

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.Nos.987 and 988 of 2015
and M.P.Nos.1 and 1 of 2015

Durai Kuppuswamy

... Appellant/Appellant/
Plaintiff in SA.987/2015,
Appellant/Appellant/
2nd Defendant in SA.988/2015

Vs.

Abdul Sukur

... Respondent/Respondent/Defendant in S.A.No.987/2015

1.Abdul Sukur

... 1st Respondent/1st Respondent/Plaintiff in SA.No.988/2015

Veeraraghavalu Naidu (Deceased)

2.Vasanthi

3.Hari

4.Vatchala

5.Nalini

.. Respondents 2 to 5/Respondents 2 to 5/
defendants 1, 3 to 5 in S.A.No.988/2015

COMMON PRAYER: Second Appeals are filed under Section 100 of C.P.C against the judgments and decrees dated 09.07.2015 made in A.S.Nos.52 and 95 of 2014 on the file of the Sub Court, Arakkonam, Vellore District confirming the judgments and decrees dated 22.10.2010 made in O.S.Nos.372 of 1999 and 452 of 1986 respectively on the file of the District Munsif Court, Arakkonam, Vellore District.

For Appellant : Mr.S.Parthasarathy, Senior Counsel
for M/s.Kavitha Rameshwar
(in both S.As.)

(In S.A.No.987/2015)

For Respondent : Mr.S.Raveendran
for M/s.D.Gopal

(In S.A.No.988/2015)

For R1 : Mr.S.Raveendran
for M/s.D.Gopal

For RR2 to 5 : No Appearance/Insufficient Address

C O M M O N J U D G M E N T

Second Appeals are filed against the judgments and decrees dated 09.07.2015 made in A.S.Nos.52 and 95 of 2014 on the file of the Sub Court, Arakkonam, Vellore District confirming the judgments and decrees dated 22.10.2010 made in O.S.Nos.372 of 1999 and 452 of 1986 respectively on the file of the District Munsif Court, Arakkonam, Vellore District.

2.In both the appeals, the parties are one and the same and therefore, they are disposed of by this common judgment.

3.The respondent in S.A.No.987/2015 and 1st respondent in S.A.No.988/2015 is one and the same (herein after referred to as 'the respondent'). The appellant filed O.S.No.372 of 1999 against the respondent for permanent injunction restraining the respondent from in any way interfering with the peaceful possession and enjoyment of the suit schedule property. According to the appellant, he purchased the property by sale deed dated 23.09.1999 from the original owner and he is in possession and enjoyment of the same. The respondent without any title, right, interest over the suit property is attempting to interfere with the peaceful possession and enjoyment of the suit schedule property. The respondent filed written statement and contended that he is the owner of the suit property and he is in possession of the properties for more than 30 years. The appellant tried to interfere with his peaceful possession and hence, the respondent has filed O.S.No.452 of 1986 for permanent injunction and obtained interim injunction and prayed for dismissal of the suit filed by the appellant.

4.The respondent filed O.S.No.452 of 1986 for permanent injunction against one Veeraraghavalu Naidu/1st defendant. Subsequently, the appellant was impleaded as 2nd defendant in the suit. After the death of the 1st defendant, the respondents 2 to 5 were brought on record as legal representatives of the deceased 1st defendant, Veeraraghavalu Naidu.

5.According to the respondent, the said Veeraraghavalu Naidu tried to interfere with his possession and hence, he filed suit. The said Veeraraghavalu Naidu and appellant filed written statement and contested the suit. The learned District Munsif, Arakkonam, by two judgments both dated 22.10.2000, dismissed the suit O.S.No.372 of 1999 filed by the appellant and decreed the suit filed by the respondent in O.S.No.452 of 1986.

6.The appellant filed A.S.No.52 of 2014 against the dismissal of the suit filed by him in O.S.No.372 of 1999 and A.S.No.95 of 2014 against the judgment and decree passed in O.S.No.452 of 1986 filed by the respondent. The learned I Appellate Judge dismissed both the Appeals filed by the appellant by separate judgments both dated 09.07.2015.

7.Against the said judgments and decrees both dated 09.07.2015, made in A.S.Nos.52 and 95 of 2014, the appellant has come out with the present two Second Appeals.

