Citation : CDJ 2017 MHC 5212

Court : High Court of Judicature at Madras

Case No : S.A.No. 849 of 2011 & M.P.No. 1 of 2011

Judges : THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

Parties : O.K. Venkatramani @ Venkatraman Rep. by Power of Attorney Agent Sathyalakshmi & Others Versus Coimbatore Diocese Society, Periakodiveri, Rep. by its Manager Periakodiveri Village, Erode District

Appearing Advocates : For the Appellants: S.V. Jayaraman, Senior Counsel, N. Srinivasan, Advocate. For the Respondent: P.R. Balasubramnaian, Advocate.

Date of Judgment : 09-08-2017

Head Note :

**Civil Procedure Code - Section 100,Order 41,Rule 31 - Easmentary Right** - Declaration - Non-compliance - Appeal against reversal of judgment and decree of lower Appellate court in suit for declaration of free use of suit cart track -

Court Held - No plea by Plaintiff as to when disputed cart track was formed, ownership of cart-track and when Plaintiff was allowed to use cart track - No allegations by Plaintiff about disturbance of usage of cart track by Fourth/Defendant-Diocese - No sufficient documentary evidence to prove that Plaintiff had acquired eastmentary right over cart track - From pleadings clear that Fourth defendant-Diocese on a mutual understanding permitted plaintiffs to use cart-track that was formed by fourth defendant-Diocese - Duty upon the plaintiffs to prove their case and not fourth defendant - Points to be framed for determination of issue and reasons and decisions must be given as per terms of decision of Apex Court - Even though lower appellate Court did not frame any point for consideration, it has delved into factual details of entitlement of parties with regard to suit-cart-track - Lower appellate Court right in reversing judgment and decree of trial Court - No substantial question of law involved - For substantial compliance of disposal of First Appeals, lower appellate Courts/first appellate Courts, shall henceforth ensure that relevant points are framed for determination in First Appeals and shall give reasons and strict compliance of Order 41 Rule 31 CPC shall be made while deciding First Appeals - Second Appeal dismissed.

Para -17,26 to 29

Cases Relied:
1993 (1) MLJ 26 = 1992 Writ L.R. 716(Madras High Court) (V.Tamil Selvan Vs. The State of Tamil Nadu):
(ii) 1983 (3) SCC 333 = AIR 1983 SC 622 = MANU/SC/0054/1983 (Dr.Vijay Kumar Kathuria and another Vs. State of Haryana and others):
1994 (1) LW 21 (SC) = 1994 (1) SCC 1(S.P.Chengalvaraya Naidu Vs. Jagannath):
V.Tamil Selvan Vs. The State of Tamil Nadu - 1993 (1) MLJ 26

Comparative Citations:
2017 (4) LW 439, 2018 (1) MWN(Civil) 454,

Judgment :

(Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 20.12.2010 in A.S.No.35 of 2010 on the file of the Subordinate Court, Gobichettipalayam, against the judgment and decree dated 27.01.2010 in O.S.No.389 of 2004 on the file of the District Munsif Court, Gobichettipalayam.)

The unsuccessful plaintiffs before the first appellate Court, are the appellants herein.

2. The plaintiffs have filed the suit (i) for declaration, declaring the plaintiffs' right of free use of the suit cart-track, marked as ABCD in yellow colour in the plaint plan as described in the suit schedule property, (ii) to restrain the defendants and their men from in any way interfering with the plaintiffs' free use of the suit cart-track marked as ABCD in yellow colour in the plaint plan more-fully described in the suit schedule, by taking carts, and (iii) to direct the fourth defendant-Diocese Society to remove the gate (12.8' x 5') which was put up by the fourth defendant-Diocese Society, in ABC cart-track in between (9-10) Mori, found by the Commissioner by way of mandatory injunction, failing which the Court Commissioner may be appointed to remove the gate. (plaint amended as per order in I.A.No.1295 of 2007, dated 03.04.2008).

3. The fourth defendant-Diocese Society earlier was not a party to the suit, and they were impleaded as per order in I.A.No.1122 of 2004, dated 08.12.2004 and amended as per order in I.A.No.295 of 2005, dated 16.03.2005 before the trial Court. The plaintiffs 2 to 4 were added as parties as per order in I.A.No.646 of 2006, dated 22.01.2007 and amended as per order in I.A.No.401 of 2007, dated 28.06.2007.

