

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.387 of 2014
and
M.P.No.1 of 2014

1.N.Selvavinayagam

2.N.Panneerselvam ... Appellants/D2 & D4

vs.

1.R.Santhanam

2.N.Kaliyaperumal

3.N.Muthulingam

... Respondents/Plaintiffs
D1 & D3

Prayer: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree passed by the learned I Additional Sub-Judge, Cuddalore, dated 27.01.2014 in A.S.No.15 of 2013 by confirming the judgment and decree passed by the learned Principal District Munsif, Cuddalore in O.S.No.425 of 2009 dated 05.01.2013.

For Appellants : Mr.K.A.Ravindran

For Respondents : Mr.R.Muralidharan for R1

No appearance for R2 and R3

J U D G M E N T

The defendants 2 and 4 in a suit for declaration and for permanent injunction are the appellants before this court. The first respondent herein as the plaintiff filed the said suit by claiming right and title over the suit properties. The defendants 1 and 3 were set exparte. The defendants 2 and 4 alone contested the suit. They denied the claim of the plaintiff over the suit property.

2.Before the trial court, the plaintiff examined himself as PW1 and examined other two independent witnesses as PW2 and PW3.

He marked Exs.A1 to A20 in support of his case. On the side of the defendants 2 and 4, they examined the fourth defendant as DW1 and they have not marked any document in support of their case.

3.The trial court on considering the facts and circumstances and appreciation of evidence let in by both parties, though found that the plaintiff is entitled for the relief of declaration of title to the suit property and for permanent injunction in its judgment, however, while drafting the decree, has granted the relief of injunction alone. Aggrieved against the judgment and decree passed by the trial court, the defendants 2 and 4 filed the first appeal before the First Appellate Court. They raised very many grounds challenging the finding rendered by the trial court. The Appellate Court confirmed the finding rendered by the trial court thereby dismissing the appeal. Aggrieved against the said concurrent findings rendered by the courts below, the defendants 2 and 4 have filed the present second appeal.

4.Though three questions of law claiming to be substantial are raised before this court in the memorandum of grounds of appeal, considering the judgment rendered by the lower Appellate Court, this court is of the view that it would suffice for the purpose of deciding the present second appeal to frame the following substantial question of law alone so that the matter could be decided in a narrow campus, without going into the merits of the matter:

"Whether the judgment and decree rendered by the lower Appellate Court is in consonance with the provision contemplated under the code of Civil Procedure while deciding the appeal without there being any independent findings rendered, even though it sought to confirm the findings of the trial court?"

5.Perusal of the judgment rendered by the lower Appellate Court would show that it has simply extracted the grounds of appeal raised by the appellants from paragraph 10 onwards upto paragraph 12. Thereafter, only in one paragraph viz., paragraph 13, the learned Appellate Judge observed that the appellant/defendant has not proved his case and that she agreed with the reasons and findings arrived by the trial court. Except these observations, which are highly cryptic in nature, there is no other discussion or findings rendered by the lower Appellate Court on the facts and circumstances of the case, even though it has decided to confirm the finding of the trial court.

6.Needless to say that the Appellate Court being the final fact finding court, has to advert to all the factual aspects of the matter and the pleadings and evidence of the respective parties and thereafter to render its own independent finding and

reasonings either to confirm the finding of the trial court or to set aside the same. In otherwords, the independent application of mind of the appellate court on the facts and circumstances must be evident on the reasonings and findings given by such court. In this case, I find that the Appellate Court has mechanically decided the appeal without applying its mind simply by saying that it agrees with the reasonings and conclusion arrived by the trial court. Such course of action is not the one contemplated under the code of civil procedure especially, when the First Appellate Court is a final fact finding court. Therefore, on this simple ground, I find that the judgment and decree of the lower Appellate Court is liable to be set aside and the matter has to be remitted back to the Appellate Court for fresh consideration. Accordingly, the above question of law is answered in favour of the appellants and the judgment and decree of the lower Appellate Court is set aside and the second appeal is allowed and the matter is remitted back to the first Appellate Court for fresh consideration on merits and in accordance with law. It is also made clear that this court is not making any view or observation on the merits of the matter, as it is for the Appellate Court to consider and decide the same on hearing both parties. The Appellate Court shall dispose of the appeal on merits and in accordance with law, as stated supra, within a period of two months from the date of receipt of a copy of this order. No costs. The connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vri

To

1.The I Additional Sub-Judge,
Cuddalore.

2.The Principal District Munsif,
Cuddalore.

+1 cc to M/s.R.Muralidharan Advocate sr 53964

+1 cc to Mr.K.A.Ravindran Advocate sr 54412

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aa10/11/2016