



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.09.2023

CORAM :

The Hon'ble Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P(NPD)No.894 of 2003

S.A.Nos.507 and 508 of 2003

and Cross.Objn.Nos.46 and 52 of 2022

and CMP No.19212 of 2023

C.R.P.(NPD)No.894 of 2003

N.Rengarajan

.. Petitioner

-VS-

N.Sellammal

.. Respondent

S.A.No.507 of 2004

1.Jayalakshmi (died)

2.Rengarajan

... Appellants

VS

1.Sellammal (died)

2.Gunasekaran

3.R.Muthamilselvan

4.R.Selvarasu

5.G.Thenmozhi



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

6.T.Senthamarai

7.R.S.Kalaiselvi

8.K.Umarani

(R.3 to R.8 brought on record as Lrs of the
deceased R.1 viz., Sellammal vide court
Order dared 15.03.2022 made in CMP No.
13168 of 2021 in SA No.507 of 2004

.. Respondents

S.A.No.508 of 2004

1.Jayalakshmi (died)

2.Rengarajan

... Appellants

VS

1.Sellammal (died)

2.R.Muthamilselvan

3.R.Selvarasu

4.G.Thenmozhi

5.T.Senthamarai

6.7.R.S.Kalaiselvi

7.K.Umarani

(R.2 to R.7 brought on record as Lrs of the
deceased R.1 viz., Sellammal vide court
Order dared 15.03.2022 made in CMP No.
13171 of 2021 in SA No.508 of 2004

..Respondents

Cross Objection No.46 of 2022

1.Sellammal (died)

2.R.Muthamilselvan

3.R.Selvarasu

4.G.Thenmozhi

5.T.Senthamarai



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

6.7.R.S.Kalaiselvi
7.K.Umarani

..Cross Objectors

VS

1.Jayalakshmi
2.Rengarajan

.... Respondents

Cross Objection No.52 of 2022

1.Sellammal (died)
2.R.Muthamilselvan
3.R.Selvarasu
4.T.Senthamarai
5.R.S.Kalaiselvi
6..K.Umarani

... Cross Objectors

VS

1.Jayalakshmi (Died)
2.Rengarajan
3.G.Thenmozhi

.... Respondents

C.R.P.(NPD)No.894 of 2003:

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order dated 28.12.1998 in E.P.No.16 of 1993 in O.S.No.31 of 1981 on the file of Subordinate Judge, Ariyalur.



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

S.A.No.507 of 2004:

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Second Appeal filed under Section 100 of the Code of Civil Procedure Code against the judgment and decree of the Principal District Court at Perambalur dated 24.02.2003 in A.S.No.205 of 2002, modifying the judgment and decree of the Subordinate Court, Ariyalur dated 28.12.1998 in O.S.No.25 of 1995.

S.A.No.508 of 2004:-

Second Appeal filed under Section 100 of the Code of Civil Procedure Code against the judgment and decree of the Principal District Court at Perambalur dated 24.02.2003 in A.S.No.206 of 2002, modifying the judgment and decree of the Subordinate Court, Ariyalur dated 28.12.1998 in O.S.No.220 of 1994.

Cross Obejction No.46 of 2022:

Cross Objection filed under Order 42 Rule 22 of Civil Procedure Code against the Judgment and Decree passed in A.S.No.205 of 2002 dated 24.02.2003 on the file of Principal District Court, Perambalur seeing to modify the judgment and decree dated 28.12.1998 passed by the Subordinate Court, Ariyalur in O.S.No.25 of 1995.



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

Cross Objection No.52 of 2022:

Cross Objection filed under Order 42 Rule 22 of Civil Procedure Code against the Judgment and Decree passed in A.S.No.206 of 2002 dated 24.02.2003 on the file of Principal District Court, Perambalur seeing to modify the judgment and decree dated 28.12.1998 passed by the Subordinate Court, Ariyalur in O.S.No.220 of 1994.

