh Singh (HUF)***[3] is as follows:

"A perusal of the judgment of the first appellate court after remand would clearly indicate that the same was neither cryptic nor

[3] (2008) 2 SCC 728

based on non-consideration of the issues involved in the appeal. Apart from that, it has to be kept in mind that the decisions of this Court in ***Madhukar v. Sangram*** *reported in* ***(2001) 4 SCC 756*** *and* ***Santosh Hazari*** *reported in* ***(2001) 3 SCC 179*** *cases were considering the reversal of the findings of fact of the trial court. In the present case, the first appellate court had affirmed the findings of the trial court, which were based on total consideration of the material evidence-documentary and oral on record. It is well settled that in the case of reversal, the first appellate court ought to give some reason for reversing the findings of the trial court whereas in the case of affirmation, the first appellate court accepts the reasons and findings of the trial court. In any view of the matter, from a perusal of the judgment of the first appellate court, it is clear that it reflects conscious application of mind and has recorded the findings supported by reason on all the issues arising along with the contentions put forward by the parties."*

26.2. The judgment of Hon'ble Supreme Court in ***Girijanandini Devi and others Vs. Bijendra***

Narain Choudary[4] in paragraph No.13 which reads as follows:

> *"It is not the duty of the appellate court when it agrees with the view of the trial court on the evidence either to restate the effect of the evidence or to reiterate the reasons given by the trial court. Expression of general agreement with reasons given by the Court decision of which is under appeal would ordinarily suffice."*

27. On careful perusal of the principles noted in all the above said citations, in the present case, the First Appellate Court has confirmed the judgment and decree passed by Trial Court and hence, it need not give separate reasons for confirming the judgment of Trial Court. Only when divergent decisions are to be given, the First Appellate Court has to give in detail the reasons for not accepting the judgment of Trial Court and also has to frame each and every point for determination for each and every issue. In the present

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[4] 1966 SCC OnLine SC 236

case, the First Appellate Court had affirmed the findings of the Trial Court, which were based on total consideration of the material evidence-documentary and oral on record. It is well settled that in the case of reversal, the First Appellate Court ought to give some reason for reversing the findings of the Trial Court whereas in the case of affirmation, the First Appellate Court accepts the reasons and findings of the Trial Court. In that view of the matter, from a perusal of the judgment of the First Appellate Court, it is clear that it reflects conscious application of mind and has recorded the findings supported by reason on all the issues arising along with the contentions put forward by the parties.

28. The plaintiff is a Trust and in the plaint cause title, it is stated that plaintiff - Trust is represented by its Chairman.

29. Learned counsel for appellants vehemently submits that the suit filed in the present nature is not maintainable in law. Order XXXI Rule 1 of C.P.C. deals with suits by or against Trust. Hence, reading of Order XXXI Rule 1 of C.P.C. is very much required. It is extracted as follows.

> ***"1. Representation of beneficiaries in suits concerning property vested in trustees*** *etc.—In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or Administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties."*

30. In this regard, learned counsel for appellants relied on the judgment of Full Bench of Gujarat High Court in ***Atmaram Ranchhodbahi Vs. Gulamhusein Gulam***

Mohiyaddin and another*[5]*, wherein at paragraph No.15 it is held as under:

> *"15. We are, therefore, of the view that unless the instrument of Trust otherwise provides, all co-trustees must join in filing a suit to recover possession of the property from the tenant after determination of the lease. No one single co-trustee even he be a managing trustee unanimously chosen by the co-trustees, can maintain such a suit against the tenant without joining the other co-trustees. All co-trustees must be joined in the suit and if any one or more of them are unwilling to be joined in the suit as plaintiffs or for some reason or the other it is not possible to join them as plaintiffs, they must be impleaded as defendants so that all co-trustees are before the Court."*

31. On perusal of the aforesaid judgment of Full Bench of Gujarat High Court and Order XXXI Rule 1 of C.P.C., it is clear that if the suit is filed against a third person, then the trustee, executor or administrator shall represent the Trust and it shall not ordinarily be

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[5] 1972 SCC OnLine Guj 10

necessary to make all of them as parties to the suit. But if Court thinks that, it may order that all or any of them may be made as parties, the court may pass such order.