4. According to the plaintiffs, the red marked tenancy land portion in which the suit cart track runs, is being in possession from the year 1930 originally belonging to the family of the plaintiffs. It is further stated by the plaintiffs that the cart track was in existence for the past more than 80 years and that the plaintiffs and their family are entitled to use the suit cart track by way of right of easement of prescription, grant and necessity. It is further stated that there is no other cart track to reach the plaintiffs' land and their family.

5. It is the case of the fourth defendant that he is the owner of the suit property and there was no cart-track in existence at any point of time. In order to enable the plaintiffs to reach the defendants' land, the fourth defendant permitted the plaintiffs to use the land and there was neither a private cart-track nor a public cart-track. The public was not allowed to use the land. That apart, the plaintiffs, by means of collusive suit, initially impleaded the defendants 1 to 3 excluding the fourth defendant-Diocese Society and tried to obtain an order and on coming to know of this, I.A. was filed to implead the fourth defendant-Diocese Society as a party to the suit, which was also allowed. It is denied by the fourth defendant that the plaintiffs are free users of the suit cart track marked as ABCD in the plaint plan. It is further contended that the gate in between 9-10 mori, was put up by the fourth defendant-Diocese.

6. It is the further case of the fourth defendant-Diocese that the plaintiffs have not come to the Court with clean hands. According to the fourth defendant, the suit itself is not maintainable in law, and there is no common cart-track in existence. The suit property belongs to the fourth defendant-Diocese. The red colour portion, which was marked in S.No.94/2 and the shed therein belongs to the fourth defendant and the cart-track has been laid by the fourth defendant only to enter into their premises and not for the plaintiffs to use the same to enter into their premises. The contention of the

fourth defendant is that there is no cart-track to enter the land of the plaintiffs, and hence, the plaintiffs are not entitled to seek the relief sought for in the suit, and prayed that the suit may be dismissed.

7. The trial Court, after framing necessary issues and taking note of the admission made in the written statement that there was oral agreement between the plaintiffs and the fourth defendant to enable the plaintiffs to use the cart track to reach the plaintiffs' place and as there was no consent for using the cart-track allowed by the plaintiffs, that the marked portion ABCD was used as cart track for years, which has been established through documentary evidence and that the fourth defendant-Diocese has got a separate way to enter into their land, and hence, the plaintiffs are entitled to the relief sought for, namely to use the cart-track. That apart, it has been further observed by the trial Court that the gate 12.8' x 5' has been allowed by the defendants in order to prevent the plaintiffs from using the cart-track and that the same has got to be removed.

8. Taking note of the factual position, the trial Court further observed that the plaintiffs are entitled to the relief sought for and the yellow colour portion, namely ABCD, which is a cart-track, which the plaintiffs are entitled to use it freely and that the defendants or their men shall not interfere and disturb the use of the said cart-track by the plaintiffs and that the gate mentioned supra, has got to be removed by the fourth defendant-Diocese within two months, failing which, the trial Court will have to appoint an Advocate Commissioner to remove the gate.

9. Aggrieved by the above said findings of the trial Court, the fourth defendant-Diocese preferred First Appeal in A.S.No.35 of 2010, in which, the lower appellate Court came to the conclusion that the contention of the plaintiffs that they have acquired the right of easement over the cart-track, has not been proved through sufficient oral and documentary evidence and thereby, the lower appellate Court allowed the appeal and dismissed the suit. The lower appellate Court, without framing any issue properly, has erroneously allowed the appeal, and it is this reversal finding of the lower appellate Court, which is under challenge in this Second Appeal.

10. This Court, by order dated 18.07.2011, has ordered "notice of motion", subsequent to which, the Second Appeal had been pending, and now, this Court is taking up the Second Appeal for final disposal on the merits of the matter. As the Second Appeal is pending for years, instead of remanding the matter to the lower appellate Court on the ground of improper framing of the point by it, disposes of this Second Appeal as follows.