CRP (NPD)No.894 of 2003

For Petitioner : Mr.S.Parthasarathy
Senior Counsel for
M/s Sarvabauman Associates

For Respondents : Mr.N.Manokaran
for
Mr.D.Balu Varadharajan

S.A.No.507 of 2004:

For Appellant : Mr.S.Parthasarathy
Senior Counsel for
M/s Sarvabauman Associates

For Respondents : Mr.N.Manokaran
for
Mr.D.Balu Varadharajan



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C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

S.A.No.508 of 2004:

For Appellant : Mr.S.Parthasarathy
Senior Counsel for
M/s Sarvabauman Associates

For Respondents : Mr.N.Manokaran
for
Mr.D.Balu Varadharajan

Cross Objn.Nos.46 and 52 of 2002:

For Cross Objectors: Mr.N.Manokaran
for
Mr.D.Balu Varadharajan

For Respondents : Mr.S.Parthasarathy
Senior Counsel for
M/s Sarvabauman Associates

COMMON JUDGMENT

The above Common Judgment will dispose of all the aforesaid proceedings.

2. Second Appeals arise out of two suits for partition viz.,O.S.No.220 of 1994 and O.S.No.25 of 1995 on the file of learned Subordinate Judge at Ariyalur. Both the suits have chequered career. In order to understand the



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

relationship between the parties, the Genealogy is set forth as hereunder.

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GENEALOGICAL TREE

Narayanasamy

Nallappa Reddiar
(died on 28.10.1966)
+
Subbammal
(died on 13.02.1975)

Ganapathi Reddiar

Periyammal

+

Arunachalam

Narayanasamy Reddiar
(died on 19.01.1964)
+

Kamatchi
Sellammal

Subbammal(13/2/1975)
W/o Nallappa Reddiar

W1
Sellammal

W2
Jayalakkshmi

Son Jaganathan
Daughter (died)

Rangarajan

3. Originally, the plaintiff Sellammal filed a suit in O.S.No.172 of 1975. The relief sought for in the said suit was for declaration of title and for permanent injunction. Sellammal had married Narayanasamy Reddiar. Narayanasamy Reddiar was the son of Nallappa Reddiar and Subbammal.





C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

Sellammal claimed 9 items of suit schedule mentioned properties in O.S.No.25 of 1995, as her own in O.S.No.172 of 1975. According to her, her mother-in-law Subbammal executed Settlement Deed in her favour on 12.12.1966 and a Sale Deed on 16.09.1967. She claimed that by virtue of Settlement Deed and Sale Deed, she became the absolute owner of the properties.

4. O.S.No.172 of 1975 was dismissed by the trial Court holding that Subbammal did not have any right over the property to alienate the same in favour of her daughter-in-law and that the properties belonged to her husband Nallappa Reddiar. Since properties were owned by Nallappa Reddiar, Subbammal could not have alienated the same in favour of Sellammal.

5. Aggrieved by the dismissal, the said Sellammal preferred an appeal in A.S.No.10 of 1978 before the District Court, Trichy. The said Appeal came to be dismissed on 05.07.1980. Aggrieved by the same, a Second Appeal was preferred before this Court in S.A.No.1728 of 1980. The said Second Appeal was dismissed on 25.01.1988. Against these concurrent finding, Sellammal preferred a Special Leave Petition before the Supreme Court in SLP (Civil)



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

No.7384 of 1988. The said Special Leave Petition was dismissed as withdrawn on 12.12.1988. In fine, the concurrent finding of the Courts that the properties belonged to Nallappa Reddiar attained finality.

6. Soon after the dismissal of AS.No.10 of 1978, the second wife and son of Narayanasamy Reddiar, (who was the husband of Sellammal), filed a suit in O.S.No.31 of 1981 before the Sub Court, Ariyalur. The said suit was for recovery of possession from Sellammal of 9 items of properties, over which, she had claimed declaration of her title in O.S.No.172 of 1975. This suit in O.S.No.31 of 1981 was dismissed on 19.07.1991 holding that the suit is barred by virtue of provisions of Benami Abolition Act. Aggrieved by the judgment and decree in O.S.No.31 of 1981, a regular appeal was preferred in A.S.No.250 of 1992 before the District Court, Trichy. The said appeal came to be allowed on 18.11.1992. Challenging the judgment and decree of the District Court, decreeing the suit for recovery of possession, Sellammal filed yet another Second Appeal before this Court in S.A.No.507 of 1993. The Second Appeal came to be dismissed by this Court on 02.07.1993.



