

Cases of the month

-Deepanshi Rajput

1. Gill & co. v. Bimla Kumari, 1986 RLR 370

Rule- Section 107, R rule 27 of Order XLI of the Code

Facts- Eviction notice to M/S Gill & Co on grounds of

- a) non-payment of rent;
- b) misuse ,
- c) bona fide requirement as residence for herself and members of her family ;
- d) Sub-letting.

Issue- Whether the learned tribunal was correct in rejecting the application for production of additional evidence.

Observations-

1. The general rule is that an appellate court shall decide an appeal on the evidence led by the parties before the lower Court and shall not admit additional evidence for the purpose of disposal of an appeal.
2. Evidently it is not a case where the lower Court had improperly refused to admit evidence. It was never tendered.
3. Likewise, it is not the case of the appellants that the additional evidence sought to be produced by them at the appellate stage was not within their knowledge or that the same could not be produced after exercise of due diligence No such effort seems to have been made.
4. The only question which falls for consideration is whether the additional evidence was required by the Appellate Court for, enabling it to pronounce judgment or was there, any other substantial, cause for allowing the, same.

Decision- Jurisdiction of the High Court in 2nd Appeal is confined to the determination of substantial question of law and not to reverse the findings of fact. Hence High Court in 2nd appeal cannot, reappreciate the evidence and interfere with the findings of fact reached by the

lower, appellant court, unless of course, it can be shown that there was an error of law in arriving at it or that it was based on no evidence at all or was arbitrary, unreasonable or perverse. The High Court was incompetent to reassess the evidence afresh and it was bound by the decision of the Tribunal on questions of fact.

2. *Sham Rao and three others v Mahadevi and nine others* (A.S. No. 487 of 1995),

Date of judgment- 23-07-2015

Held- In civil cases, pleadings are extremely important for ascertaining the title and possession of the property in question. In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once the title is prima facie established, it is for the person who is resisting the title holders claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place before the court all such documents as in the ordinary course of human affairs are expected to be there. Only if the pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.

Apart from these pleadings, the court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the court must carefully and critically examine the pleadings and documents.

The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.

3. *M.K. Tirupathi Rao v Deputy General Manager, Syndicate Bank, Industrial Relations Section, Zonal Office, Hyderabad, 2016 (3) ALT 363 (DB)* (Service of notice: Presumption)

Held- Under section 14 of Indian Post Office Act, 1898 and under section 16 of Evidence Act, 1872, when a registered letter is sent to a person and when it is returned by Postman with the endorsement 'absent', the endorsement made on the registered cover is a prima facie evidence of taking the said letter to the address of the person noted on the registered cover and that the noting thereon is prima facie proof of absence of addressee. (See :- para 32 and 41). Presumption as to service of registered letter- in view of provisions of section 114 Illustration (f) of Evidence

Act, 1872 and Section 27 of General Clauses Act, 1897, there is a presumption that the addressee has received the letter sent by registered post.

4. *Boddapalli Anjaiah S/O.Yellaiah v Shaik Sayeed S/O.Shaik Mohammad (2015) APPEAL SUIT NOs.1490 of 1996* (Without seeking relief of recovery of possession, plaintiffs are not entitled to claim relief of declaration)

Date of judgment- 19-08-2015

Held- Para 57. One of the contentions raised before the trial Court is that since defendant Nos.13 to 24 are in possession and enjoyment without seeking relief of recovery of possession, plaintiffs are not entitled to claim relief of declaration as discussed earlier in the earlier paras, defendants miserably failed to establish their possession over the property and on the other hand this Court while accepting possession of defendant No.1 directed defendants not to dispossess plaintiff No.1 from possession of the property under Ex.A.1 after issuing notice, plaintiffs filed the present suit and undisputedly defendant Nos.5 to 11 and plaintiff Nos.1 and 2 were compromised as per orders in I.A.No.1930 of 1992. Defendants also failed to establish that they are continuing in possession of the property, consequently the contention of the defendants that plaintiff Nos.3 to 6 are not entitled to claim relief of declaration of title, without seeking relief of recovery of possession is without any substance and this contention would stand to any legal scrutiny by this Court.

5. *Sarala Jain and others vs. Sangu Ganadhar and others, 2016 (3)ALT 132* (Appointment of advocate commissioner in suit – Pretrial decree)

When the plaintiff sought for appointment of Advocate Commissioner to survey schedule property with the help of Surveyor and fix boundary stones to his land, appointment of Advocate Commissioner by trial court for demarcating schedule property and to fix boundary stones to the land of respondents amounts to granting pre-trial decree.

APPOINTMENT OF ADVOCATE COMMISSIONER:

To appoint an advocate commissioner, Court has to keep in mind the following:

- i. Total pleadings of both parties;
- ii. Relief claimed in suit;

- iii. Appointment of advocate commissioner for specific purpose at interlocutory stage shall not amount to grant pretrial decree; and
- iv. Necessity to appoint advocate commissioner to decide real controversy between parties.