11. Heard both sides and perused the materials available on record.

12. The contention of the fourth defendant-Diocese is that at no point of time, easementary right over the cart-track was proved and whether it is proved or not, the finding of the trial Court is that the cart-track was in existence for 20 or more years by the trial Court. P.W.2 Sathyalakshmi has stated that she is not aware of the pathway in the patta land or in poramboke land. The appellants/plaintiffs have not come to the Court with clean hands and that of course, the fourth respondent-Diocese filed a petition to implead themselves in the suit by dubious method and the plaintiffs have been trying to usurp the portion of the land, which has been stalled by the fourth respondent-Diocese by getting themselves impleaded in the suit. But however, the trial Court has brushed aside this aspect of the matter and without any evidence to the effect that the plaintiffs have established the easementary right, the trial Court has granted the relief as prayed for by the plaintiffs. Mere proceeding on the basis that there was admission in the written statement, cannot be relied on to hold that the plaintiffs have been permitted to use a portion of the plaintiffs' land to route their land, but at no point of time, it can be construed that it is easementary right and there was a Memo filed before the Court below to the effect that there was a portion of land for suit cart-track. The suit was filed on 09.06.2004 for the cause of action arose on 02.06.2004. The fourth defendant-Diocese was impleaded by order dated 16.03.2005 in I.A.No.295 of 1995 and dated 08.12.2004 in I.A.No.1122 of 2004 before the trial Court and the

plaint was amended on 03.04.2008 in I.A.No.1295 of 2007 with regard to the details of the schedule property. The written statement was filed on 16.06.2006.

13. Admittedly, initially, there was no relief sought for against the fourth defendant-Diocese initially, but the prayer in the plaint was amended seeking relief as against the fourth defendant-Diocese also. In any event, it is submitted that the cart-track was found by the fourth defendant-Diocese and the permission was granted by the fourth defendant to the plaintiffs to use the cart-track to go to his family property. Only with the said permission/understanding, the plaintiffs have been using the property and on coming to know that the fourth defendant-Diocese was erecting a gate for their property, the plaintiffs have approached the Court as if they were prevented from using the cart-track. In fact, in the suit, defendants 1 to 3 alone were impleaded initially and the plaintiffs are projecting the case as if the defendant(s) have obstructed the plaintiffs property. As stated supra, since the plaintiffs have not approached the Court with clean hands, on that score, the suit has got to be dismissed.

14. The lower appellate Court came to the conclusion that the cart-track in dispute is said to have been in existence for more than 80 years and the plaintiffs have not produced any document to establish the same. The only document filed by the plaintiffs is that they were in possession of the leasehold property for more than 80 years and only later, it is said to have been retained by Catholic on 02.12.1931 on the basis of the letter said to have been written by the Priest of the Catholic Mission to one O.Venkatarao. The other documents establish the title and ownership of the plaintiffs' property and there is no dispute with regard to the title over the properties in S.Nos.95, 96, 124, 125 etc. The lower appellate Court has extracted a portion from Ex.A-14, dated 02.12.1931, addressed by the Priest of Catholic Mission to the said O.Venkatarao, and the relevant portion of the same reads as follows:

“TAMIL”

15. From the above extract of Ex.A-14, it is clear that it cannot be construed that the plaintiffs and their family had been in possession of the leasehold property for more than 80 years. As rightly contended by the learned counsel for the fourth defendant/respondent herein, the lower appellate Court rightly observed that being the owner of the property, the fourth defendant-Diocese is entitled to have a gate of their own choice in the land and it cannot be construed as obstruction being done to the plaintiffs.

16. The contention of the learned counsel for the plaintiffs that the fourth defendant-Diocese has taken law in their own hands and made alterations by erecting the gate, cannot be accepted. Admittedly, permission was granted to use the cart-track as pathway and the land belongs to the fourth defendant-Diocese. The plaintiffs have not established the easementary right by prescription or grant or necessity and hence, the trial Court was wrong in granting the relief to the plaintiffs and the lower appellate Court is right in reversing the judgment and decree of the trial Court.