32. In the instant case, defendants have not raised any plea regarding filing of suit by the Trust represented by its Chairman. Thus, no issue was framed on this point and thus, the Trial Court has not passed any order to make all trustees as parties to the suit. However, if the suit is filed against the defendant-Trust, then all the trustees, executors and administrators shall be made as parties to the suit as per Order XXXI Rule 2 of C.P.C. As this is the suit filed on behalf of plaintiff - Trust, it is not required that all the trustees shall be made as parties to the suit.

33. Learned counsel for appellants would submit that, this being the point of law, it can be raised at any stage of the proceedings and even in appeal. In this regard, he

relied on the judgment of Hon'ble Apex Court in ***M/s.Band Box Private Limited Vs. Estate Officer, Punjab and Sind Bank and another***[6] wherein at paragraph Nos.7 and 11 it is held as under:

> *"7. On the other hand, it was submitted by Mr. Vikas Singh, learned senior counsel appearing for the respondent-Bank that the appellant had raised at an intermediate stage the plea of not being covered under the Public Premises Act, and had subsequently dropped that plea. They had then relied upon guidelines and, therefore, the plea, which is sought to be raised at a second stage, cannot be allowed to be raised now on the ground of res judicata, as well as constructive res judicata. As far as this objection of Mr. Vikas Singh is concerned, inasmuch as the plea raised by Mr. Raval is based on a legal submission, we would not like the appellant to be denied the opportunity of raising the legal plea and, therefore, we do not accept this submission.*
>
> *11. For the reasons stated above, we allow this appeal and set aside the order passed by the Division Bench as well as by the*

[6] AIR 2014 SC 1602

single Judge, by the District Judge, and the Estate Officer. The eviction proceedings initiated against the appellant will stand set aside."

34. Even though the appellants have raised this plea at the appellate stage, as per Order XXXI Rule 1 of the CPC, any one of the trustees, administrators, or executors can file the suit. Therefore, the suit filed by the Chairman of the plaintiff - Trust is maintainable and thus, this is the suit filed in a proper form.

35. With this background, the point to be considered is, when there is no landlord and tenant relationship between plaintiff and defendants, even as per plaintiff, then whether Court Fee paid under Section 41 of the Act, 1958 is proper.

36. In some of the letters correspondence between Chairman of the plaintiff and Chairman of the defendant - Trust, plaintiff has demanded rent at ₹1,000/- per month, but defendants refused to pay on

so many grounds. Admittedly, there is no lease agreement between plaintiff and defendants at any point of time. There is not even written agreement to show that defendant - Trust is licensee under plaintiff. However, it is an admitted fact that defendants are in possession of suit schedule property since 2000. It is also established by plaintiff that plaintiff is the owner of suit schedule property and not defendants. Defendants' contention that they have taken permission from the original lessee and then started possessing suit schedule property cannot be accepted because the original lessee has not handed over the property to the defendants, but the plaintiff handed over its possession to defendants in the year 2000. Much earlier to it, in the year 1997 itself, the possession of suit schedule property was handed over to plaintiff under Gift Deed and said Gift Deed was acted upon. Hence the contention of plaintiff that there is licensor and licensee relationship could be accepted because defendants are not trespassers, and only under permission of plaintiff they are in possession of suit schedule property.

