



S.A.(MD).No.93 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 25.07.2024

DELIVERED ON : 14.10.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

S.A.(MD).No.93 of 2021
and C.M.P.(MD).No.1491 of 2021

1.Perumal (Died)
2.Senrayaperumal ... Appellants/Respondents/Plaintiffs
3.Packiyam
4.Rukmanidevi
5.Suppulakshmi
6.Pappammal
7.Vairamani ... Appellants.
(Appellants 3 to 7 are brought on record as LR's of the deceased 1st
Appellant vide Court order dated 13.12.2022 made in C.M.P.
(MD).No11757 of 2022)

Vs.

1.Natarajan
2.Alagarsamy
3.Balakrishnan ... Respondents/Appellants/Defendants

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree passed in A.S.No. 34 of 2017 on the file of the Subordinate Judge, Theni, dated 09.12.2019 reversing the Judgment and Decree passed in O.S.No.72 of 2014 on the



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file of the District Munsif cum Judicial Magistrate, Andipatti dated 15.03.2017.

For Appellants : Mr.N.Vallinayagam

For Respondents : Mr.H.Arumugam for
Mr.B.Arun for R1 to R3

JUDGMENT

This appeal has been filed against the Judgment and Decree passed in A.S.No.34 of 2017 on the file of the Subordinate Judge, Theni, dated 09.12.2019 reversing the Judgment and Decree passed in O.S.No.72 of 2014 on the file of the District Munsif cum Judicial Magistrate, Andipatti dated 15.03.2017.

2.The facts in brief:

The suit is filed by the appellants herein seeking the relief of declaration that the suit property absolutely belongs to them and for permanent injunction restraining the defendants from interfering into the peaceful possession and enjoyment and for cost.

3.The suit property along with some other properties were purchased by the plaintiffs' father Gopalsamy on 29.09.1956. The



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plaintiffs are the sons. Apart from the plaintiff, another son namely Subiah was also born. He died. Gopalsamy died intestate leaving behind the plaintiff as his legal heirs. Similarly, Subbiah also died intestate some 10 years prior to the plaint. In the oral partition that took place in the family, the suit property was allotted to the first plaintiff. On the west of the suit property, third defendant is having lands. On the farther west, the defendants 1 and 2 are having lands. They are claiming right over the property on the basis of some forged documents. Therefore, claiming right over the property trying to lay 16 feet pathway. That attempt was made on 02.03.2014. But that was prevented. In pursuance of the above said cause of action, the suit is filed.

4.Statement was filed by the first defendant adopted by the other defendants stating that the suit property originally belongs to one Alagarisamy. After his death it devolved upon Perumal Naidu and Naranapa Naidu. Naranapa naidu settled a portion of the property in first item measuring about 26 cents on the west and 60 cents in the middle portion to his second wife called Thirumalaiaammal, on 23.06.1948. Thirumalaiaammal sold the property in favour of one Nanammal in 1965.



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From Nanammal third defendant purchased that property. After purchase subdivision was made. Now the defendants are in possession of that portion. The remaining portion belongs to Perumal Naidu. After his death that portion also is in the possession and enjoyment of this defendant. Patta was also granted in their name. This case has been filed by the plaintiff due to the previous enmity. The first plaintiffs' brother is also necessary party to the suit. The sale deed dated 26.09.1956 is not valid under law and the vendor have no right to sell the property. Description of property in the plaint is also not proper and correct. The plaintiffs were never in possession of the property.

5. On the basis of the pleadings, 5 issues were framed by the trial Court.

1. Whether the sale deed dated 29.09.1956 is till in existence?
2. Whether the plaintiffs are in possession of the property?
3. Whether the suit is bad for non joinder of necessary parties?
4. Whether the plaintiffs are entitled for the relief of declaration and injunction?
5. To what other relief?



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6.To substantiate the case, on the side of the plaintiffs one witness was examined. 14 documents were marked. On the side of the defendants two witnesses were examined and 21 documents were marked.

7.At the conclusion of the trial process, the trial Court came to the conclusion that the title and possession over the property were not established by the plaintiff and dismissed the suit without any cost. Against which, A.S.No.34 of 2014 was preferred by the plaintiff before the appellate Court namely sub Court, Theni. It reversed the finding of the trial Court and allowed the appeal. But, at the same time, confirmed the dismissal of the suit. But reversed the finding in respect of the issue No.2 and 1.