17. In the plaint, the plaintiffs have never accused the fourth defendant-Diocese about the disturbance of the usage of pathway-cart-track. There is also no plea as to when the cart-track was formed, which is in dispute, and who was the owner of the cart-track and when he was allowed to use the cart-track, etc., had also not been proved by sufficient evidence by the plaintiffs. The plaintiffs have not proved that they have acquired easementary right over the cart-track through sufficient documentary evidence, as rightly held by the lower appellate Court. From the pleadings, it is clear that the fourth defendant-Diocese, on a mutual understanding, has permitted the plaintiffs to use the cart-track that was formed by the fourth defendant-Diocese, which is only meant to enter into the premises of the fourth respondent-Diocese. Even though it has been contended that the consent or permission is said to have been granted, the duty cast upon the plaintiffs to prove their case and not the fourth defendant.

18. Even though much stress has been made with regard to the written statement, wherein it is stated that there was a cart-track which has been in existence, and there was mutual understanding, on a reading of the written statement, it is clear that the plaintiffs have been permitted to use the cart-track to go to their land and by no stretch of imagination, it can be construed that the plaintiffs have got easementary right over the property.

19. As the intention of the plaintiffs appears to usurp the place, he has made the other three persons who are not at all concerned with the property to the suit, as party-defendants and take the property that belong to the fourth defendant-Diocese. The ownership of the respondent-fourth defendant with regard to the so-called cart-track is not in dispute and that it belongs to the fourth defendant-Diocese. It cannot also be construed that the plaintiffs were obstructed by the fourth defendant-Diocese and the plaintiffs have also not established as to how the respondents 1 to 3 have prevented the plaintiffs from using the cart-track.

20. From all the above facts, this Court finds that the plaintiffs have not approached the Court with clean hands. In this context, it is worthwhile to refer the following decisions:

(i) 1993 (1) MLJ 26 = 1992 Writ L.R. 716 (Madras High Court) (V.Tamil Selvan Vs. The State of Tamil Nadu):

"28. I am concerned with the question whether the petitioner can claim any relief in the present two writ petitions. The remedy under Article 226 of the Constitution is an extraordinary and discretionary remedy. This Court would be fully justified in refusing to exercise its discretion in favour of a person who has abused the process of court and suppressed material and relevant factors and obtained orders from the High Court. It is on the strength of such orders, the petitioner is now claiming relief in the present writ petitions. In my view, Court should not be a party and extend its helping hand to a person who has played a fraud on court.

29. It is also significant to notice that the writ petitioner has not chosen to mention about W.P.No.1835 of 1991 and W.A.No.429 of 1991 in the present two writ petitions. The petitioner has not come to court with clean hands and failed to disclose material facts. The reason for not mentioning the above facts is also obvious. If the petitioner were to disclose the earlier writ proceedings in W.P.No.9008 of 1991, the Court would have not only declined the relief but also frowned on the petitioner. Equally, if all the relevant facts are mentioned in the present writ petitions, the court would not have even entertained the writ petitions. I have no doubt in my mind that the petitioner has been misleading the court and obtained favourable orders and is trying to mislead the court further. Though I would be justified in not embarking on the merits of the case, yet, I do not find any ground to grant the reliefs claimed. ... ...

33. Again, these materials facts have been suppressed in W.P.Nos.5793, 6503 and 6504 of 1992. Consequently, the petitioner is not entitled to any consideration at the hands of this Court in view of the landmark decision of Rajagopalan,J., in the case reported in K.Marappa Gounder, K.M.S.Bus Service Vs. The Central Road Traffic Board, Madras (1956) 1 MLJ 324. Hence this Court should decline to grant any relief to the writ petitioner in the exercise of its jurisdiction under Article 226 of the Constitution of India. Accordingly, both the writ petitions (W.P.Nos.6503 and 6504 of 1992) are dismissed with costs of Rs.5,000/- i.e. Rs.2,500/- in each case. The award of heavy cost is justified in view of the unfair conduct of the petitioner. Such award of cost has been held to be proper and justified by the Apex Court in the decision reported in Dr.Vijay Kumar Kathuria Vs. State of Haryana - 1983 (3) SCC 333)."