37. Earned counsel for respondent relied on the judgment of Hon'ble Supreme Court in ***Bhimangouda Mallikarjungouda Dharanappagoudar and others Vs. Golangouda Adiveppagouda Honnawad***[7] wherein it is held as under:

> *"What was overlooked by the Munsiff was that for purposes of quantification of the court-fee payable, the court should look into the allegations in the plaint whatever may be the allegations in the written statement. The nature of the suit should be judged by what the plaintiff says and not by what the defendant says. Looked at in that way, the suit brought by the plaintiff was clearly one for the recovery of immovable property from a tenant governed by S. 41 (2) of the Mysore Court-fees and Suits Valuation, Act, 1958."*

[7] 1970(2) Mysore Law Journal page No.262

38. As discussed above, the plaint pleadings are that defendant - Society is a licensee under plaintiff and it has not pleaded that there is landlord and tenant relationship between parties. Hence, relying upon the principles noted in the above said Judgment of Hon'ble Apex Court, the suit has to be valued as per the pleadings in the plaint.

39. With this background, Section 41 of the Act, 1958 is to be looked into. It is extracted as under:

> **41. Suits between landlord and tenant.**
> (1) In the following suits between landlord and tenant in civil courts, namely:-
> (a) for the delivery by a tenant of the counterpart of a lease or for acceptance of patta in exchange for a much alike;
> (b) for enhancement of rent;
> (c) for the delivery by a landlord of a lease or for obtaining a patta in exchange for a much alike;
> (d) for recovering occupancy of immovable property from which a tenant has been illegally ejected by the landlord;

(e) for establishing or disproving a right of occupancy;

fee shall be levied on the amount of rent for the immovable property to which the suit relates, payable for the year next before the date of presenting the plaint.

(2) In a suit for recovery of immovable property from a tenant including a tenant holding over after the termination of a tenancy, fee shall be computed on the premium, if any, and on the rent payable for the year next before the date of presenting the plaint.
Explanation. - Rent includes also damages for use and occupation payable by a tenant holding over.

40. A plain reading of Section 41 of the Act, 1958 reveals that, when a suit is filed between landlord and tenant, then the fee shall be computed under the said section. However, admittedly, this suit is not filed alleging the landlord and tenant relationship. Hence, application of Section 41 of the Act, 1958 by plaintiff is not proper

and holding of Trial Court that said provision applies to present suit is also not proper.

41. When there is no other provision applicable for filing a suit for possession, then under Section 29 of the Act, 1958, the court fee is to be valued. Section 29 of the Act, 1958 is extracted below:

> **29. Suits for possession not otherwise provided for.**
> - In a suit for possession of immovable property not otherwise provided for, fee shall be computed on the market value of the property or on [rupees one thousand].

42. Thus in a suit for possession of immovable property, not otherwise provided for, fee shall be computed on the market value of the property. However, this point is not at all touched by the First Appellate Court whereas the Trial Court has passed its judgment by answering issue No.13 that Section 41 of the Act, 1958 is applicable to the case on hand which is erroneous. It requires interference. Hence the court

fee valued by plaintiff under Section 41 of the Act, 1958 is incorrect. Plaintiff has to file fresh valuation slip with correct market value as on the date of filing of the suit and to pay the court fee by calculating the court fee as on the date of filing of the suit.

43. In this regard, as per Section 11 of the Act, 1958, if the Court of Appeal decides that court fee paid before Trial Court is insufficient, then Court shall require the party liable to pay the deficit fee within the time fixed by it.

44. Section 11 of the Act, 1958 reads as follows:

> ***11 - Decision as to proper fee in courts***-
>
> *(1) In every suit instituted in any court, the Court shall, before ordering the plaint to be registered, decide on the materials and allegations contained in the plaint and on the materials contained in the statement, if any, filed under section 10, the proper fee payable thereon, the decision being however subject to review, further review, and correction in the*

manner specified in the succeeding sub-sections.

(2) Any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim but, subject to the next succeeding sub-section, not later, plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the court shall fix a date before which the plaint shall be amended in accordance with the Court's decision and the deficit fee shall be paid. If the plaint be not amended or if the deficit fee be not paid within the time allowed, the plaint shall be rejected and the court shall pass such order as it deems just regarding costs of the suit.