PRE –TRIAL DECREE:- If the suit is filed for fixing boundaries by the Court, then appointment of advocate commissioner would serve purpose to decide the real controversy between the parties but it is not even the case of the petitioner that schedule property is not demarcated. In such case, appointment of advocate commissioner is wholly unnecessary and it is beyond the scope of the suit. The trial Court did not look into the reliefs claimed in the suit; plea of the petitioner regarding survey of land and fixation of boundary stones; and the purpose for which commissioner is sought to be appointed. In those circumstances, the order passed by the trial Court cannot be sustained as it amounts to granting pre-trial decree in view of the law declared in Mohd. Mehtab Khan (1st supra) and it is, therefore, liable to be set aside. Accordingly, the point is answered in favour of the respondents and against the petitioner.

6. *K.A. Abdul Jaleel vs T.A. Shahida, (AIR 2003 SC 2525.)*

Provisions of the Family Courts Act, 1984

should be construed liberally :It is well settled principle of law that the jurisdiction of a court created especially for resolution of disputes of certain kinds should be construed liberally. The restricted meaning if ascribed to Explanation (c) to sub-section (1) of Section 7 of the Family Courts Act, 1984 would frustrate the object where for the Family Courts were set up.

7. *D. Velusamy vs D. Patchaiammal, (AIR 2011 SC 479)* (Live-in relationships & its preconditions to be treated as marriage)

Merely spending weekends together or a one night stand would not make it a ‘domestic relationship’ u/s 2(f) of the Protection of Women from Domestic Violence Act, 2005. All live-in relationships will not amount to marriage. Live-in relationships in the nature of marriage under 2005 Act must fulfill the following conditions –

- (a) the couple must hold themselves out to society as being akin to spouses.
- (b) they must be of legal age to marry
- (c) they must be otherwise qualified to enter into a legal marriage, including being unmarried.
- (d) they must have voluntarily cohabited and held themselves out to the world as being akin to

spouses for a significant period of time.

8. *A.P. Arya Vysya Mahasabha rep.by its President vs Mutyapu Sudershan and others, CIVIL Revision PETITION No.1961 OF 2015*

Date of judgment- 16-06-2015

- i. Whether an appeal against an ad interim injunction is maintainable under Order 43 rule 1(r) c.p.c? From the discussions made hereinbefore, there is no manner of doubt that no appeal is maintainable in this Court under Order 43 Rule 1 of C.P.C. and there cannot be any doubt that a revision petition shall be maintainable.
- ii. No injunction shall be granted to interdict the election when once the election process is started.

The safe and better course is to give short notice on injunction application and pass an appropriate order after hearing both the sides. In case of grave urgency, if it becomes imperative to grant an exparte ad interim injunction, it should be granted for a specified period, such as, for two weeks. In those cases, the Plaintiff will have no inherent interest in delaying disposal of injunction application after obtaining an exparte ad interim injunction. The Court in order to avoid abuse process of law may also record in the injunction order that if the suit is eventually dismissed, the plaintiff undertakes to pay restitution, actual or realistic costs. While passing the order, the Court must take into consideration the pragmatic realities and pass proper order for mesne profits. The Court must make serious endeavour to ensure that even-handed justice is given to both the parties. If the law as declared by Apex Court is applied to the present case granting ad-interim injunction till 15-06-2015 is totally inconsonance with the principle laid down in the above judgment, by the Vacation Civil Judge, Nizamabad.

On overall consideration of entire material available on record with reference to law declared by Apex Court and this Court, it is clear that no injunction can be granted to interdict the election once the election process is started.

9. *Syed Yousuf Ali v Mohd. Yousuf and others*

➤ *No judicial order be passed based on memo.*

HELD- Para 12. The first and foremost contention of the learned counsel for the respondents is that no judicial order be passed based on memo. Filing of memo is not contemplated either under

Code of Civil Procedure or under Civil Rules of Practice. The purpose of receiving memos by the Courts is only to receive certain intimation pertaining to the lis pending before it. Since filing of memo is not contemplated under Code of Civil Procedure or Civil Rules of Practice, no judicial order can be passed on memo. But the trial Court passed a judicial order based on memo which is contrary to the established practice. Therefore, the order passed by the trial Court basing on memo dated 11.09.2015 filed before the trial Court is erroneous and it is an illegal exercise of jurisdiction which is conferred on it.

➤ *Whether a document is admitted and marked as exhibit, it cannot be questioned?*

Held- Stamp duty on possessory contract of sale- Para 23. In M.Narasimhulus case (9th supra) single Judge of this Court held that in view of bar under Section 36 once the document was admitted in evidence, the same cannot be questioned, at subsequent stages, but in view of law declared by Apex Court, the objection can be entertained to determine judicially at any subsequent stage.

Para 24. According to Order 13 Rule 3 CPC the Court may at any stage of the suit, reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds for such rejection. Order 13 Rule 4 CPC prescribes the endorsement to be made on the document when a document is admitted in evidence. According to it, there shall be an endorsement on every document which has been admitted in evidence containing number and title of the suit, the name of the person producing the document, the date on which it was produced and a statement of its having been so admitted and the endorsement shall be signed or initialed by the Judge.

