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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.02.2021

PRONOUNCED ON : 26.02.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No. 1201 of 2008

Kothandapani

...Appellant

Vs.

Radhakrishnan

... Respondent

Prayer: Second Appeal filed under Section 100 of CPC, 1908 against the judgment and decree dated 31.01.2007 in A.S.No. 61 of 2006 on the file of the Subordinate Judge, Cuddalore, confirming the decree and judgment dated 01.06.2006 in O.S.No.365 of 2003 on the file of the Principal District Munsif, Cuddalore.

For Appellant : Mr. V. Sairam

For Respondent : Mr. T.S. Baskaran

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 31.01.2007 passed in A.S.No. 61 of 2006 on the file of the Subordinate Court, Cuddalore, confirming the judgment and decree dated 01.06.2006 passed in O.S.No.365 of 2003 on the file of the Principal District Munsif Court, Cuddalore.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. The plaintiff in OS.No.365 of 2003 is the appellant in the Second Appeal.

4. The suit has been laid by the plaintiff seeking for the declaration that the judgment and decree dated 03.07.2000 passed in O.S.No.363/1997 on the file of the District Munsif Court, Cuddalore and confirmed by the judgment and decree dated 03.07.2000 passed in A.S. No.17/2002 on the file of the



FTC, Cuddalore, are null and void.

5. Shorn of unnecessary details, the case of the plaintiff is that the plaint 'A' schedule property belongs to him and claiming that the plaintiff had alienated the plaint 'A' schedule property to one Shanmugam Chettiar by way of the sale deed dated 19.09.1970 and that Shanmugam Chettiar in turn had alienated 0.20 cents to one Arasayeeammal by a sale deed dated 02.04.1979 and after the demise of Shanmugam Chettiar claiming that his legal heirs had alienated the remaining 0.36 cents to the defendant by way of the sale deed dated 30.05.1994 and based on the abovesaid facts, the defendant having endeavoured to dispute the plaintiff's possession and enjoyment of the plaint 'A' schedule property, according to the plaintiff, he had been necessitated to lay the suit against the defendant in O.S. No.592/95 on the file of the District Munsif Court, Cuddalore for the reliefs of declaration and permanent injunction and based on the sale deed dated 30.05.1994, the defendant laid the suit against the plaintiff in O.S.No.363/1997 on the file of the District Munsif Court, Cuddalore, qua 0.36 cents of land for the reliefs of declaration and permanent injunction and both the abovesaid suits were jointly tried and a common judgment was rendered on 03.07.2000 and the suit laid by the defendant had been decreed and the suit laid by the plaintiff had been dismissed by way of the common judgment and aggrieved over the same, the plaintiff preferred preferred the first appeals in A.S.Nos, 17 and 18 of 2002 respectively and the first appeals had been disposed of by way of the common judgment dated 19.11.2002 and thereby the judgment and decree of the court below, as above pointed out, had been confirmed by the first appellate court and the plaintiff had made necessary arrangements to obtain the certified copies of the judgment and decree of the first appellate court and prefer a second appeal in the High Court and ready to disclose the same as and when the second appeal is taken on file. The defendant claiming to have purchased an extent of 0.36 cents by way of the sale deed dated 30.05.1994 has described the said property as comprised in old survey No.238/14 instead of old survey No.238/11 and even in the sale deed in the name of Ayasayeeammal pertaining to 0.20 cents, the survey number has been mentioned as 238/14 and when the plaintiff had taken steps to prefer the second appeal in the High Court and on verification of the papers, found that the defendant, without the permission of the court, had altered the old survey number as 238/11 and obtained the decree in his suit and the abovesaid action of the defendant is totally impermissible in law and therefore, with a view to grab the property one way or the other, the defendant had stealthily altered the old survey number in the plaint without the knowledge and permission of the court and he having secured the decree, as above pointed out, according to the plaintiff, the judgment and decree passed in O.S.No.363/1997 and A.S.No.17/02 are liable to be set aside as null and void and hence the suit.