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

7. The insatiable appetite for litigation, not satisfying the family members, two more suits came be filed which are the present subject matter of the present Second Appeals.

8. O.S.No.220 of 1994 was filed by Sellammal, claiming 1/2 share, in respect of 16 items that stood in the name of Nallappa Reddiar and her husband Narayanasami Reddiar. Similarly, she filed a suit in O.S.No.25 of 1995 on the file of Subordinate Court, Ariyalur, claiming 2/3rd share with respect to the 9 items. I have to make it clear here that the 9 items, which is the subject matter of O.S.No.25 of 1995, were the subject matter of the proceedings in O.S.No.172 of 1975 on the file of Subordinate Court, Trichy and O.S.No.781 of 1980 on the file of Subordinate Court, Trichy and S.A.No.1728 of 1980 and S.A.No.507 of 1993 respectively.

9. Insofar as 16 items of properties, there was no prior litigation between the parties. O.S.No.220 of 1994 and O.S.No.25 of 1995 came to be decreed by the learned trial Judge granting 3/4th share in the respective suit schedule mentioned properties.



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

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10. It is pertinent to point out that in the first round of litigation, Sellammal claimed property through her mother-in-law Subbammal and today she has abandoned that boat and is claiming her property as a legal heir of her son Jagannathan, who died on 08.05.1957.

11. This was resisted by the second appellant before me on the ground that the suit is hit by *res judicata*, since Sellammal had already made a claim to the property through Subbammal and lost the case until the High Court and again, in the second round of litigation with respect to recovery of possession filed by Rengarajan, son of Narayanasamy Reddiar, which attained finality till the High Court.

12. The suits having been decreed, regular appeals were preferred in A.S.Nos.205 and 206 of 2002. It is here that I have to take note of the manner of disposal by the learned First Appellate Judge. For ready reference, I am extracting the paragraph Nos.42 and 43:-



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

“ 42. அரியலூர் சார்பு நீதிமன்றத்தில் அசல் வழக்கு எண்.31/81ல் பிறப்பிக்கப்பட்ட தீர்ப்பின் நகல் பி.சா.ஆ.8. அதன் மீது தாக்கல் செய்யப்பட்ட முதல் மேல்முறையீட்டில் பிறப்பிக்கப்பட்ட தீர்ப்பின் நகல் பி.சா.ஆ.9 ஆகும். வா.சா.ஆ.1, பி.சா.ஆ.8லுள்ள தாவா சொத்துக்களுக்கும், இந்த உரிமை வழக்கிலுள்ள தாவா சொத்துக்களும் ஒரே சொத்துக்களாகும். எனவே, இதிலிருந்தே முன் தீர்ப்புத் தடை காரணமாக வழக்கு பாதிக்கப்பட்டுள்ளது என்பது நன்கு தெரிகின்றது.

43. வாதிக்கும், நாராயணசாமி ரெட்டியாருக்கும் பிறந்த மகன் 8.5.57ல் இறந்துபோனார் என்றும், வாதிக்கும், நாராயணசாமி ரெட்டியாருக்கும் பிறந்த பெண் குழந்தை 2 ½ வயதில் இறந்து போனது என்றும், வாதி தனது வழக்குரையில் கூறியுள்ளார். குழந்தைகளே பிறக்கவில்லை என்பது பிரதிவாதிகளின் வழக்கல்ல. ஆண் குழந்தையும், பெண் குழந்தையும் நாராயணசாமி ரெட்டியாரும் இறந்துபோனார்கள். 1957ல் வாதியின் மகன் ஜெகநாதன் இறந்து போயிருப்பதாகவும், அவனுக்குரிய பாத்தியம் வாதிக்கு வந்தடைந்துள்ளது என்பது வாதியின் வழக்கறிஞர் தன் வாதுரையில் கூறினார். ஆதாவது ¼ பங்கு வாதிக்கு வந்தடைந்தது