Para 25. Here there is an endorsement on the reverse of possessory contract of sale consisting the details under Order 13 Rule 4(1)(A) to (C), 1(D) is absent. Therefore, the document cannot be said to be admitted after judicial determination, in such a case, exercising power under Order 13 Rule 3 CPC, the Court can reject any document which it considers irrelevant or in-admissible, recording reasons.

Further in para 33, it was observed as follows:

"33. By exercising power under Order XIII Rule 3 of CPC, possessory contract of sale dated 11.09.2015 which is marked as Ex.A1 is rejected as it is hit by explanation to S.No.47-A of schedule 1-A of Indian Stamp Act and inadmissible in evidence, since the document is not impounded or stamp duty and penalty is not paid."

10. *M.K. Tirupathi Rao vs Deputy General Manager, Syndicate Bank, Industrial Relations Section, Zonal Office, Hyderabad, 2016 (3) ALT 363 (DB)* (Service of notice: Presumption)

Under section 14 of Indian Post Office Act, 1898 and under section 16 of Evidence Act, 1872, when a registered letter is sent to a person and when it is returned by Postman with the endorsement 'absent', the endorsement made on the registered cover is a prima facie evidence of taking the said letter to the address of the person noted on the registered cover and that the noting thereon is prima facie proof of absence of addressee. (See :- para 32 and 41). Presumption as to service of registered letter- in view of provisions of section 114 Illustration (f) of Evidence Act, 1872 and Section 27 of General Clauses Act, 1897, there is a presumption that the addressee has received the letter sent by registered post.

11. *Rajbala v State of Haryana, 2015*

The constitutionality of the Haryana Panchayati Raj (Amendment) Act 2015 was upheld. The Act disbarred persons in Haryana from the right to contest panchayat elections on the basis of certain restrictions like educational qualifications, arrears clause, etc.

12. *Angalakurthy Venkata Narayanamma v Molakapalli Lakshamma and others, 2016 (1) ALT 394* (Natural family property)

A person adopted by another family, ceases to be member of his natural family, and unless any property is already vested prior to his adoption either in partition or otherwise, he cannot claim a share in the natural family property.

Composite family:- In order to constitute a composite family, there must be a custom or an agreement between two families.

Family custom:- A family custom is a category of special custom, and it should have the attributes of antiquity, certainty and uniformity.

Adverse possession:- Payment of land revenue would not constitute adverse possession. Entries in revenue records are only for fiscal purpose.

13. *Angoth Renuka @ Rena vs State of Telangana through its Principal Secretary, Prohibition and Excise Department, 2016 (3) ALT 418 (DB)* (Preventive detention)

Held- "To enable the detenu to exercise his right to make an effective representation against his detention, it is imperative that all relevant material, including copies of the bail orders, are furnished to him. The contention that the detenu was aware of the bail order, even if accepted as true, would not justify failure of the detaining authority to furnish these copies to the detenu when he has no access to these documents when he is in preventive custody. Failure to furnish copies of the orders granting bail to the detenu vitiates the order of detention. [*Vasanthu Sumalatha, 2016 (1) ALT 738 (DB)*]. As the detenu has been denied his right to make an effective representation thereby, his continued detention is rendered illegal. The detention order, and the continued detention of the detenu, stand vitiated for the failure of the detaining authority to consider the orders whereby bail was granted to the detenu, and in not furnishing copies thereof to the detenu along with the grounds of detention respectively. The Writ Petition is allowed, the order of detention is set aside, and the detenu shall be set at liberty forthwith provided he is not required to be kept in custody in connection with any other case/cases registered against him. The miscellaneous petitions pending, if any, shall also stand disposed of No costs."

14. Jackie Kukubhai Shroff vs Ratnam Sudesh Iyer – Bombay High Court

If an award is based on conclusions which no fair or judiciously minded person could have arrived at and it shocks the conscience of the court. Each of these grounds bears on the fundamental policy of Indian law in making of an award –

Held- The Court held that the impugned award, thus, does not measure up to the minimal judicial scrutiny even within the parameters of Section 34 of the Act. It is completely unreasonable, impossible, and I dare say, perverse. It is partly based on no evidence, partly on non-application of mind, and partly, by a wholesale misapplication of law resulting into miscarriage of justice. All in all, it shocks the conscience of the court. It is submitted that after the 2015 amendment of the Act, as observed by the Supreme Court in *Ssangyong Construction and Engineering Co.'s* case, the ground of patent illegality is no longer available for challenging an award passed in an international commercial arbitration, such as the present award. Leaving aside the question of applicability of 2015 amendment to the present award which was both rendered and challenged under the unamended Act (i.e. the Act as it stood prior to the 2015 amendment), it is clear that the impugned award is being interfered with, as noted above, on the

grounds that it is an impossible award; it is an award based on conclusions which no fair or judiciously minded person could have arrived at; and it shocks the conscience of the court. Each of these grounds bears on the fundamental policy of Indian law in making of an award.