6. The defendant resisted the suit contending that the plaintiff's suit is not maintainable either in law or on facts. The defendant had purchased an extent of 0.36 cents in the suit village in punjai survey No.238/14 lying on the southern side of the extent of 0.56 cents and in the plaint copy served on the plaintiff in O.S.No.363/97, the abovesaid description has been given and in the sale deed executed in favour of Arasayeeammal dated 02.04.1979, the survey number has been given as 238/14 measuring an extent of 0.20 cents out of 0.56 cents and it is false to state that the defendant has amended or altered the old survey number in the plaint without the permission of the court as put forth by the plaintiff and the plaintiff also laid the suit in O.S.No.592/95 for the total extent of 0.56 cents showing the same lying in old survey No.238/11 new survey No.238/14 and therefore, the identity and the lie of the property in dispute is not controverted as such and the defendant has properly given the description of the property acquired by him in O.S.No.363/197 and the plaintiff, after contesting the abovesaid suit both in the trial court as well as in the appellate court, having failed to succeed in his endeavours, had come forward with the present case without any basis as if the defendant had altered the old survey number in the plaint without the permission of the court and on the other hand, the defendant has properly given the description of the property in the plaint laid in O.S.No.363/97. The plaintiff being the party to O.S.No.363/1997 and having contested the matter throughout, at this stage, cannot come and put forth the case that the decree obtained by the defendant in the abovesaid suit is null and void and accordingly, prayed for the dismissal of the plaintiff's suit.

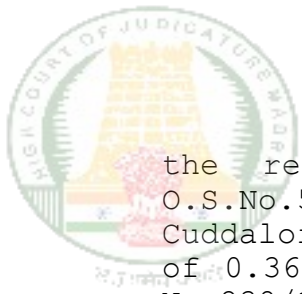
7. In support of the plaintiff's case P.W.1 was examined and Exs.A1 to A28 were marked. On the side of the defendant D.W.1 was examined and Exs.B1 to B4 were marked.

8. On an appreciation of the oral and documentary evidence adduced in the matter and the submissions put forth by the respective parties, the courts below were pleased to dismiss the plaintiff's suit. Impugning the same, the present second appeal has been laid by the plaintiff.

9. At the time of admission of the second appeal, the following substantial question of law was formulated for consideration.

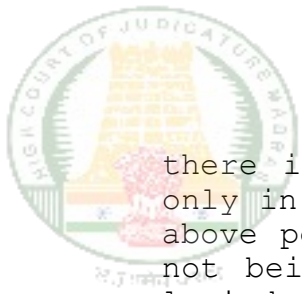
"Whether the lower appellate court has right in not at all giving any finding with respect to any of the documents filed by the appellant?"

10. Claiming title to the property comprised in Old Survey No.238/11, new Survey No.238/14 measuring an extent of 0.56 cents by way of the sale deed dated 12.12.1949, the plaintiff has laid the suit against the defendant seeking for



the reliefs of declaration and permanent injunction in O.S.No.592/95 on the file of the District Munsif Court, Cuddalore. The defendant claiming to have purchased an extent of 0.36 cents of land in old Survey No.238/11 and new Survey No.238/14 by way of the sale deed dated 30.05.1994 has laid the suit against the plaintiff in O.S.No.363/97 on the file of the District Munsif Court, Cuddalore for declaration and permanent injunction. From the pleas put forth by the respective parties, the defendant traced his title to an extent of 0.36 cents from Shanmugam Chettiar on the footing that the plaintiff had alienated the extent of 0.56 cents acquired under the sale deed dated 12.12.1949 to Shanmugam Chettiar and Shanmugam Chettiar in turn had alienated the extent of 0.20 cents to one Arasayeeammal by way of the sale deed dated 02.04.1979 and alienated the remaining extent of 0.36 cents to the defendant by way of the sale deed dated 30.05.1994. Per contra, according to the plaintiff he is still retaining the title to the property of the total extent of 0.56 cents in the abovesaid survey number. Thus, on that footing, when the parties had levied the suits against each other and as the property involved in both the suits are found to be one and the same, particularly lying in old Survey No.238/11 and new Survey No.238/14, it is found that both the suits had been jointly tried and a common judgment had been rendered on 03.07.2000. By way of the same, the plaintiff's suit in O.S.No.592/95 had come to be dismissed and the defendant's suit in O.S. No.363/97 had come to be decreed. Impugning the judgment and decree passed in the abovesaid two suits, the first appeals have been preferred by the plaintiff in A.S. No.17 and 18 of 2002 on the file of the Fast Track Court, Cuddalore. It is found that both the appeals have been dismissed. Though it is claimed that the plaintiff had endeavoured to prefer the second appeal against the dismissal of the above appeals, however, the fact remains that the plaintiff has not placed any material, whatsoever, to hold that he had preferred the second appeal till date. Therefore, the claim of the plaintiff in the plaint that he had made arrangement to prefer the second appeal, as such, cannot be countenanced and equally the case of the plaintiff that only at the time of making such arrangement, he had come to know that the defendant had altered the survey number of the suit in O.S. No.363/97 without the permission of the court. When the plaintiff has not placed any material evidencing that he had really made arrangement to prefer the second appeal, the case projected by him that at that stage of the matter he had come to know about the abovesaid fact, as such, cannot be countenanced in any manner.