(3) A defendant added after issues have been framed on the merits of the claim may, in the written statement filed by him, plead that the subject-matter of the suit has not been

properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim, and if the court finds that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the court shall follow the procedure laid down in sub-section (2).

Explanation.—Nothing in this sub-section shall apply to a defendant added as a successor or a representative in interest of a defendant who was on record before issues were framed on the merits of the claim and who had an opportunity to file a written statement pleading that the subject-matter of the suit was not properly valued or that the fee paid was not sufficient.

(4) (a) Whenever a case comes up before a court of appeal, it shall be lawful for the court, either on its own motion or on the application of any of the parties, to consider the correctness of any order passed by the lower court affecting the fee payable on the plaint or in any other proceeding in the lower court and determine the proper fee payable thereon.

Explanation.—A case shall be deemed to come before a court of appeal even if the appeal relates only to a part of the subject-matter of the suit.

(b) If the court of appeal decides that the fee paid in the lower court is not sufficient, the court shall require the party liable to pay the deficit fee within such time as may be fixed by it.

(c) If the deficit fee is not paid within the time fixed and the default is in respect of a relief which has been dismissed by the lower court and which the appellant seeks in 15 appeal, the appeal shall be dismissed, but if the default is in respect of a relief which has been decreed by the lower court, the deficit fee shall be recoverable as if it were an arrear of land revenue.

(d) If the fee paid in the lower court is in excess, the court shall direct the refund of the excess to the party who is entitled to it.

(5) All questions as to value for the purpose of determining the jurisdiction of courts arising on the written statement of a defendant shall be heard and decided before evidence is

recorded affecting such defendant, on the merits of the claim.

***Explanation.*—**In this section, the expression "merits of the claim" refers to matters which arise for determination in the suit, not being matters relating to the frame of the suit, misjoinder of parties and causes of action, the jurisdiction of the court to entertain or try the suit or the fee.

45. Thus the respondent/plaintiff is directed to file fresh valuation slip and to pay deficit court fee within four weeks from the date of receipt of certified copy of this judgment.

46. A plain reading of said provision makes it amply clear that, when the appellate court held that court fee paid is insufficient; then, merely because the court fee paid is insufficient, then the suit cannot be dismissed on that ground. An opportunity is to be given to the plaintiff to pay the deficit court fee and if he fails to do so, then it shall be recoverable as if it is arrears of land revenue.

47. In this regard, learned counsel for the respondent relies on the judgment of Division Bench of this Court in the case of ***Venkatesh R. Desai Vs. Smt. Pushpa Hosmani and others***[8].

> 35. Accordingly, and in view of the above, we are clearly of the view that by virtue of Section 11 of the Karnataka Court Fees and Suits Valuation Act, 1958 read with Order XIV Rule 2 of the Code of Civil Procedure, 1908, when an issue of valuation and/or Court fees is raised in a civil suit on the objection of the defendant, the same is not invariably required to be tried as a preliminary issue and before taking evidence on other issues; but could be tried as a preliminary issue if it relates to the jurisdiction and the Trial Court is of the view that the suit or any part thereof could be disposed of on its determination. The reference stands answered accordingly.

48. In the instant case, the suit is filed before the Senior Civil Judge Court, which has got pecuniary jurisdiction to entertain the suit. All suits above the market value

[8] ILR 2008 KAR 5095

of ₹5,00,000/- shall be filed before Senior Civil Judge Court. Hence there was pecuniary jurisdiction to entertain the suit, even if the market value of more than ₹10,00,000/-, the suit shall be filed before the Senior Civil Judge Court. Hence the suit cannot be dismissed on the ground of no pecuniary jurisdiction. Under these circumstances, even though the issue regarding court fee was not tried as preliminary issue, the same is not fatal to the case of the plaintiff.

