

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

S.A.No.406 of 2016

and

C.M.P.Nos.7105 and 7106 of 2016

1.Tirugnanasambandam (deceased)

2.Thaiyalnayagi

3.Saraswathi

4.Tamayandy

5.Kamalatchi

Appellants 3 to 5 brought on record
as LR's of the deceased Ist Appellant
vide order of court dated 13.07.2015
in MP No.1 of 2015.

... Appellants/Defendants

..Vs..

Hema

... Respondent/Plaintiff

Prayer: This Second Appeal has been filed under Section 100 of Civil Procedure Code., praying to set aside the Judgment and Decree dated 27.09.2011 made in A.S.No.7 of 2011 on the file of the District Court, Karaikal, confirming the Judgment and Decree dated 15.03.2011 made in O.S.No.252 of 2007 on the file of the Principal District Munsiff Court, Karaikal

For Appellant : Mr.S.Sounthar

JUDGMENT

This memorandum of Second Appeal has been directed against the judgment and decree, dated 27.09.2011 and made in A.S.No.7 of 2011 on the file of the District Court, Karaikal, confirming the Judgment and Decree dated 15.03.2011 and made in O.S.No.252 of 2007 on the file of the Principal District Munsiff Court, Karaikal.

2. The defendants are the appellants herein whereas the respondent is the plaintiff.

3. After the pronouncement of the judgment in the appeal in A.S.No.7 of 2011, the first appellant being the first defendant had passed away. Therefore, in view of the order passed in the

Miscellaneous Petition No.1 of 2015, the appellants 3 to 5 have been brought on record as the legal heirs of the deceased defendant/appellant.

4. The respondent herein had filed a suit in O.S.No.252 of 2007 as against the appellants on the file of the learned Principal District Munsiff, Karaikal, seeking the relief of permanent injunction to restrain the appellants from in anyway disturbing or interfering with his peaceful possession and enjoyment of the suit property.

5. Despite strenuous contest was made by the appellants by filing their written statement, the Trial Court had proceeded to grant the decree of permanent injunction as sought for by the respondents.

6. Challenging the correctness of the judgment of the Trial Court, dated 15.03.2011, the appellants had preferred an appeal in A.S.No.7 of 2011 on the file of the learned District Judge, Karaikal. After hearing both sides, the learned First Appellate Judge had proceeded to dismiss the appeal, confirming the decree and judgment of the Trial Court. Having been aggrieved by the impugned judgment of the First Appellate court, the appellant stands before this Court with this Second Appeal.

7. Heard Mr.S.Sounthar, learned counsel for the appellants.

8. This Court has perused the averments of the grounds of the Second Appeal along with the judgment and decree of the Courts below.

9. Having regard to the related facts and circumstances, this Court, is of considered view that this Second Appeal can be disposed of at the admission stage itself, as there is no substantial question of law involved.

10. Section 100 of the Code of Civil Procedure provides for filing Second Appeal from the Appellate Court Judgments and Decrees.

Sub section 1 enacts as under:-

Sub section (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

Sub section (4) contemplates that where the High Court is satisfied that a substantial question of law

is involved in any case, it shall formulate that question.

Sub Section 4 to Section 100 mandates that if any substantial question of law is involved, it shall be formulated provided the High Court is satisfied.

Sub section (5) of section 100 contemplates that the appeal shall be heard on the question as formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

"Provided that noting in this sub-section shall be deemed to take away or abridge the power to the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question".

11. On coming to the instant case on hand, it is significant to note here that both Courts have given concurrent findings, granting the relief of permanent injunction as sought for by the respondent/plaintiff.

12. The amended section 100 [Substituted by CPC (amendment) Act, 1976 (104 of 1976), Section 37, for Section 100 (w.e.f.1-2-1977)] has drastically cut down the scope of this section by providing in sub-section (1), that a second appeal is henceforth competent only if the case involves, at the stage of admission, a substantial question of law. Further, such a question has to be precisely stated in the memorandum of appeal. Where the substantial question of law is not stated in the memorandum of appeal, the Court shall formulate the same. The respondent however, have the right to challenge that no substantial question of law is involved.

13. It is also to be noted that where, based on the evidence on record, the Trial Court and the First Appellate Court had concurrently arrived at a finding, the High Court in Second Appeal cannot reverse the said concurrent findings under ordinary circumstances. This principle is laid down by the Apex Court in the State of Haryana Vs. Khalsa Motors Limited and others in 1990 (4) SCC 659.

14. Mr.S.Sounthar, learned counsel for the appellant has submitted that the patta in respect of suit property stood in the name of the first appellant's father i.e., first defendant's father and his four sons including the first appellant / D1 and hence her claim of possession over the suit property was not considered by the Trial Court. He has also added that even as per the case of the respondent/plaintiff, the tax receipts for

the suit property stood in the name of the mother of the first appellant and hence the possession pleaded by the respondent is un-believable.

15. Thirdly, he would contend that the respondent/plaintiff had miserably failed to prove her possession on the date of filing of the suit. In so far as this appeal is concerned, this Court would like to point out that the plaint document which was relied upon by the respondent/plaintiff was Ex.A1 partition deed dated 13.12.1997.

16. As observed by the First Appellate Court, the person, who can speak about this document is the first defendant. But he had not chosen to enter into the witness box. The First Appellate Court has found that the contention of the first defendant is that Ex.A1 is sham and nominal document but this has not been substantiated by the first defendant. Further, the first appellant had not proved his contention that he had perfected title over the suit property by adverse possession for about 45 years as against the other co-sharer. The First Appellate Court has also observed that the appellants had not asserted the title over the suit property through any documentary evidence.

17. Further, the Lower Appellate Court has also observed that the Ex.A1 would go to prove that the suit property was originally belonged to the father of Sattiyappa Mudaliar and in view of this fact, the Lower Appellate Court has come to the conclusion that the respondent being the plaintiff had proved her possession over the suit property and had also proved her title through acceptable legal evidence.

18. This Court, having taken into consideration the concurrent findings of the Courts below, finds that this appeal is liable to be dismissed at the admission stage, as no substantial question of law is involved. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The District Court, Karaikal

2.The Principal District Munsiff Court, Karaikal

1 cc to Mr.S.Sounthar, Advocate, sr.27128

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ug co, kra 23.06.2016