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

என்பது வாதியின் வழக்கறிஞரின் வாதுரையாகும். பிரதிவாதிகளின் வழக்கறிஞர் தனது வாதுரையில் வாதிக்கு தாவா சொத்துக்களில் ¼ பங்கு கொடுக்க சம்மதித்தார். ஆனால், எழுத்து மூலமாக கொடுக்கவில்லை. வாதுரையின்போது சம்மதித்தார். எனவே, சட்டப்படி வழக்கு முன் தீர்ப்புத் தடை காரமான பாதிக்கப்பட்டிருந்தாலும், வாதிக்கு தாவா சொத்தில் ¼ பங்கு கிடைக்கும் என்று தீர்மானிக்கிறேன். ஏனவே, பிரச்சனை இரண்டையும் மேற்கண்டவாறு தீர்மானிக்கப்படுகிறது.”

13. A reading of the judgment of the lower Appellate Court shows that Paragraph Nos.2 to 22 are mere summary of pleadings, issues framed by the trial court, a short summary of the judgment of the trial court and the grounds of appeal. The learned Judge framed the issues to be decided in paragraph No.23. From paragraph Nos.24 to 41, he merely extracts the respective arguments and sets forth the exhibit numbers. In paragraph No.42, he concluded that the claim of Sellammal is hit by principles of *res judicata*.

14. Having come to the conclusion, he did not proceed further with the conclusion arrived at, but on the contrary, as seen from the above extracts, on an



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

alleged concession that had been made by the counsel for the respective parties, he had allowed the appeals granting 1/4th share.

15. These Second Appeals S.A.Nos.507 and 508 of 2004 were admitted on the following substantial questions of law:-

1) Whether the lower appellate court is correct in law in granting a decree having found that the suit is barred by res judicata only on the basis of an alleged concession by the counsel for the appellant?

2) Whether the lower appellate court is correct in law in rendering a judgment on an alleged admission by the counsel especially when the entire matter has been found in favour of the party alleged to have admitted to giving a share to the other party, whose case has been found against

3) Whether judgment of the lower appellate court which has failed to follow the procedure prescribed under Order 12 Rule 6 read with Order 23 Rule 3 of the Code of Civil Procedure is sustainable in law?



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

WEB COPY 16. I heard Mr.S.Parthasarathy, learned Senior Counsel for the appellants and Mr.N.Manoharan, learned counsel for the respondents.

17. At the very out set, Mr.S.Parthasarathy, learned Senior Counsel submits that no concession had been made by his client before the lower appellate Court.

18. Mr.N.Manoharan, learned counsel very fairly submits that both the parties had filed their written arguments before the trial as well as the lower appellate courts and there was no occasion for the Court to record the alleged concessions made by the counsels.

19. While recording of matters of what had happened before a Court, have been held to be final, I have to see that whether the concessions that is made by the counsel on facts is binding on the parties. It is here that a recent judgment of the Supreme Court *in Himalayan Co.op Group Housing Society vs Balwan Singh and Others 2015 7 SCC 373* becomes relevant. After



referring to several judgments of Privy Council and the Supreme Court itself, the

Bench came up with the following conclusion:-

“ 32. Generally, admissions of fact made by a counsel is binding upon their principals as long as they are unequivocal; where, however, doubt exists as to a purported admission, the Court should be wary to accept such admissions until and unless the counsel or the advocate is authorised by his principal to make such admissions. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not authorised to make. Lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed. We hasten to add neither the client nor the Court is bound by the lawyer’s statements or admissions as to matters of law or legal conclusions. Thus, according to generally



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C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. We may add that in some cases, lawyers can make decisions without consulting client. While in others, the decision is reserved for the client. It is often said that the lawyer can make decisions as to tactics without consulting the client, while the client has a right to make decisions that can affect his rights."

