

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.12.2016

PRONOUNCED ON : 15.12.2016

CORAM

THE HONOURABLE DR.JUSTICE G. JAYACHANDRAN

S.A.No.66/2008 & MP No.1/2008

V.Krishnan

Appellant/Plaintiff

..Vs..

1.Mohanammal
2.s.P.babu Nanmullai
3.S.P.Thirumal
4.S.P.Sridharan
5.S.P.Parthiban
6.Subramani
7.Saravanan
8.Manickammal
9.Radha
10.Maragathammal
11.Murugan

..Respondents/
Defendants

Prayer: Appeal filed Under Section 100 C.P.C., to set aside the judgment and decree dated 11.12.2006 made in A.S.No.10 of 2006 on the file of the Subordinate Court, Tirupattur and restore the judgment and decree dated 11.11.2005 made in O.S.No.1067 of 1991 on the file of the District Munsif Court, Tirupattur.

For Petitioner	: Mr.D.Balachandran
For RR-1 to 5	: Mr.PA.Sudesh Kumar
For RR-6 ,8,9	: No Appearance
For RR-7,11	: Died
For R-10	: Not ready notice

JUDGMENT

The plaintiff is the appellant herein. The appeal is directed against the decree and judgment passed by the First Appellate Court setting aside the judgment and decree of declaration and injunction of the trial court.

2.The claim of the plaintiff is that he purchased 1.10 acres of land in S.No.133/5 and ½ share in the Well and land around it in S.No.133/2 from its lawful owner vide sale deed dated 04.03.1982. As per the sale deed he has right to draw water from the Well situated in S.No.133/2 to irrigate his land in S.No.133/5 through the Channel running in the defendants land.

3.The defendants resisted the suit on the ground that the plaintiff has no right or title on the well which is situated in their land bearing S.No.133/2. The plaintiff's Vendor namely Mottaiyan @

Munusamy or his legal heirs have no right over the Well or Land in S.No.132/2. In fact, property under S.No.133/2 originally owned by one Ratinammal, who is the mother of deceased first defendant and grand mother of the deceased second defendant. The other defendants 3 to 13 are LR's of the defendants 1 and 2 impleaded pending suit. After the demise of Ratinammal, the defendants are in exclusive enjoyment and possession of the land in S.No.133/2. Neither the plaintiff nor his Vendor has title or right in the Well or Land around it which is situated in S.No.133/2.

4. With the above pleadings, the suit was tried by the Court after framing the following issues touching upon the material proposition of fact and law affirmed by the plaintiff and denied by the defendants.

1. Whether the plaintiff have title and possession over the suit property?

2. Whether the defendants are in possession of the suit property?

3. Whether the defendants are entitle for declaration and permanent injunction as prayer?

4. Whether the suit is properly valued and stamped?

5. Whether suit have any cause of action?

6. What other relief?

5. On appreciating three witnesses and 16 exhibits on behalf of the plaintiff; one witness and 3 exhibits on behalf of the defendant, the Trial Court allowed the suit granted decree of declaration and permanent injunction as prayed. On appeal, by 9 to 13 defendants, the First Appellate Court has formulated the following point for consideration.

“Whether the appeal has to be allowed”?

6. Pointing out that the property schedule in the plaint is not adequately described, the Trial Court judgment was reversed by the Appellate Court after comparing the schedule of the property purchased by the plaintiff under Ex.A-16 and the schedule of the property in the title deed Ex.A-2 of plaintiff Vendor. Further, The Lower Appellate Court after reading the plaint and the schedule to the plaint, pointed out that the plaintiff has not claimed undivided $\frac{1}{2}$ share of the land and Well at S.No.133/2. The pleadings and the decree of the Trial court indicates the plaintiff is entitled for declaration to $\frac{1}{2}$ share in the Well and for entire land in S.No.133/2 which is admittedly not owned by the plaintiff. Thus the decree is an in-executable decree. Since the Vendor of the defendant had no right over $\frac{1}{2}$ share in S.No.133/2, the First Appellate Court

allowed the appeal holding that the plaintiff has not come with clean hand and based on the Maxim "Memo debt quad non habit" – reversed the judgment of the Trial Court.

7.The aggrieved plaintiff has raised several question of law challenging the Lower Appellate Court judgment. This Court has put the respondents on notice before admitting the Second Appeal to find out whether any substantial question of law arise in this appeal. The respondents 1 to 5 appeared through counsel and pleaded there is no substantial question of law involved in this appeal.

8.The learned counsel for the appellant submitted that U/s 41 Rule 31 of CPC the Appellate Court should frame the point for determination and arrive at the decision with proper reasoning. Contrary to the above rule of procedure, the First Appellate Court has reversed the Trial Court finding without stating the point for determination.