11. Be that as it may, now according to the plaintiff, the copy of the plaint served on him in O.S.No.363/97 depict as if the suit property is lying in old Survey No.238/14. Further according to the plaintiff, even in the sale deed of the defendant, the suit property is found to be described as lying in Old Survey No.238/14. However, it is found that



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there is no dispute that the suit property is actually lying only in new survey No.238/14 and old Survey No.238/11. When as above pointed out, the identity and lie of the suit property not being in dispute as such and accordingly both the suits levied by the plaintiff as well as the defendant had been jointly tried and on that footing the case now projected by the plaintiff as if the defendant had stealthily and without the permission of the court had altered the old survey number as 238/11 in the plaint in O.S.No.363/97, as such, cannot be countenanced. When considering the judgment and decree passed in O.S.No.363/97, when the description of the suit property as noted in the decree passed in O.S.No.363/97 when it is seen that the suit property had been correctly described as lying in old survey No.238/11 and new survey No.238/14 measuring an extent of 0.36 cents out of 0.56 cents, the case of the plaintiff that the old survey number had been altered by the defendant without the permission of the court, as such, cannot be accepted. No doubt, in the plaint copy in O.S.No.363/97 served on the plaintiff, the property has been described as lying in old survey No.238/14 and new survey No.238/14. However, as rightly held by the trial court, considering the evidence of P.W.1 it is noted that the plaint filed in O.S.No.363/97 only contained the description of the property as lying in old survey No.238/11. When there is no material projected on the part of the plaintiff that the same has been corrected by the defendant subsequent to the institution of the suit, that too, without the permission of the court, mainly on the footing that the plaint copy served on him depicted the old survey number as 238/14, on that sole factor, as held by the trial court, the decree passed in O.S.No.363/97 cannot be held to be null and void. The abovesaid determination of the trial court with reference to the same being noted to be passed on the proper appreciation of the oral and documentary evidence adduced in the matter and the same also centering on factual matrix and not involving any substantial question of law as such, in my considered opinion, the same do not warrant interference.

12. No doubt, the first appellate court has not, in detail, adverted to the abovesaid facts and the first appellate court on the footing that the plaintiff having averred that he had intended to prefer the second appeal against the dismissal of the first appeals preferred by him, according to the first appellate court, the plaintiff should urge all the points raised in the plaint before the High Court in the second appeal to be preferred by him and on that score held that the present suit laid by the plaintiff is an abuse of the process of court and law accordingly held that the plaintiff is not entitled to secure the reliefs prayed in the plaint and resultantly, considering the reasons and conclusions of the trial court, the first appellate court deemed it not fit to interfere with the same as the same and founded on sound judicial reasonings, resultantly dismissed the appeal preferred by the plaintiff.



13. No doubt, the first appellate court should have adverted to the evidence adduced by the parties, both oral and documentary in detail as the first appellate court is the final court of facts and thereupon determine the issues involved between the parties one way or the other. However, the first appellate court had proceeded that the plaintiff could agitate all the points urged by him in the plaint in the second appeal proceedings intended to be preferred by him and on that score proceeded to dismiss the first appeal. The first appellate had not stopped there and on the other hand, after scanning the reasonings and conclusions of the trial court noting that the trial court has in detail considered the same on the correct principles of law, accordingly, noting that no reason is projected to take a different stand from the same by the plaintiff, resultantly, dismissed the first appeals preferred by the plaintiff.

14. Pointing to the above, the plaintiff's counsel would contend that the first appellate court being a court of facts, the judgment rendered by the first appellate court without referring to any of the documents projected by the plaintiff is totally perverse and liable to be set aside.

15. The plaintiff has challenged the decree obtained by the defendant in O.S.No.363/97 on the file of the District Munsif Court, Cuddalore. The said decree had been confirmed by the first appellate court. The plaintiff has not preferred any second appeal challenging the same. It is thus found that the decree secured by the defendant in O.S.No.363/97 having been confirmed by the first appellate court, the same has become final. It is to be noted that in respect of the same property, the plaintiff's suit in O.S.No.595/95 having also been jointly tried with O.S.No.363/97 had come to be dismissed by the trial court by way of the common judgment and the appeals preferred by the plaintiff against the dismissal of his suit ended in dismissal. It is thus found that as the parties are not at issue regarding the identity and the lie of the property in question, both endeavoured to have a common trial in the suits laid by them and on that basis, they having invited the decision of the trial court as well as the appellate court, the same having ended against the plaintiff and in favour of the defendant, to say that the decree obtained by the defendant in the abovesaid proceedings is null and void on the part of the plaintiff, as such, cannot be readily accepted unless the plaintiff is able to substantiate the same with acceptable and reliable materials. The only point of attack projected by the plaintiff is that the defendant in the plaint in O.S.No.363/1997 has given the old survey number as 238/14 instead of 238/11 as mentioned in the sale deed dated 30.05.1994. On the other hand, according to the defendant, in the plaint filed by him in O.S.No.363/97, he has only given the old survey number as 238/11 and the same is also fortified in the decree passed in O.S.No.363/97. As