8.Heard the learned counsel for the appellant as well as the respondent in S.A.No.987/2015 and 1st respondent in S.A.No.988/2015 and perused the materials available on record. Notice sent to the respondents 2 to 5 in S.A.No.988/2015 has been returned with an endorsement as "insufficient address". Today, there is no representation for the respondents 2 to 5.

9.The appellant has raised various grounds in Second Appeals. In S.A.No.987 of 2015, following Substantial Questions of Law were framed at the time of admission:

"(a).Whether the judgment of the lower Appellate Court is nothing but a word by word reproduction of the trial Court judgment is sustainable in law?

(b).Even when the lower appellate Court is confirming the judgment of the trial Court whether it is not bound to give its independent reasoning for such confirmation when it is a final Court of fact?"

In S.A.No.988 of 2015, the following Substantial Questions of Law were framed at the time of admission:

"(a).Whether the judgment of the lower Appellate Court is nothing but a word by word reproduction of the trial Court judgment is sustainable in law?

(b).Even when the lower appellate Court is confirming the judgment of the trial Court whether it is not bound to give its independent reasoning for such confirmation when it is a final Court of fact?"

(c).Has not the lower appellate Court committed manifest error in law in not noticing that the documents produced at the appellate stage would clearly establish that the present suit is barred under Section 11 of C.P.C?"

10.When the Second Appeals were taken up for hearing, the learned Senior Counsel for the appellant restricted his contention only to the fact that the I Appellate Court did not independently consider the issue involved in the Appeals and dismissed the Appeals after verbatim producing the judgments of the Trial Court. The learned Senior Counsel for the appellant referred to entire judgments of the Trial Court as well as the I

Appellate Court to substantiate his contention.

11.The learned counsel for the respondent made submissions on merits and contended that I Appellate Court independently considered the issue and dismissed the Appeals. The learned counsel for the respondent relied on the judgment reported in 2018 (2) CTC 770 (Alagarsamy Vs. Sathayi) and the head note of the same is extracted hereunder:

"Specific Relief Act, 1963 (47 of 1963), Section 34 - Code of Civil Procedure, 1908 (5 of 1908), Section 107 - Appellate Court powers - Trial Court decreed suit for Declaration based on Boundaries in Defendant's Sale Deed - First Appellate Court adopted same reasoning to dismiss Appeal - No conflict between Boundaries and extent in present case - Same not sufficient to set aside Appellate Court Order - Trial Court approach not inconsistent with facts - Held, Appellate Court adopting same reasoning as Trial Court, not ipso facto indication of non-application of mind - Appeal dismissed."

12.From a reading of the judgments of the Trial Court as well as the I Appellate Court, it is clear that the I Appellate Judge has not independently considered the issue while dismissing the Appeals. After reproducing the judgments of the Trial Court in the last paragraph, the I Appellate Judge has dismissed the Appeals, stating that there is no reason to interfere with the reasoning of the Trial Court. Except this sentence, the I Appellate Court has not given any reason for confirming the judgments of the Trial Court. In such circumstances, the judgment relied on by the learned Senior Counsel for the appellant is applicable to the facts of the present case and the judgment relied on by the counsel for the respondent does not advance the case of the respondent.

13.In view of the same, both the Second Appeals are allowed, setting aside the judgments and decrees of the I Appellate Court and the I Appellate Judge is directed to rehear both the First Appeals afresh and render findings on all the issues involved in both the Appeals. Since, the suits are of the years 1986 and 1999, the learned I Appellate Judge is directed to dispose of the Appeals within a period of two months from the date of order of this judgment. The Registry is directed to return the entire case bundles along with copy of this judgment forthwith.

14.In the result, these Second Appeals are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

- 1.The District Munsif, Arakkonam, Vellore District.
- 2.The Subordinate Judge, Arakkonam, Vellore District.
- 3.The Section Officer,
VR Section,
High court, Madras.
- 4.The Section Officer,
Judicial/Posting,
High court, Madras (rlg para 13)

+1cc to M/s.Kavitha Rameshwar, Advocate sr.no.42811

+1cc to Mr.S.Raveendran, Advocate sr.no.42605

S.A.Nos.987 and 988 of 2015
and M.P.Nos.1 and 1 of 2015

rsk(co)
nr 03/08/2018

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