(ii) 1983 (3) SCC 333 = AIR 1983 SC 622 = MANU/SC/0054/1983 (Dr.Vijay Kumar Kathuria and another Vs. State of Haryana and others):

"... In other words, it is clear that on 1.10.1982 the petitioners made a false representation to this Court that they were continuing their studies as post-graduate students of Medical College Rohtak on 1.10.1982 and obtained an order of status quo as of that date to be maintained from this Court. But for the misrepresentation this Court would never have passed the said order. By reason of such conduct they have disentitled themselves from getting any relief or assistance from this Court and the Special Leave Petitions are liable to be dismissed.

... ...

Before parting with the case, however, we cannot help observing that the conduct or behaviour of the two petitioners as well as their counsel (Dr.A.K.Kapoor who happens to be medico-legal consultant practising in Courts) is most reprehensible and deserves to be deprecated. The District Judge's report in that behalf is eloquent and most revealing as it points out how the two petitioners and their counsel, (who also gave evidence in support of the petitioner's case before the District Judge) have indulged in telling lies and making reckless allegation of fabrication and manipulation of records against the College Authorities and how in fact the boot is on their leg. It is a sad commentary on the scruples of these three young gentlemen who are on the threshold of their carriers. In fact, at one stage we were inclined to refer the District Judge's report both to the Medical Council as well as the Bar Council for appropriate action but we refrained from doing so as the petitioners' counsel both on behalf of his clients as well as on his own behalf tendered unqualified apology and sought mercy from the Court. We, however, part with the case with a heavy heart expressing our strong disapproval of their conduct and behaviour but direct that the petitioners will pay a sum of Rs.2,500 each as by way of costs to the respondents. The two SLPs. and CMP are thus dismissed with the aforesaid direction in regard to payment of costs."

(iii) 1994 (1) LW 21 (SC) = 1994 (1) SCC 1 (S.P.Chengalvaraya Naidu Vs. Jagannath):

"5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence." The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex.B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court

that the appellants-defendants could have easily produced the certified registered copy of Ex.B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital documents in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

21. From the above decisions, it is clear that if any person is approaching the Court with unclean hands, he shall not be shown any indulgence and he is not entitled to any relief sought for by him.

22. In the case on hand, the fourth defendant-Diocese has put up construction, namely the gate in their property, and that property belongs to them, which is also not in dispute, which has also been admitted by the plaintiffs. Even though no points have been properly framed for determination by the lower appellate Court under Order 41 Rule 31 CPC which deals with appeals from original decrees and more particularly, Rule 31 therein deals with contents, date and signature of the judgment. In the case on hand, the only issue that has been framed by the lower appellate Court is in paragraph 9 of the impugned judgment, i.e. "whether the appeal is to be allowed". As the entire issue that is dealt with now and based on the arguments advanced on either side and also taking note of the grounds raised in the appeal before the lower appellate Court and the facts that are narrated above and discussed by the Courts below, in non- formation of the issues as contemplated under Order 41 Rule 31 CPC, is not going to affect the relief sought for by the appellants in this appeal/plaintiffs.

23. With regard to substantial compliance of rendering judgment in any appeal, more particularly, the first appellate Court, the learned counsel for the respondent (fourth defendant) relied on a decision of the Supreme Court reported in 2006 (3) SCC 224 (G.Amalorpavam Vs. R.C.Diocese of Madurai), wherein the Apex Court held as follows:

"6. In support of the appeals, learned counsel for the appellants submitted that the High Court did not keep in view the true scope and ambit of Order 41 Rule 31 CPC. Points for determination were not specifically indicated by the First appellate Court and, therefore, the judgment was non est.

7. Learned counsel for the respondents on the other hand supported the impugned judgment.

8. Order 41 Rule 31 CPC reads as follows:

"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."

