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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.04.2021

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THE HONOURABLE MR. JUSTICE M.SUNDAR

S.A.No.388 of 2021

and

C.M.P.No.7437 of 2021

Vardhan

S/o.Ayyanar

.. Appellant / Appellant / Defendant

Vs.

Sekar

S/o.Kali

.. Respondent / Respondent / Plaintiff

Second Appeal under Section 100 of CPC to set aside the judgement and decree dated 07.10.2020 passed in A.S.No.29 of 2018 on the file of the Subordinate Judge at Madurantakam confirming the judgment and decree dated 23.07.2018 passed in O.S.No.104 of 2012 on the file the District Munsif Court at Madurantakam.

For Appellant : Mr.A.Balasingh Ramanujam

J U D G M E N T

This judgment and order will govern the captioned main Second Appeal and captioned CMP.

2. The lis which has led to captioned Second Appeal commenced almost a decade ago, to be precise on 09.04.2012 when one Sekar (S/o. Kali) presented a plaint in the 'District Munsif's Court at Madurantakam' [hereinafter 'trial Court' for the sake of convenience and clarity]. This plaint was taken on file as O.S.No.104 of 2012. Sekar is the sole respondent in captioned Second Appeal and the suit was laid against one Varadhan (S/o.Ayyanar), who is the lone appellant in the captioned Second Appeal. The suit was laid with a prayer for bare injunction qua immovable property in the form of land admeasuring 2410 sq.feet (224 sq.meter or 5.5 cents) or thereabouts comprised in S.No.135/9 (Old S.No.77), Thotachery Village, Choonambedu Firka, Cheyyur Taluk, Kancheepuram District with a thatched hut thereon which shall hereinafter be referred to as 'suit property'.



3. The appellant before this Court, as defendant in trial Court took a plea that the plaintiff is not the sole, absolute and exclusive owner of suit property, it is not correct to say that the plaintiff's vendor Arjunan was in possession of suit property for over 30 years and it was a further plea of defendant that in 1983 itself patta was granted in respect of suit property in favour of one Perumal who is none other than the plaintiff's vendor Arjunan's brother. In sum and substance, defendant pleaded that the plaintiff has no right over the suit property and that the defendant is taking necessary steps to challenge the same. This is articulated in Paragraph No.3 of written statement.

4. After full contest, trial Court decreed the suit vide judgment and decree dated 23.07.2018. To be noted, full contest includes examination of three witnesses each on the side of plaintiff and defendant, 9 exhibits on the side of plaintiff were marked namely, Ex.A1 to Ex.A9, 2 exhibits on the side of defendant were marked namely, Ex.B1 & Ex.B2 and 2 Court exhibits were marked being Ex.C1 & Ex.C2 i.e., Advocate Commissioner's report and rough plan respectively.

5. Defendant carried the matter by way of a regular First Appeal under Section 96 of 'The Code of Civil Procedure, 1908' ['CPC' for brevity] vide A.S.No.29 of 2018 to the 'Subordinate Judge's Court at Madurantakam' [hereinafter 'First Appellate Court' for the sake of convenience and clarity]. After full contest, the First Appellate Court dismissed the appeal in and by judgment and decree dated 07.10.2020 confirming the judgment and decree granted by the trial Court.

6. Mr.A.Balasingh Ramanujam, learned counsel for appellant, notwithstanding very many grounds raised in memorandum of grounds of appeal and notwithstanding five questions set out in the memorandum of grounds of appeal which according to appellant are substantial questions of law, made focussed submissions on two points. The summation of these two points are as follows:

(a) When title of plaintiff is under a cloud, the trial Court and the First Appellate Court ought not to have granted injunction qua possession of the suit property.

(b) The report of Advocate Commissioner is in



favour of defendant and therefore the plaintiff should have been non-suited.

7. This Court carefully considered the submissions of learned counsel for appellant. In a suit for bare injunction, the pivotal point is whether the plaintiff was in possession of suit property on the date of filing of the suit and in this case 09.04.2012 is the date of presentation of plaint which has already been mentioned supra. Both the Courts below have framed a specific issue in this regard and have answered the same in favour of plaintiff by appreciating all the documentary and oral evidence before it. With regard to trial Court, as many as three issues are framed and the same are captured in Paragraph No.6 of the judgement of trial Court which reads as follows:

'1. Whether the plaintiff is in possession and enjoyment of the suit property?