20. This view has been reiterated yet again in ***Director of Elementary Education Odisha & Others vs Pramod Kumar Sahoo. 2019 10 SCC 674.***

21. These two judgments of the Supreme Court very categorically states while there is an implied authority to a limited extent still no counsel has the authority to take a decision which will affect the rights and liabilities of his clients. If the Court had come to the conclusion that the counsel had conceded a share to Sellammal, it would have been appropriate if it had directed either party to file a Memo of Compromise. This would be in line with Order 23 of



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

Civil Procedure Code.

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22. In fact, as I pointed out above, apart from recording that the counsel for the appellant had conceded to 1/4th share and it has been accepted by the learned counsel for the respondents, there is nothing on record to show that such concession was supported either by the clients or written instructions of the parties.

23. I wanted to independently analyse to see whether *de hors* the concession, I could still deal with the Second Appeals. On going through the judgments of the lower appellate Court, I find that the entire appeal had been disposed of in a cryptic manner as set forth in Paragraph Nos. 42 and 43. The first appellate court, dealing with an appeal under Section 96 of the Civil Procedure Code, is the last Court of facts. While dealing with the question of facts, it is expected that the Court marshal the evidence and come to a conclusion independently of the concession. When the trial court has taken pains to go through the entire documents and come to the conclusion, the lower appellate court ought to have independently analysed the conclusion and



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

thereafter varied the decree.

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24. Further, I find an inherent contradiction in the judgment of the lower appellate court. Having come to the conclusion that the suit is hit by the principles of *res judicata*, the court below on the basis of concession, should not have decreed the suit. It is a fundamental principle of law that *res judicata* is not directed against the parties but it is an injunction against the Court. When the court has come to the conclusion that the entire proceedings had been concluded by virtue of judgment and decree in O.S.Nos.172 of 1975 and 31 of 1981, then it could not have recorded the concession and allowed the appeal. In other words, the judgment does not follow the logic embedded in it. The reasoning of the Court that it is hit by *res judicata* should have resulted in only one conclusion that the appeals should have been allowed. Having come to the conclusion that it is suffering an order of injunction by virtue of Section 11, the Court ought not to have proceeded further and allowed the appeals on the basis of the alleged concession said to have been made by the counsel.

25. It is here the judgment that has been cited by Mr.N..Manokaran,



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

learned counsel becomes relevant. Three Judges from the Supreme Court in ***Santoshi Hazari vs Purushottam Tiwari (2001) 3 SCC 179*** had dealt with the manner in which a first appeal must be disposed of. For ready reference, I am extracting the relevant paragraph;

“ 15. A perusal of the judgment of the trial Court shows that it has extensively dealt with the oral and documentary evidence adduced by the parties for deciding the issues on which the parties went to trial. It also found that in support of his plea of adverse possession on the disputed land, the defendant did not produce any documentary evidence while the oral evidence adduced by the defendant was conflicting in nature and hence unworthy of reliance. The first appellate Court has, in a very cryptic manner, reversed the finding on question of possession and dispossession as alleged by the plaintiff as also on the question of adverse possession as pleaded by the defendant. 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



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

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 & Ors. Vs. Bijendra Narain Choudhary, 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



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

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. Smt. Narayani Bai & Ors., 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 Judges 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 Ramdeo Sahu Vs. Jwaleshwari Pratap Narain Singh & Ors., AIR 1951 SC 120). Secondly, while reversing a finding of fact the



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C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

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.

26. In the light of the settled position of the law laid down by the three



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

Judges of the Supreme Court set forth above, I am now faced with an unfortunate decision of having to set aside the judgment of the court below and remitting it for fresh disposal.

27. I preface the word “unfortunate” because the suit properties have been under the cloud of litigation for the past 48 years. When the Court is dealing with the matter which has been under the cloud of litigation for nearly half a century, the least that is expected is that the lower appellate court could have bestowed some attention prior to the cryptic manner of disposal of the appeal.

