

NON-REPORTABLE**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. 6744 of 2013****MANJULA & ORS.****...APPELLANT(S)****VERSUS****SHYAMSUNDAR & ORS.****...RESPONDENT(S)****O R D E R**

1. This appeal is directed against the judgment and decree in R.F.A. No. 468 of 2004 dated 07.09.2006 whereby the High Court of Karnataka has dismissed the appeal filed by the appellants.

2. The appellants were the plaintiffs in O.S. No. 1/2002 on the file of the Principal Sessions Judge, Dharwad, and the respondents were the defendants. The plaintiffs filed a petition under Section 278 of the Indian Succession Act, 1925 praying for issuance of a letter of administration in respect of the Will dated 19.12.1976 executed by one Srinivas Gambhir. Since the defendants challenged the execution of the Will, the said petition was registered as a suit. Srinivas Gambhir died on 24.12.1983. According to the plaintiffs, at the time of his death, he left the aforesaid Will in the custody of the scribe of the Will. They have further contended that by the said Will,

deceased-Srinivas Gambhir bequeathed his undivided share in the suit scheduled property in favour of the plaintiffs. On the basis of this Will, the plaintiffs claim title to the said property.

3. The defendants are the brother and sisters of Srinivas Gambhir. They have denied execution of the said Will in their written statement. They have also contended that Srinivas Gambhir was an idiot/lunatic in the care and custody of his mother-Indirabai and was incompetent to execute a Will. The competency of Srinivas Gambhir to execute the Will has already been decided by a judgment and decree passed by the High Court in R.F.A. NO.582/1987 dated 8/11.01.1988.

4. On the basis of the pleadings of the parties, the trial court framed the following issues:

“(1) Whether Plaintiffs prove that deceased Srinivas S/o Gururao Gambhir had executed a Will dated 19.12.1976 on his own bequeathed his undivided share in the properties, detailed in the Complaint annexed?

(2) Whether the Plaintiffs further prove that deceased was in sound state of mind at the time of execution of the Will?

(3) Whether defendants prove that the suit WILL is concocted, created and fabricated one?

(4) Whether there is cause of action in the suit?

(5) Whether the Court fee paid is correct?

(6) What decree or Order?"

5. On appreciation of the oral and documentary evidence on the record, the trial court dismissed the suit by a judgment and decree dated 27.11.2003. The plaintiffs challenged the said judgment and decree before the High Court of Karnataka. As noticed above, the High Court has dismissed the appeal, thereby confirming the judgment and decree of the trial court.

6. We have heard the learned counsel for the parties and also perused the judgment and decree passed by the High Court.

7. As noticed above, the trial court had framed as many as six issues. The appeal before the High Court involved questions of law and facts. However, the High Court, without examination any of these aspects save for the medical evidence at Exhibit D-4, has dismissed the appeal by a cryptic order. The High Court has not adverted to any of the contentions of the parties. The High Court has also not appreciated the oral evidence adduced by the parties.

8. Section 96 of the Code of Civil Procedure, 1908 (for short, 'CPC') provides for filing of an appeal from the decree passed by a court of original jurisdiction. Order 41 Rule 31 of the CPC provides

the guidelines to the appellate court for deciding the appeal. This rule mandates that the judgment of the appellate court shall state (a) 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. Thus, the appellate court has the jurisdiction to reverse or affirm the findings of the trial court. It is settled law that an appeal is a continuation of the original proceedings. The appellate court's jurisdiction involves a rehearing of appeal on questions of law as well as fact. The first appeal is a valuable right, and, at that stage, all questions of fact and law decided by the trial court are open for re-consideration. The judgment of the appellate court must, therefore, reflect conscious application of mind and must record the court's findings, supported by reasons for its decision in respect of all the issues, along with the contentions put forth and pressed by the parties. Needless to say, the first appellate court is required to comply with the requirements of Order 41 Rule 31 CPC and non-observance of these requirements lead to infirmity in the judgment.

9. In the instant case, the High Court has not complied with any of the aforesaid requirements. In view of the above, we are of the considered opinion that the High Court has to re-consider the matter in the light of the observations made above.

10. In the result, the appeal succeeds and is accordingly allowed in part. The judgment and decree of the High Court of Karnataka in R.F.A. NO.468 of 2004 dated 07.09.2006 is hereby set aside and the matter is remanded to the High Court for fresh disposal of the same in accordance with law. We request the High Court to dispose of the matter as expeditiously as possible but not later than six months from the date of receipt of a copy of this order. All contentions of the parties are left open. Pending applications, if any, shall stand disposed of. The parties shall bear their own costs.

.....J.
(S. ABDUL NAZEER)

.....J.
(SURYA KANT)

**New Delhi;
January 27, 2021.**

ITEM NO.103

Court 10 (Video Conferencing)

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 6744/2013

MANJULA & ORS.

Appellant(s)

VERSUS

SHYAMSUNDAR & ORS.

Respondent(s)

Date : 27-01-2021 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. ABDUL NAZEER
HON'BLE MR. JUSTICE SURYA KANT

For Appellant(s)

Mr. Md. Shahid Anwar, AOR

For Respondent(s)

Mr. C.M.Angadi, Adv.
Mr. Rameshwar Prasad Goyal, AORUPON hearing the counsel the Court made the following
O R D E R

Heard learned counsel for the parties.

The appeal is allowed in part in terms of the signed
non-Reportable order.Pending application, if any, shall also stand
disposed of.(ANITA MALHOTRA)
COURT MASTER(KAMLESH RAWAT)
COURT MASTER

(Signed non-Reportable order is placed on the file.)