



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.08.2017

CORAM :

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

S.A. (MD) No. 66 of 2014
and
M.P. (MD) .No. 1 of 2014

M. Shanmugam Pillai

...Appellant/ Appellant
/Plaintiff

Vs.

P. Stanley Samraj

... Respondent/Respondent
/Defendant

Prayer: Second Appeal filed under Section 100 of the Code of the Civil Procedure, against the Judgement and Decree, dated 23.10.2013, made in A.S.No.58 of 2012 on the file of the Sub Court, Thoothukudi, confirming the Judgement and Decree of the Additional District Munsif Court, Thoothukudi, in O.S.No.142 of 2006, dated 22.11.2011.

For appellant : Mr.V.Meenakshi Sundaram
for Mr.D.Nallathambi

For respondent : Mr.A.Arumugam
for M/s.Ajmal Associates

JUDGMENT

The plaintiff, who had lost in both the Courts below, is the appellant. The suit has been filed for declaration of title of the 2nd schedule property and for recovery of the same from the defendant and for mandatory injunction to remove the stone pillar and iron fencing from the suit property.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

3. At the time of admission, the substantial questions of law were framed for consideration:

a) *Whether the approach of the first appellate Court in dismissing the appeal filed by this appellant/plaintiff without hearing the application in I.A.No.63 of 2013 in I.A.No.149 of 2013 under Order 41 Rule 27 of Civil Procedure Code along with the main appeal in A.S.No.58 of 2012 which is against the spirit of Order 41 Rule 27 and 28 of Civil Procedure Code and hence the same warrants interference under Section 100*



of Civil Procedure Code?

b) Whether the Judgment of the Courts below that the appellant/plaintiff has not proved his title to entire 1 acre 19 cents property in dispute as the title deed Ex.A1 stands only for 61 cents is correct. When the plaintiff pleaded that the entire suit property belonged to the grandfather late. Eswaramoorthi Pillai by purchase and by inheritance of ancestral property which was proved through revenue records of the year 1927 which and 1950 corroborated by oral evidence of PW1 and hence the judgment and decree of the Courts below warrants interference under Section 100 of Civil Procedure Code?

c) When the documents relied by the defendant for his title namely, Ex.B1, Ex.B4, Ex.B5 and Ex.B15 though Velasamy Pillai @ Murugadiya Pillai were void in the eye of law, since the said Velasamy Pillai sold the property to Erullappa Pillai much before through Ex.A.11 and in that circumstances, whether the Courts are correct in accepting the title of the defendant and thus the judgment and decree of the Courts below warrants interference under Section 100 of Civil Procedure Code?

d) Whether the Courts below are correct in dismissing the suit filed by the appellant/plaintiff as there is no documents to prove title for entire suit property, when the plaintiff proved his title to 61 cents through Ex.A1, and remaining 61 cents is by way of inheritance of ancestral property and through oral partition which reflects in revenue records and the same goes to the root of lis and warrants interference under Section 100 of Civil Procedure Code?

e) As in the other suit in O.S.No.302 of 2006 filed by one Selvaparathy against the very same defendant herein in respect of immediate southern portion of the present property in dispute. Wherein the defendant herein produced the very same set of title deeds for his title and by the Judgment dated 22.01.2011, the same trial Court declared that the title deeds are void and not accepting the case of the defendant, whether the Courts below are correct in dismissing the present suit by overlooking the Judgment in O.S.No.302 of 2006 dated 22.11.2011 and hence the judgment and decree of the Courts below warrants interference under Section 100 of Civil Procedure Code?"

4. It is seen that the appellant/plaintiff herein had filed I.A.Nos.63 of 2013 and 149 of 2013 pending appeal in A.S.No.58 of 2012 on the file of the Sub Court, Thoothukudi. A perusal of the Judgment shows that the learned Appellate Judge did not consider the said Interlocutory applications, which, according to the plaintiff, would go to the root of the matter. When the applications were filed under Order 41 Rule 27 of C.P.C., the Courts below have to



issue notice to the other side and thereafter, decide the petition on merits along with appeal. Though, in this case, the defendant had filed his counter affidavit to the said I.As., the learned Subordinate Judge has not discussed the said I.As. along with the first appeal.

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5.The learned counsel appearing for the respondent has no serious objection for remitting the matter to the first appellate Court for consideration of the said I.As. and to decide the matter afresh.

6.In view of the above, without going into the merits of the case, this Court is inclined to set aside the Judgment and Decree passed by the First Appellate Court and accordingly, the judgment and decree passed by the first appellate Court is set aside and the matter is remitted back to the file of the First Appellate Court to hear the appeal along with the above said I.A.Nos.63 of 2013 and 149 of 2013 and to consider the matter and deliver the Judgment within a period of 3 months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Subordinate Judge,
Thoothukudi.

2.The Additional District Munsif Court,
Thoothukudi.

3.The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai.
(For sending the records to the Sub Court, Thoothukudi.

+1cc to AJMAL ASSOCIATES in SR. No. 74884

+1cc to Mr.D.NALLATHAMBI Advocate in SR. No. 74728

MSA

JS/GT/SAR.2/8.9.2017/3P-6C

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