28. In the light of the above discussions, the substantial questions of law are answered in favour of the appellant. The judgment and decree in A.S.Nos.205 and 206 of 2002 on the file of Principal District Court, Perambalur dated 24.02.2003 are hereby set aside. The matter is remanded to the lower appellate court to dispose of the appeals afresh in accordance with the principles laid down by the Supreme Court in ***Santoshi Hazari vs Purushottam Tiwari (2001) 3 SCC 179***. Both the parties are granted liberty to file additional



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

documents, if any. All points are available for both sides to argue before the lower appellate court.

29. The learned Principal District Judge, Perambalur is requested to take up the appeals on priority basis, after the parties file their application under Order 41 Rule 27 of Civil Procedure Code and decide the appeals within a period of four months from the date of receipt of a copy of this order.

30. NOTE TO OFFICE:

(i) Records that have been received from the lower appellate Court must be sent back immediately to enable the first appellate court to deal with the issue.

(ii) The original documents filed in CMP No.19212 of 2023 may be returned to the learned counsel after getting necessary endorsement.



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

31. C.R.P.NPD No.894 of 2003:

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This Civil Revision Petition arises against the order dismissing the execution petition filed to execute O.S.No.31 of 1981 on the file of Subordinate Court, Ariyalur. As noted in the Judgment in the Second Appeals, O.S.No.31 of 1981 was filed by the civil revision petitioner for recovery of possession on the strength of the findings given in O.S.No.172 of 1975 on the file of Subordinate Court, Ariyalur. O.S.No.31 of 1981 was decreed till this Court in S.A.No.507 of 1993.

32. In the light of the decree in O.S.No.220 of 1994 and O.S.No.25 of 1995, E.P.No.16 of 1993 had been dismissed on the ground that a decree of recovery of possession cannot be executed against a co-owner. Since I am remanding the matter to the lower appellate Court for its fresh decision, this Civil Revision Petition is allowed. The Execution Petition is restored on to the file of learned Subordinate Court at Ariyalur.

33. The learned Subordinate Judge, Ariyalur shall determine the fate of the execution petition after disposal of A.S.No.205 and 206 of 2002 on the file



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

of Principal District Court, Perambalur.

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34. To be clear if the first appeals in A.S.Nos.205 and 206 of 2002 are allowed and O.S.Nos.220 of 1994 and 25 of 1995 on the file of Subordinate Court, Ariyalur are dismissed, then the execution petition will be proceeded in accordance with law. If A.S.Nos.205 and 206 of 2002 are dismissed, confirming the judgment and decree in O.S.Nos.220 of 1994 and 25 of 1995 the execution petition shall be closed.

35. Cross Objection Nos.46 and 56 of 2022 are disposed of since Second Appeals are allowed and remanded.

36. In the result,

(i) CRP No.894 of 2003 is allowed;

(ii) S.A.Nos.507 and 508 of 2004 are allowed and the matter is remanded to the lower appellate court to dispose of the appeals A.S.Nos.205 and 206 of 2002 afresh in



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

accordance with the principles laid down by the Supreme

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Court in *Santoshi Hazari vs Purushottam Tiwari (2001)*

3 SCC 179.

(iii) Cross Objection Nos.46 and 52 of 2022 are disposed of since the second appeals are allowed and remanded to the lower appellate court.

(iv) **CMP No.19212 of 2023** : Registry is directed to return the original documents filed to the learned counsel after getting necessary endorsement. With the above direction, CMP No.19212 of 2023 is disposed of.

No costs.

08.09.2023

Index : Yes/No

Internet : Yes/No

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To

Page 28 of 30



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

1. The Subordinate Court, Ariyalur
2. The Principal District Court, Perambalur



C.R.P.NPD No.894 of 2003, S.A.Nos.507, 508 of 2004 and Cross Objection Nos.46 and 52 of 2022

V.LAKSHMINARAYANAN,J.,

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C.R.P.NPD No.894 of 2003, S.A.Nos.507,
508 of 2004 and Cross Objection Nos.46
and 52 of 2022

08.09.2023