49. Learned counsel for appellants vehemently submitted that, when once plaintiff permitted defendants to put up construction of permanent nature in the suit schedule property; then plaintiff is estopped from revoking the license in favour of defendants and immediately, the license given to defendants became irrevocable. In this regard, he relied on Section 60 of the Act, 1882, which deals with licenses.

50. Section 60 of the Act, 1882 is extracted below:

> 60. License when revocable.—A license may be revoked by the grantor, unless—
> (a) it is coupled with a transfer of property and such transfer is in force;
> (b) **the licensee, acting upon the license**, has executed a work of a permanent character and incurred expenses in the execution.

51. According to this Section 60(b) of the Act, 1882, when the licensee acting upon the license has put up any permanent structure, then the licensor is estopped from revoking the license and the nature of license would become permanent and irrevocable.

52. In this regard, learned counsel for appellants relied on the judgment of Hon'ble Supreme Court in the case of ***Ram Sarup Gupta (dead) by Legal representatives Vs. Bishun Narain Inter College and Others***[9], wherein it is held as under:

> ***Head Note (B) Easements Act (5 of 1882),***

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[9] AIR 1987 SC 1242

> *S.60(b)-Irrevocable licence-Revocation of-Grant of license in respect of certain premises and land attached thereto for running school-Subsequently, the school acting upon licence, made constructions on land without any objection by licenser-Held, the licence being irrevocable, the licenser or the transferee from him could not revoke it or evict school.*

53. In the instant case, in the plaint, plaintiff contended that it has constructed the building and then it was given to defendants. In this regard defendants have produced the license, approved plan and some other documents to show that first floor in suit schedule property is constructed by the defendants. These facts are not in serious dispute.

54. It is to be noted here that, while cross-examining DW1, a suggestion was put to him that ground floor of the building was constructed by plaintiff Institution, which is denied by him. But there is no specific suggestion that first floor of the building is also constructed by the plaintiff. These facts clearly

establish that defendants have put up construction of first floor in the suit schedule property. Plaintiff has not objected for such construction. Hence, whether Section 60 (b) of the Act, 1882 applies to the facts of present case or not is to be analyzed.

55. Since from beginning of the written statement and even earlier to it, while giving reply to the termination notice, defendants have never admitted that they are licensees under plaintiff - licensor. When this relationship of licensor and licensee is admitted, then the Section 60(b) of the Act, 1882 will have its application.

56. It is specifically stated in Section 60(b) of the Act, 1882, that when the **licensee acting upon license** has executed a work of permanent character, then the license became irrevocable.

57. In the present case, as discussed above, defendants never admitted the ownership of plaintiff or that

plaintiff is licensor and defendants are licensee. However, according to them, they have taken permission from one lessee – Basayya Chennamallayya Yellapurmath and not from plaintiff to put up construction in the suit schedule property. When they have not acted upon the license, then they are not entitled for the benefit available under Section 60(b) of the Act, 1882.

58. Accordingly, the substantial questions of law No.(i) is answered in the ***Affirmative*** and substantial question of law No.(ii) is answered in the ***Negative*****.**

59. Hence, this Court pass the following:

ORDER

The appeal filed under Section 100 CPC is ***partly allowed*** by modifying the judgment and decree dated 18.08.2015 passed by the Senior Civil Judge, Yallapur, in O.S.No.31/2011 as under:

i. Plaintiff is hereby directed to file fresh valuation slip by valuing the suit schedule property under Section 29 of the Act, 1958 as on the date of suit and to pay court fee on that valuation slip within four weeks from the date of obtaining certified copy of the judgment;

ii. One year time is given to defendants to vacate and hand over vacant possession of suit schedule property to the plaintiff.

iii. Other portion of the judgment of Trial Court is unaffected.

SD/-
(GEETHA K.B.)
JUDGE

SH- upto Para 4
SSP: Para 5 to 45
gab: Para 46 to end
List No.: 1 Sl No.: 25