8.Against which this second appeal is preferred. At the time of admission the following substantial question of law is framed.

1. Whether the lower appellate court was right in entertaining the appeal against the mere findings without any part of the decree being based on such findings?



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9. Before answering the Substantial Question of Law involved in this matter let us have re-look into the title and possession issue. As mentioned in the preamble portion of the judgment it is the specific case of the plaintiff that the suit properties were purchased by Gopalsamy, their father on 29.09.1956 through a registered sale deed. Per contra, it is the specific case of the defendant that the property never belonged to the vendor of the plaintiffs' father. Originally it belongs to one Alagirsamy.

10. To whom the property originally belongs ought to have been the matter for consideration by the trial Court as well as the appellate Court, since it is the suit for declaration of title.

11. Now we will go to the finding of the trial Court on that aspect. The framing of the issues by the trial Court itself is not proper, simply because the defendant has raised the plea that the sale deed dated 29.09.1956 is not in existence, the trial Court ought to have framed the issue in proper manner to the effect whether the plaintiffs' father validly



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purchased the property by virtue of the sale deed dated 29.09.1956.

Because the defendants were not parties to the documents. Now leaving that issue, now we will go to the finding of the trial Court with regard to the title.

12.It recorded a finding that as per the sale deed dated 29.09.1956 the plaintiffs' father purchased the property and the sale deed was in existence. Regarding the defendants' title it recorded finding that except the revenue records no other documents of title were produced.

13.Now the appellate Court says that the appeal was preferred only against the finding in respect of the issues Nos.1 and 2. Similarly, the plaintiff also did not file any appeal against the dismissal portion.

14.The appellate Court says that there is mis-description in sale deed Ex.A1 dated 26.06.1956. But in the plaint they have mentioned the date as 29.09.1956, which one is correct is not explained by them. Apart from that another finding is that in Ex.A1 the purchaser's name is mentioned as Gopal Naidu. But, whereas the plaintiffs' father's name is



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Gopal Samy Naidu. So whether Gopal Naidu and Gopal Samy Naidu are one and the same person or whether the purchaser under Ex.A1 is the father of the plaintiffs, were not properly established by the plaintiff.

15.Apart from that the first plaintiffs' brother one Gopal filed a suit for partition against the first plaintiff and others, wherein, this property was not shown. So this was the added circumstances taking into account by the appellate Court in recording the finding that Ex.A1 is not related to the first plaintiffs' father and so it was not in existence. So consequential possession was also found to be not proved by the plaintiff. But it is not taken the title of the defendant, since no appeal was preferred by the plaintiff regarding the dismissal portion and no argument was also advanced in respect of the title of the defendants namely appellant before the appellate Court. In the absence of any such discussion on that aspect by the appellate Court recording any finding, it has not assumed any importance, in view of the failure on the part of the plaintiff to prove their title.

16.Now coming back to the substantial question of law, it is



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unfortunate to note that such a plea was not raised before the appellate Court by the appellants herein stating that no appeal will lie against mere findings. But, they have chosen the second appellate forum to raise such a plea after suffering the above said order by the appellate Court.

17.The learned counsel for the appellant would submit the judgment of this Court in the case of ***P.Veerappan Vs. Mariammal*** reported in ***2013-1-L.W.356*** for the proposition of law to the effect that against mere findings appeal will not lie.

18.Per contra the respondent would submit that against the mere findings appeal will lie in specific circumstances and for that proposition of law, he would rely upon the following judgments.

1.The Judgment of the Honourable Supreme Court made in the case of ***Mohd. Nooman and others Vs. Mohd. Javed Alam and others*** reported in ***(2010) 9 SCC 560*** and

2.The Judgment of this Court made in the case of ***R.Maria Siluvai Vs. B.Sreekumari Amma and three others*** reported in 1998 (II) CTC 218.