held by the trial court, the plaintiff has not placed any material to show that the defendant had corrected the old survey number in the plaint in O.S.No.363/97 subsequent to the institution of the suit and that too without the permission of the court. Merely because, the copies served on the plaintiff in the abovesaid suit contains the old survey Number 238/14, it cannot be held that the defendant would have corrected the old survey number in the plaint subsequent to the institution of the suit and without the permission of the Court. The abovesaid issue having been considered in detail by the trial court and determination arrived at by the trial court is only centering on the appreciation of the factual matrix and no formidable question of law is involved for the determination of the same and accordingly the first appellate court had also concurred with the determination of the trial court though not by discussing the evidence adduced in the matter but in other context. Since the parties are vying with each other one way or the other right from 1997 and when the challenge put forth by the plaintiff to attack the decree obtained by the defendant in O.S.No.363/97 is found to be based on the factual matrix, in my considered opinion, no useful purpose would be achieved by remitting the matter back to the appellate court as sought to be projected by the plaintiff's counsel. If on any other serious substantial question of fact or law, the plaintiff had challenged the decree obtained by the defendant in O.S.No. 363/97, this Court would not have hesitated to remit the matter back to the first appellate court, particularly, considering the approach of the first appellate court in disposing of the first appeal. However, the issue raised by the plaintiff is only arising and basing on factual matrix and not involving any serious and important substantial question of law and as above noted the parties are not at issue that the property in issue is lying in new survey No.238/14 and the wrong mentioning of the old survey number as 238/14 in the sale deed of the defendant would not tilt this case in favour of the plaintiff to contend that the defendant has no title at all to the property in question. When the plaintiff's endeavour that he is still retaining the title of the entire extent of 0.56 cents has been negated by the trial court as well as the first appellate court in the earlier proceedings and when the same has become final and the plaintiff has not preferred any second appeal challenging the same, in such view of the matter, in my considered opinion, as rightly held by the trial court and confirmed by the appellate court, the decree obtained by the defendant in O.S.No.363/97 cannot be held to be null and void merely on the footing that the copies of the plaint served on the plaintiff in the abovesaid matter contains the old survey number as 238/14 instead of 238/11. It is again reiterated that when the parties are not at issue as regards the identity and lie of the property and on that basis had also invited the courts below for the joint trial of the suits laid by the plaintiff as well as the defendant in the earlier proceedings, in such view of the matter, the plaintiff having lost in the earlier



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proceedings both in the trial court as well as in the first appellate court and not throwing any challenge to the same in the next forum as per law, the ground of attack projected by the plaintiff for nullifying the decree obtained by the defendant in the earlier proceedings cannot be accepted in any manner and therefore, in my considered opinion, the courts below are found to have correctly held that the plaintiff is not entitled to secure the reliefs prayed for and the reasonings of the trial court, in particular with reference to the same do not warrant any interference. Though the first appellate court has not in detail gone into the question, still the ground of attack projected by the plaintiff for nullifying the decree secured by the defendant in O.S.No.363/97 being centering on factual aspects and considering the long period of tussle between the parties right from 1997, I am not inclined to remit the matter back to the first appellate court as sought to be contended by the plaintiff's counsel.

16. In view of the above, the reasonings of the trial court for declining the reliefs sought for by the plaintiff, being based on the appreciation of the factual matrix and the same had also been rightly confirmed by the first appellate court, in such view of the matter, I do not deem it fit to remit the matter back to the first appellate court at this point of time as above discussed. Accordingly, the substantial question of law formulated in this second appeal is answered.

17. In conclusion, the judgment and decree dated 31.01.2007 passed in A.S.No. 61 of 2006 on the file of the Subordinate Court, Cuddalore, confirming the judgment and decree dated 01.06.2006 passed in O.S.No.365 of 2003 on the file of the Principal District Munsif Court, Cuddalore. are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(Lok Adalat)

//True copy//

Sub Assistant Registrar

bga

To

1. The Subordinate Court,
Cuddalore.
2. The Principal District Munsif Court,
Cuddalore.



3. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.T.S. Baskaran, Advocate SR.No.11153

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S.A.No.1201 of 2008

SSV(CO)

GMV (22/09/2021)



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