

[2013] 12 S.C.R. 397

A.M. SANGAPPA @ SANGAPPA

v.

SANGONDEPPA & ANR.

(Civil Appeal No. 10490 of 2013)

NOVEMBER 19, 2013

[P. SATHASIVAM, CJI, RANJANA PRAKASH DESAI  
AND RANJAN GOGOI, JJ.]

CODE OF CIVIL PROCEDURE, 1908:

*O.41, r.31 - First appeal - Disposal of - Held: A regular first appeal is to be disposed of, particularly, in the light of O. 41 r.31 -- It mandates that appellate court has to frame points for determination, decision thereon, reasons for the decision and where the decree appealed from is reversed or varied, the relief to which appellant is entitled -- First appeal is a valuable right and unless restricted by law, the whole case is open for rehearing both on questions of fact and law -- Accordingly, judgment of appellate court must reflect its conscious application of mind and record findings supported by reasons, on all issues arising along with contentions put forth by both sides -- In the instant case, relevant aspects have not been noticed and adverted to by High Court -- Appeal has been decided in an unsatisfactory manner which falls short of considerations expected from the court of first appeal -- Judgment of High Court is set aside and regular first appeal is remanded to it for disposal afresh.*

*B.V. Nagesh and Another vs. H.V. Sreenivasa Murthy*  
2010 (11) SCR 784 = (2010) 13 SCC 530 - relied on.

Case Law Reference:

2010 (11) SCR 784      relied on      para 7

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10490 of 2013.

From the Judgment and Order dated 19.08.2006 of the High Court of Karnataka at Bangalore in R.F.A. No. 238 of 2004.

B

Sobha for the Appellant.

Anand Sanjay M. Nuli, Lave Kumar Sharma, V.N. Raghupathy for the Respondents.

C

The following order of the Court was delivered by

#### O R D E R

1. Leave granted.

D

2. This appeal is filed against the judgment and decree dated 19.08.2006 passed in Regular First Appeal No. 238 of 2004.

E

3. Learned counsel for the appellant, after taking us through the impugned judgment, submitted that the same cannot be sustained since being a Regular First Appeal the High Court ought to have considered the evidence on record and findings recorded by the trial Judge. In other words, according to the counsel, the impugned judgment and order cannot be sustained in the absence of appreciation of evidence and acceptability of the findings recorded by the trial Court.

F

4. Learned counsel for the respondents supported the impugned decision of the High Court.

G

5. In the light of the limited submission, we have carefully perused the reasoning of the High Court and we agree with the contention raised by the counsel for the appellant.

H

6. In a series of decisions, this Court has highlighted how a regular first appeal is to be disposed of, particularly, in the

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light of Order 41 Rule 31 CPC. It mandates that the appellate Court has to frame points for determination, decision thereon, reasons for the decision and where the decree appealed from is reversed or varied, the relief to which the appellant is entitled. Such recourse has not been followed by the High Court, while disposing of the regular first appeal.

7. It is not in dispute that 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. Accordingly, the judgment of the appellate Court must reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth by both the sides. These principles have been reiterated in *B.V. Nagesh and Another vs. H.V. Sreenivasa Murthy*, (2010) 13 SCC 530.

8. By applying the above principles, we are of the view that the relevant aspects, as mentioned above, have not been noticed and adverted to by the High Court. The appeal has been decided in an unsatisfactory manner which falls short of considerations which are expected from the court of first appeal.

9. In the light of the above conclusion, without expressing anything on the merits of the claim of both the parties, we set aside the impugned judgment of the High Court and remand the regular first appeal for fresh disposal.

10. We request the High Court to restore RFA No. 238 of 2004 (corrected as RFA Nos. 622-623 of 2007) on its file and make all endeavour for early disposal, preferably, within a period of six months from the date of receipt of copy of this order.

11. The appeal is disposed of accordingly.

R.P.

Appeal disposed of.