9. At this juncture, it is relevant to refer to the following decisions:

1. [(AIR 2006 ALLAHABAD 3) D.P.Singh, S.L.Yadav, Mahendra Pratap and P.K.Debey -vs- U.N.Sharma, Rajiv Kumar Srivastava] wherein the Allahabad High Court has held as follows;

"7. Coming to the analytical examination of the judgments of the two courts below, it is clear from a perusal of the judgment of the trial court that the trial court framed as many as four issues and decided each and every point by appraising the evidence adduced in the case. I have also been taken through the judgment of the trial court as well as the lower appellate Court. It would appear that the trial court analytically scanned the evidence adduced and disbelieved the statements of the D.Ws 1 and 2 noticing glaring discrepancies in their statements and ultimately, converged to the conclusions that the plaintiff were the owners of the property

in question. On the other hand, the lower appellate court heavily relied upon the Amins report and wandered off into discussing points, which were, in view of controversy involved, less relevant to the controversy involved in the case. Besides one noticeable aspect is that the conclusion of the lower appellate court about possession of plaintiff to the extent of few cubic feet towards east of their eastern door is not a logical one and the conclusion has been drawn without any valid basis and it would appear that the lower appellate court has discounted material facts on record while converging to the conclusion. It would further appear from a perusal of the judgment that the lower appellate court did not frame any question of law for determination and it would rather appear that the court below jumped from one point to another without traversing upon points

which were very material for consideration and therefore judgment does not clearly suggest that the court has applied its judicial mind to the appreciation of the evidence and therefore manifestly conveys the process of judicial thinking by which it differs from the conclusions of the courts below.”

2.[(AIR 2006 BOMBAY 62) Genba Sahadu Modak -vs- Suryakant

Vitthal Modak & Ors. wherein Bombay High Court has held as follows;

“8.In this regard must note that there cannot be two opinions with regard to the ratio laid down by the Apex Court. However, the entire tenor of the judgment definitely shows that though the duty is cast upon the appellate Court to state the points for determination and the decision thereon, along with the reasons for the decision, it cannot be said that the said ratio is applicable to the present appeals at hand especially for the reasons I have already recorded to the effect that no prejudice is caused to the other party because every issue in dispute is taken up for discussion and has been appreciated properly which leaves no doubt that the he has applied his mind to the facts and legal aspects. If this is so, in my considered view, the facts that detailed points for determination were not formulated, would amount only to irregularity which would not vitiate the proceeding

especially when the body of the judgment shows the material compliance with the provision of Order 14 Rule 31 of the C.P.C. is made by the lower appellate Court.

3. [(AIR 2002 MADRAS 90) *T. Murugappa and another -vs- Perumiah and Others*)]

".....It is true that the lower appellate Court has summarised the submissions of the respective counsel. But a perusal of the judgment of the lower appellate Court would indicate that only after careful consideration of the available materials. It has arrived its own conclusion. What has been done by the lower appellate Court is not a mere affirmation of the findings of the trial court, but an affirmation of the trial Courts findings on an analysis and careful consideration of the available evidence."

10. The First Appellate Court after introducing the facts of the case by extracting the pleadings and the judgment of the Trial Court, has only stated the point for determination is whether the appeal is to be allowed? and had proceeded to re-appreciate the evidence elaborately. The Appellate Court has appreciated the pleadings, evidence and the reasoning of the Trial Court and after pointing out the error in pleading, and description of property in dispute concluded that the said error has lead to wrong decision by Trial Court and hence reversed the same.

11.This Court on scrutiny of the First Appellate Court judgment find that though the Appellate Court has failed to formulate point for determination properly, it has not placed its decision on surmises or conjectures. The Lower Appellate Court has taken up every issues framed by the Trial Court and has reversed the finding of the Trial Court after providing reasonable and legally acceptable reasons for reversing.

12.The Lower Appellate Court weighing the evidence such as Ex.B-4 sale deed in favour of Rathinammal and Ex.B-5 to B-7 Electricity Bills held that the defendants are not the absolute owners for the Well. The EB document show since 1984 Shanmuga Mudaliar the father of the defendants 1 to 4 has obtained electricity connection and drawing water from the Well in dispute. The appellants have never objected the same. Also the Lower Appellate Court has pointed out the inherit defect in the description of the property rendering it in-executable even if decree passed. This finding is in consonance to Order VII Rule 3 of CPC.

13.Next the Trial Court has pointed out that in the absence of pleading and proof that there was a channel to take water from the Well

at S.No.133/2 and the plaintiffs were drawing water using "Kavalai" (கவலை) (way of drawing water using bull; non-mechanized non-electrical method) and irrigating their land situated in S.No.133/5. The suit bound to fail.

14. Therefore, this Court holds that, the Appellate Courts has taken each and every issue for discussion and appreciated it properly by applying its mind to facts and law. It amounts to material compliance with the provision of Order 41 Rule 31 CPC. Failure to formulate detailed points for determination is mere an irregularity, where no prejudice is shown to have been caused.

15. Inadequacy in the description of the suit property, amelioration of the channel in S.No.133/2, according to the Advocate Commissioner report, absence of pleading to the effect that the plaintiff drawing water from the dispute Well and irrigating their land through the channel running in the field of the defendants and a consequential prayer to restore the channel all coupled together makes the suit fallible.

DR.G.JAYACHANDRAN.,J.

KP

16.For the forgoing reasons this appeal against the well found judgment of the Lower Appellate Court is liable to be dismissed. Hence Second Appeal dismissed. No costs. Consequently the connected miscellaneous petition is closed.

15.12.2016

KP

To
The Subordinate Court, Tirupattur.
The District Munsif Court, Tirupattur.

Judgement in
S.A.No.66/2008