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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2018

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

S.A.No.501 of 2008

- 1.Marappa Gounder (Deceased)
- 2.Arthanareeswaran
- 3.Velappan
- 4.Saraswathi
- 5.Rukmani

...Appellants 2 to 5 are brought on record as LRs of the deceased sole appellant vide order of Court dated 11.8.2018 made in CMP.13395 to 13397/18 in SA.501/2008

vs.

1. Nallasamy
2. Veerasamy
3. Kuppusamy
4. Rukmani
- ...Respondents

Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, against the judgment and decree dated 28.02.2007 made in A.S.No.106 of 2006 - on the file of the Additional District Court - Fast Track Court No.IV, Bhavani - reversing the judgment and decree dated 01.03.2006 made in O.S.No.167 of 2003 on the file of the Principal District Munsif Court, Bhavani.

For Appellant : Mr.V.Rajesh

For Respondents : Mr.N.Manoharan for R1 to R4

J U D G M E N T

The plaintiff in OS No.167 of 2003 is the appellant. The suit in OS No.167 of 2003 was filed by the plaintiff seeking declaration of his title to the suit property and for consequential injunction restraining the defendants from interfering with the plaintiff's possession of the property.



2. The suit property was described as dry land measuring 2 acres 72 cents in Survey No.334 C and 319 C (RS No. 566/4,5,6) of Kounthapadi Village, Bhavani Taluk of Erode District.

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3. According to the plaintiff, the suit properties were purchased by the plaintiff's grandfather one Kumara Kounder on 17.12.1923, on his death, the properties devolved on the plaintiff's father Karumanda Kounder, who was his only son. He would also contend that the said Karumanda Kounder had died leaving behind the plaintiff as his only son, therefore the plaintiff is entitled to the suit properties.

4. The suit was resisted by the defendant contending that the plaintiff has no title to the entire extent of 2 acres 72 cents as claimed by him. The defendant would contend that they are also entitled to certain extent of the property in 334 C and 319 C. In fact in Para 7 of the written statement, the defendant had admitted that the plaintiff family owned an extent of 0.61.2 hectares equivalent to 1.52 cents in S.No.334 C.

5. The Trial court concluded that the plaintiff has established his right over the suit property and decreed the suit. The Trial Court in coming to the said conclusion relied upon all proceeding between the plaintiff and one Venugopal Iyer wherein the extent of 2 acres 72 cents in survey No.334 was demarkated. The defendants were not parties to the said suit. Aggrieved by the decree, the defendants preferred an appeal in A.S. No. 106 of 2006. Pending appeal respondent filed an application in IA.No.131 of 2006 seeking to file certain documents namely, sale deed dated 12.12.1903 and sale deed dated 04.06.1973 as additional evidence. It is seen from the records that the application was filed on 18.12.2006. The Lower Appellate Court had allowed the IA only on 28.02.2007 along with the appeal. However, it is seen from the documents that they have been marked as Ex.P10 and Ex.P11. Even on 18.12.2006 much before the application for additional evidence was taken up by the Lower Appellate Court and allowed. The procedure adopted by the Lower Appellate Court is erroneous according to the appellant.

6. Apart from the above, the Lower Appellate Court has not even assigned any reasons for disagreeing with the findings of the Trial court. While dealing with the powers and duties of the Appellate Court, more particularly, when the Appellate Court chooses to reverse the findings of the Trial Court, the Hon'ble Supreme Court in Santosh Hazari v. Purushottam Tiwari, reported in 2001 (3) SCC 179, has observed as follows:

"Secondly, while reversing a finding of fact the appellate Court must come into close quarters with the reasoning assigned by the trial Court and then assign its own



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reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it."

The above said legal position was reiterated by the Hon'ble Supreme Court again in *Uttar Pradesh State Road Transport Corporation v. Mamta and Others*, reported in 2016 (4) SCC 172, wherein the Hon'ble Supreme Court quoted the above passage from *Santosh Hazari* 's case with approval.

Again in *Laliteshwar Prasad Singh and others v. S.P.Srivastava (dead) through legal representatives*, reported in 2017 (2) SCC 415, the Hon'ble Supreme Court while dealing with the powers and duties of the First Appellate Court, which is a final Court of fact has observed as follows:

"Even though the appellate Court would be justified in taking a different view on question of fact that should be done after advertting to the reasons given by the trial Judge in arriving at the finding in question. When the appellate court agrees with the views of the trial Court on evidence, it need not restate effect of evidence or reiterate reasons given by the trial court; expression of general agreement with reasons given by the trial Court would ordinarily suffice. However, when the first appellate Court reverses the findings of the trial Court, it must record the findings in clear terms explaining how the reasonings of the trial Court are erroneous."

A reading of the judgment of the Lower Court reveals that such an exercise has not been made and therefore I am of the considered opinion that judgment of the Lower Appellate Court is to be set aside and this appeal is to be remitted to the Lower Appellate Court for fresh consideration, in the light of the discussion above. Since, I have remitted the matter for fresh consideration on account the non compliance with the provisions of Order 41, Rule 31 of CPC. I am not dealing with the questions of law that are raised at the time of the admission of this appeal. I am of the considered opinion that these questions cannot be gone into in the absence of a proper judgment by the Lower Appellate Court on the effect of the additional documents that are produced as well as its reasons for not agreeing with the findings of the Trial Court. Hence, the judgment of the Lower Appellate Court is set aside and the matter remitted back to the Appellate Court for fresh consideration in the light of the law laid down by the Hon'ble Supreme Court *Santosh Hazari* 's case cited *supra*.



7. The parties are directed to appear before the Lower Appellate Court on 19.11.2018. The registry is directed to despatch the entire records to the Lower Appellate Court forthwith. The Lower Appellate Court shall reconsider the matter within a period of 6 months from 19.11.2018 and dispose of the appeal in accordance with law. There will be no order as to costs in this appeal. The parties will not be entitled to any notice from the Lower Appellate Court for the first hearing. The Court fee paid in this Second Appeal is directed to be refunded to the appellant.

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Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Principal District Munsif Court,
Bhavani.

2.The Additional District Court(Fast Track Court NO.IV)
Bhavani

Copy to:The Section Officer
VR Section,
High court, Madras.

+lcc to Mr.V.Rajesh, Advocate SR.NO.67646
+lcc to Mr.N.Manokaran, Advocate SR.NO.67683

KS(CO)
sm:19.11.2018

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