

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

Petition(s) for Special Leave to Appeal (Civil) No(s).24264/2012

(From the judgement and order dated 30/11/2011 in SA No.108/2006 of
The HIGHCOURT OF MADRAS AT MADURAI)

A.V. SUBRAMANIAN & ORS.

Petitioner(s)

VERSUS

RAMAMOORTHY & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 31/03/2014 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

HON'BLE MR. JUSTICE N.V. RAMANA

For Petitioner(s)

Mr. M.A. Chinnasamy, Adv.
Mr. S. Muthu Krishna, Adv.
Mr. K. Krishna Kumar, Adv.

For Respondent(s)

Mr. V. Balachandran, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

[Neeta]

[Usha Sharma]

Sr. P.A.

Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4261 OF 2014

(Arising out of SLP(C) No. 24264 of 2012)

A.V. SUBRAMANIAN & ORS.

Appellant (s)

VERSUS

RAMAMOORTHY & ORS.

Respondent(s)

O R D E R

Leave granted.

This appeal has been preferred by defendant-

petitioner against the Judgment and decree dated 30th November, 2011

passed by Madras High Court, Madurai Bench of in Second Appeal (M.D.) No. 108 of 2006. By the impugned judgment, the High Court dismissed the second appeal filed by the defendant-petitioner and affirmed the judgment and decree dated 30th September, 2005 passed by III Additional Sub Judge, Madurai in A.S. No. 14 of 2004 reversing the judgment and decree dated 3rd December, 2003 in O.S. No. 510 of 1986 passed by District Munsif Court, Tirumangalam.

The suit for declaration was filed by a respondent-plaintiff which was dismissed but the appeal against the same was allowed by III Additional Sub Judge, Madurai as noticed above.

The appellants being aggrieved preferred the second appeal with raising one of the the substantial question of law as follows:

"3. Whether the Lower Appellate Court is right in reversing the judgment and decree of the trial Court without framing the points for

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determination and without deciding the points independently as fresh as provided under Order 41 Rule 31 of the Code of Civil Procedure, which mandatory in nature and to be strictly followed as laid down in 2004 (2) MLJ - 283 and 1997 (1) CTC 26 and 559?"

Though the High Court has noticed that the First Appellate Court had not followed the procedure under Order 41 Rule 31 of the Code of Civil Procedure, observed that it does not mean that the matter to be remanded back to the First Appellate Court.

On notice the contesting respondent has appeared and taken similar plea. From the impugned Judgment, we find that learned Single Judge of the High Court noticed the factual position and observed as follows:

"86. On going through the Judgment of the First Appellate Court in A.S. No. 14 of 2014 dated 30.9.2005, this Court is of the considered view that the First Appellate Court has not borne in mind the ingredients of Order 41 Rule 31 of the Code of Civil Procedure. It has admittedly framed an omnibus, a wholesale or a mechanical point for rumination i.e.

whether the Appeal is to be allowed which is not a palatable one, in the considered opinion of this Court and obviously, the First Appellate Court has not adverted to the ingredients of Order 41 Rule 31 of the Code of Civil Procedure by framing the necessary points for determination in the manner known to law. Their appears to be a palpable omission by the First Appellate Court in not adhering to the ingredients of Order 41 Rule 31 of the Code of Civil Procedure viz., in not framing the necessary points for

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determination. But on perusal of the First Appellate Court Judgment in Appeal shows that the First Appellate Court has referred to the evidence of witnesses and has made discussions about Exs.A.1 sale deed, B.17 sale deed and also referred to the trial Court's observations in the suit judgment. Just because, the First Appellate Court has not framed the necessary points for determination as contemplated under Order 41 Rule 31 of the Code of Civil Procedure and the matter cannot be remanded as a matter of routine. The non-framing of necessary points for determination in Appeal by the First Appellate Court in its Judgment in Appeal will not in any way preclude this Court from dealing with the matter on merits, by exercising discretion and avoiding remand, this Court has dealt with the Second Appeal on merits based on the available oral and documentary evidence on record and accordingly answered the substantial questions of law Nos. 1 and 2 as referred to earlier. Accordingly, the substantial questions of law no. 3 is so answered against the Appellants/Defendants."

On hearing the parties, we do not agree with the find recorded by the High Court.

Order 41 Rule 31 of Code of Civil Procedure reads as under:

"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 a 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."

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As per Order 41 Rule 31 aforesaid, the appellate

Court is not only required to record the points for determination but also required to render decision giving reasons therein, where the decreed appeal is reversed on valid ground, the relief to which the appellant is entitled is also required to be given at the time of pronouncement of the judgment. From the said provision, it is clear that in absence of points of determination no decision can be rendered on any point much less reason for such decision.

The provision aforesaid being mandatory, absence of point for determination shall render the Judgment and decree passed by the appellate court illegal.

For the reasons aforesaid, we set aside the impugned Judgment and decree dated 30th November, 2011 passed by the Madras High Court, Madurai Bench in Second Appeal (M.D.) No. 108 of 2006 and the Judgment and decree dated 30th September, 2005 passed by IIIrd Additional Subordinate Judge Court, Madurai and remit the appeal to Learned IIIrd Additional Subordinate Judge Court, Madurai for its decision in accordance with law after notice and hearing the parties.

The appeal is allowed with aforesaid observations.

.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)

.....J.
(N.V. RAMANA)

NEW DELHI;
MARCH 31, 2014