19.Perusal of the judgments cited by the respondents shows that if the finding is found to operate as res-judicata, appeal will lie. The relevant portion in ***R.Maria Siluvai Vs. B.Sreekumari Amma and three others*** reported in 1998 (II) CTC 218 is extracted hereunder:

“It is well settled that a party against whom a finding is recorded has got a right of appeal eventhough the ultimate decision may be in his favour if the finding can operate as res judicata in a subsequent suit or proceedings, if however it cannot operate as res judicata then such a party has no right of appeal”.

20.The second one is the judgment of Patna High Court. After referring to various authorities on that proposition, the following, legal principles was enunciated.

“From the above survey, the following broad legal principles emerge: (a) An appeal is a creature of statute. Unless statutory conditions are fulfilled, a court of justice has no jurisdiction to entertain an appeal. (b) If the statute prohibits, the court has no jurisdiction to entertain an appeal. (c) A successful party has no right of appeal against a finding against him. Such a decision will not operate as res



judicata in a subsequent suit. (d) A question decided and a finding recorded against a losing party will operate as res judicata against him if not challenged by him. (e) A remand order conclusively deciding the rights of parties is a decree within the meaning of Clause (2) of Section 2 of the Code of Civil Procedure and hence appealable. If not appealed against it will operate as res judicata. If the appellate court purports to act under Order 41, Rule 23, CPC an order of remand is appealable. (f) The grounds available to an appellant in such appeals against findings are those which would be available to him in a second appeal. (g) In appeals against orders of remand, the findings of fact other than those relating to the order of remand, cannot be pressed into service. (h) If findings on orders of remand are not appealed against, they will become final and the party aggrieved will be precluded from disputing their correctness.”

21.The concluding portion reads under.

“As already stated, the ultimate test is whether there is a final decision on any particular point against a party and if there is one and if he is a losing party, the finding against him has to be



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treated as a decree and an appeal lies.

In the instant case, the documents Exs.B2 to B4 under which the appellant (D6) claimed title to suit item 3 have been held to be void. The learned Subordinate Judge remanded the matter to the trial court for affording an opportunity to implead the children of the fourth respondent Meenakshi Amma. However so far as the finding against the appellant that the sales in his favour are void is concerned, unless the appellant questioned it, it will bind him in further proceedings and in any subsequent suit by him or against him. In these circumstances, I am clearly of the view that the second appeal is maintainable.”

22.So reading of the above said judgment reported in 1998 (II) CTC 218, makes the position clear that if the finding goes against a particular party even though the result may not against him, he is entitled to file appeal, if the finding likely to be operated as res-judicata in subsequent cases.

23.Here the reading of the judgment of the trial Court does



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indicate that it went into the title of issue of the plaintiff and defendant and recorded a finding that title of the plaintiff got proved. But not the defendants. So it operates against the right of the defendant. So they got every right to file appeal against that finding pertaining to the title.

24. But unfortunately as mentioned above, the title of the defendant was not gone into by the appellate Court. It simply reversed the finding of the title claimed by the plaintiff. So he cannot canvass any title, but in fact so such right of title canvassed by the respondent before the Court at the time of argument.

25. Now to set the records right we can also go through the title of the plaintiff, since in the grounds such a plea is raised.

26. Absolutely, there is no answer to the doubt raised by the appellate Court with regard to the title of the plaintiff. There is a confusion with regard to the father's name and the name mentioned in Ex.A1. That was not clarified by him. Similarly, there is no evidence on record to show that in the oral partition that took place between this



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plaintiff and his brothers the suit property was allotted to him. In this connection we can also remember the finding of fact recorded by the appellate Court over non inclusion of the suit property by Gopal, the brother of the first plaintiff, while filing a suit for partition. So in the absence of any such proper explanation on the part of the appellant herein with regard to the title, I find no reason to interfere into the findings recorded by the appellate Court in this regard.

27.Now coming back to the issue as to whether the appeal was rightly filed by the respondent herein before the appellate Court, so the substantial question of law is answered that the appeal filed by the respondent before the appellate Court was maintainable. So the substantial question of law is answered accordingly. Second appeal fails

28.Accordingly, this second appeal **dismissed**. There shall be no order as to costs. The Judgment and decree passed by the appellate Court is hereby confirmed. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

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To

1.The Subordinate Judge, Theni

2.The District Munsif, Andipatty.

3.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVA,J.

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