9. The question whether in a particular case there has been a substantial compliance with the provisions of Order 41 Rule 31 CPC has to be determined on the nature of the judgment delivered in each case. Non-compliance with the provisions may not vitiate the judgment and make it wholly void, and may be ignored if there has been substantial compliance with it and the second appellate Court is in a position to ascertain the findings of the lower appellate Court. It is no doubt desirable that the appellate court should comply with all the requirements of Order 41 Rule 31 CPC. But if it is

possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not thereby suffered, that would be sufficient. Where the appellate court has considered the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate Court there is substantial compliance with the provisions of Order 41 Rule 31 CPC and the judgment is not in any manner vitiated by the absence of a point of determination. Where there is an honest endeavour on the part of the lower appellate court to consider the controversy between the parties and there is proper appraisement of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifest by the perusal of the judgment of the lower appellate court, it would be a valid judgment even though it does not contain the points for determination. The object of the Rule in making it incumbent upon the appellate court to frame points for determination and to cite reasons for the decision is to focus attention of the Court on the rival contentions which arise for determination and also to provide litigant parties opportunity in understanding the ground upon which the decision is founded with a view to enable them to know the basis of the decision and if so considered appropriate and so advised to avail the remedy of Second Appeal conferred by Section 100 CPC.

10. At this juncture it would be relevant to note what this Court said in Girijanandini Devi and Ors. Vs. Bijendra Narain Choudhary (1967 (1) SCR 93 = AIR 1967 SC 1124). In AIR para 12 it was noted as follows (SCR p.101 F-G):

"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."

11. The view was reiterated in Santosh Hazari Vs. Purshottam Tiwari (2001 (3) SCC 179). In para 15 it was held with reference to Girijanandini Devi's case (1967 (1) SCR 93 = AIR 1967 SC 1124) as follows (SCC pp.188-89):

"..... 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. The task of an appellate court affirming the findings of the trial court is an easier one. The appellate court agreeing with the view of the trial court need not restate the effect of the evidence or 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 (see - Girijanandini Devi Vs. Bijendra Narain Choudhary (1967 (1) SCR 93 = AIR 1967 SC 1124). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate court for shirking the duty cast on it. While writing a judgment of reversal the appellate court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial court must weigh with the appellate court, more so when the findings are based on oral evidence recorded by the same Presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate court is entitled to interfere with the finding of fact. (see - Madhusudan Das Vs. Narayanibai ( (1983) 1 SCC 35 = AIR 1983 SC 114)). The rule is -- and it is nothing more than a rule of practice -- that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the

evidence of a particular witness which has escaped the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate court should not interfere with the finding of the trial Judge on a question of fact. (see - Sarju Pershad Vs. Jwaleshwari Pratap Narain Singh (1950 SCR 781 = AIR 1951 SC 120). Secondly, 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. We need only remind the first appellate courts of the additional obligation cast on them by the scheme of the present Section 100 substituted in the Code. The first appellate court continues, as before, to be a final court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate court is also a final court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate court even on questions of law unless such question of law be a substantial one."

24. It is argued by the learned counsel for the plaintiffs that the lower appellate Court in paragraph 9 has framed a general point for determination, rather than the substantial compliance.

25. In this regard, it is worthwhile to quote Order 41 Rule 31 CPC as follows:

Order 41 : Appeals from original decrees:

Rule 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."

26. From the above judgment of the Supreme Court, it is seen that the points have got to be framed for determination of an issue and the reasons and decisions must be given in terms of the decision of the Apex Court, and that substantial compliance is sufficient and there is no need that it should be in the form as mentioned in Order 41 Rule 31 CPC. Thus, if substantial compliance of the said provision of the CPC is there, even without framing the points as mentioned in Rule 31 CPC of Order 41, and if the lower appellate Court is going to answer all the points raised by the parties, that itself would be substantial compliance. In the case on hand, even though the lower appellate Court did not frame any point for consideration, yet, it has delved into the factual details of the entitlement of the parties with regard to the suit-cart-track.

27. Hence, for the foregoing reasonings, the judgment and decree of the lower appellate Court are confirmed and this Court holds that the lower appellate Court is right in reversing the judgment and decree of the trial Court, and the same is perfectly in order.

28. There being no question of law, much less substantial question of law, the Second Appeal is dismissed, confirming the judgment and decree of the lower appellate Court. No costs. Consequently,

the miscellaneous petition is closed.

29. For substantial compliance of the disposal of the First Appeals, the lower appellate Courts/first appellate Courts, shall henceforth ensure that the relevant points are framed for determination in the First Appeals and shall give reasons and strict compliance of Order 41 Rule 31 CPC shall be made while deciding the First Appeals.