

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.620 OF 2000

JUDGMENT:

This appeal is filed under Section 100 of the Code of Civil Procedure, 1908, aggrieved by the judgment and decree, dated 26.04.2000, rendered in A.S.No.36 of 1999 on the file of Senior Civil Judge, Narayanpet, whereby and whereunder, the judgment and decree, dated 28.11.1997, rendered in O.S.No.28 of 1991 on the file of District Munsif, Kodangal, were set aside.

2. Heard both sides. Perused the record.
3. Appellant Nos.1 to 8 herein are the plaintiffs in the Original Suit. During pendency of this Second Appeal, since appellant No.2 died, his legal representatives were brought on record as appellant Nos.9 to 11. Respondent Nos.1 to 3 herein are defendants Nos.1, 3 and 4 in the Original Suit. During pendency of this Second Appeal, since respondent No.3 died, his legal representatives were brought on record as respondent Nos.5 to 7. Respondent No.4 is the legal representative of deceased respondent No.2.
4. For the sake of convenience, the parties hereinafter are referred to as they were arrayed in the Original Suit before the trial Court.

5. The averments in the plaint are that plaintiff Nos.1 and 2 are brothers. Plaintiff No.1 and father of plaintiff No.3 purchased the suit lands from the defendants and their fathers under a Sale Deed, dated 24.01.1964, and came into possession over the suit lands. They got mutated their names in the revenue records on 25.03.1991. On 11.06.1991, when the plaintiffs were carrying out agricultural operations in the suit lands, the defendants interfered with the possession of the plaintiffs over the suit lands. As the plaintiffs were unable to carry out their agricultural operations due to the interference by the defendants with their possession over the suit lands, they filed the Original Suit seeking to grant perpetual injunction restraining the defendants from illegally interfering with their possession over the suit lands.

6. Defendant No.2 died during pendency of the Suit and as such, his legal representatives were brought on record as defendant Nos.5 to 7.

7. Defendant Nos.1, 3 and 4 filed written statement denying the material allegations, including the alleged sale of suit lands to the plaintiffs by the defendants and their fathers. It is stated that the defendants and their fathers never sold the suit lands to the plaintiffs nor plaintiffs came into possession over the suit lands and cultivated the same. The alleged Sale Deed is a forged one and prepared subsequently for the purpose of the Suit. Plaintiffs also obtained

certificates from the Mandal Revenue Officer behind the back of the defendants. The defendants are absolute owners of the suit lands and they are in possession of the suit lands by cultivating the same. The defendants and other family members of the defendants used to go out of the village to eke out their livelihood and as such, they used to give the suit lands to various persons on lease and the plaintiffs also cultivated the suit lands as lessees for some years. The plaintiffs were never in possession of the suit lands even before or after filing the Suit. Hence, they prayed to dismiss the Suit.

8. Based on the above pleadings, the trial Court settled the following issues:

- “1. Whether the plaintiffs are entitled to the grant of perpetual injunction prayed for?
2. Whether the sale deed Dated.24-1-1964 is forged?
3. Whether the plaint plan is not true?
4. Whether the plaintiffs have no cause of action?
5. Whether the suit as framed is maintainable?
6. Whether the plaintiffs have no locus standi to file the suit?
7. To what relief?”

9. During trial, on behalf of the plaintiffs, PWs.1 to 4 were examined and got marked Exs.A1 to A28. On behalf of the defendants, DWs.1 to 3 were examined and Exs.B1 to B5 were marked.

10. The trial Court, after considering the oral and documentary evidence available on record, by judgment and decree, dated 28.11.1997, while decreeing the Suit with costs against defendant Nos.1, 3 and 4 restraining them from interfering with the possession of the plaintiffs over the suit lands, dismissed the Suit against defendant Nos.5 to 7 without costs.

11. Aggrieved by the said judgment and decree, defendant Nos.1, 4 and the legal representative of deceased defendant No.3, since defendant No.3 died after the Suit was decreed, preferred A.S.No.36 of 1999 before the first appellate court.

12. The first appellate Court, after hearing both sides, framed the following point for determination:

“Whether the respondents/plaintiffs are entitled to perpetual injunction against the appellants/defendants.”

13. The first appellate Court, having examined the oral and documentary evidence, by the judgment under challenge, allowed the Appeal Suit by setting aside the judgment and decree, dated 28.11.1997, in O.S.No.28 of 1991 on the file of District Munsif, Kodangal, and consequently, dismissed the said Suit.

14. Aggrieved by the same, the present appeal is filed by the appellants – plaintiffs.

15. Learned counsel for the plaintiffs would contend that the judgment and decree passed by the first appellate Court is contrary to the pleadings and evidence on record. The first appellate Court, though recorded a finding that the appellants – plaintiffs are in possession of the suit lands since 1964, considering the pahanies and other records filed by the plaintiffs, dismissed the Original Suit on the ground that no perpetual injunction can be granted against the true owners. The first appellate Court erred in observing that the appellants–plaintiffs did not establish their title over the suit lands.

16. During the course of submissions, it is brought to the notice of the Court that the plaintiffs were not heard by the first appellate Court and treating that the arguments on behalf of the plaintiffs were heard, the first appellate Court reversed the judgment of the trial Court. Further, from a perusal of the impugned judgment, it is clear that the appellants – plaintiffs were not heard by the first appellate Court. Therefore, the appellants – plaintiffs seek an opportunity to put forth their case before the first appellate Court.

17. The plaintiffs have filed several documents to prove their possession over the suit lands. Further, they also examined one of the coparceners of the defendants as PW.4, who spoke the sale of suit lands in favour of the plaintiffs under a sale deed in the year 1964. The appellate Court on the sole ground that no injunction can be granted against the true owner, relying on a decision reported in **Alagi**

Alamelu Achi v. Ponniah Mudaliar¹, was pleased to dismiss the Suit filed by the plaintiffs for perpetual injunction.

18. The factual aspects with regard to possession over the suit lands and the sale transaction set up by the plaintiffs in respect of the suit lands are required to be examined by the first appellate Court after hearing both the parties. When the plaintiffs were not heard, certainly, it causes prejudice to the plaintiffs. The first appellate Court, being the final Court on facts, has to afford opportunity to the parties to put forth their contentions. Pure findings of fact remain immune from challenge before the High Court in Second Appeal. Now the first appellate Court is also a final Court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in Second Appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate Court even on questions of law unless such question is a substantial question of law. Therefore, to meet ends of justice, it is appropriate to set aside the impugned judgment and decree of the first appellate Court and remand the matter for fresh disposal of the appeal.

19. Under these circumstances, the Second Appeal is allowed and the judgment and decree, dated 26.04.2000, rendered in A.S.No.36 of 1999 on the file of the Senior Civil Judge, Narayanpet, are set aside

¹ AIR 1962 Madras 149

and the matter is remanded to the first appellate Court to hear both the parties and to dispose of the appeal in accordance with law within a period of three months from the date of receipt of the record. Meanwhile, both the parties are directed to maintain *status quo*.

Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

August 13, 2018.
MD



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