2. Whether the plaintiff is entitled for the relief of permanent injunction as sought for?

3. To what other relief is the plaintiff entitled for?'

8. From a perusal of the above three issues, it comes to light that the pivotal issue is issue No.1. This issue No.1 has been neatly answered in favour of plaintiff and most relevant portions of judgment of the trial Court in this regard read as follows:

'.....On perusal of Exhibit A-5, the patta No.42, stands in the name of one Sundara Moorthy, whereas the recitals of Exhibit B-1 stated that the patta No.44, stands in the name of one Chellamuthu and after the said Chellamuthu, the same stands in the name of Perumal bearing Patta No.42. On perusal of Exhibit A-7, the patta No.44 stands in the name of one Chellamuthu S/o.Kumuzhiya Gounder. The said patta No.44, at present stands in the name of Varadhan, the Defendant herein through RPT No.1454/2013. The defendant herein set out the defence that the patta No.42 stands in the name of Perumal. To prove the same the Defendant has not chosen to file any documents. On the other hand the plaintiff herein had filed the Exhibit A-3, the patta stands in the name of Arjunan, the plaintiff's vendor. Admittedly, the patta is not a title document, the



(underlining now made in this order for the purpose of supplying emphasis, highlighting and for ease of reference)

'11. Points for Consideration:

(i) Whether the trial Court's finding that the plaintiff has proved the possession and enjoyment of the suit property is proper?

(iii) whether the appeal is to be allowed?'

'13(m) Further, the encumbrance certificate Ex.A-9 have disclosed the sale transaction of plaintiff, and Ex.B-1 disclosed that the defendant also got sale deed in his name for the suit properties, therefore, the plaintiff has proved that



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the defendant has attempted to interfere with the peaceful possession of the suit property by the way of Ex.B-1, hence, if the injunction is not granted to the plaintiff, irreparable loss will be caused to the plaintiff.

13(n) It is to be noted that the trial Court has discussed the above facts elaborately and came to the conclusion that the plaintiff has proved his case and the defendant has failed to resist the case successfully. As discussed above, this Court is of the opinion that the decision of the trial Court found with reason, hence, this Court is not inclined to interfere with the decision of the trial Court. Accordingly, answered to the Point No.1 & 2.'

11. One other fact though not argued but noticed by this Court is, in the First Appellate Court, the appellant has taken out an application inter-alia under Order XLI Rule 27 of CPC for additional evidence. This was taken on file as I.A.No.1 of 2019. The First Appellate Court has respectfully followed the law laid down by Hon'ble Supreme Court in Sivaji Rao case being [Shivajirao Nilangekar Patil Vs. Mahesh Madhav Gosavi [AIR 1987 SC 294], wherein it was held that with regard to additional evidence under Order XLI Rule 27 CPC, a person making such plea for additional evidence at the appellate stage should be able to establish that the additional evidence could not be adduced inspite of best efforts at the first instance and more importantly, it was held that such additional evidence must be relevant for the determination of issue. The First Appellate Court, has considered I.A.No.1 of 2019 and has come to the conclusion that the evidence sought to be brought as additional evidence is not relevant for deciding the issue between the parties and is negatived this under Order XLI Rule 27 and the same has attained finality. A perusal of the list of documents sought to be brought in brings to light that the First Appellate Court is certainly not in error in negating the order XLI Rule 27 plea as they are far from the crux of the lis and certainly not clinching.

12. This Court reminds itself of Kanailal principle laid down by Hon'ble Supreme Court in Kanailal and Others Vs. Ram Chandra Singh and Others reported in (2018) 13 SCC 715 and this Court deems it appropriate to read the same in conjunction with



Kirpa Ram principle laid down by Hon'ble Supreme Court in Kirpa Ram Vs. Surendra Deo Gaur and others reported in 2020 SCC Online SC 935. To be noted, Kanailal principle is to the effect that principles underlying Order XLI Rule 31 CPC stand telescoped into a Section 100 CPC legal drill and Kirpa Ram principle is to the effect that a Second Appeal Court can dismiss a second appeal at the admission stage itself without formulating a substantial question of law if no substantial question of law arises. On a conjoint and combined reading of Kanailal and Kirpa Ram principles, this Court deems it appropriate to set out two points for determination in the captioned Second Appeal and the same are as follows:

(1) Whether there is any error in the concurrent findings returned by the two Courts below regarding the factum of plaintiff being in possession of suit property?

(2) Whether any substantial question of law arises on facts, findings and trajectory the matter has taken?

13. This Court reminds itself about what the expression 'substantial question of law' occurring in Section 100 CPC means. This expression 'substantial question of law' occurring in Section 100 CPC has not been defined in CPC, but has been explained in a long line of authorities commencing from Rimmalapudi Subba Rao case [Rimmalapudi Subba Rao Vs. Noony Veeraju and others reported in AIR 1951 Mad 969 (FB)] to Santosh Hazari's case [Santosh Hazari Vs. Purushottam Tiwari reported in (2001) 3 SCC 179]. This Rimmalapudi principle has been subsequently approved by a Constitution Bench of Hon'ble Supreme Court in Sir Chunilal V.Mehta Vs. Century Spinning and Manufacturing Co. Ltd. reported in AIR 1962 SC 1314. Thereafter, in Santosh Hazari case being Santosh Hazari Vs. Purushottam Tiwari reported in (2001) 3 SCC 179, the view taken in Chunilal Mehta's case, affirming the view taken by Full Bench of this, was reiterated. Relevant paragraphs of Chunilal Mehta's case and Santosh Hazari's case are paragraph Nos.6 & 12 respectively, which read as follows:

'Paragraph No.6 of Chunilal Mehta's case:

6. We are in general agreement with the view taken by the Madras High Court and we think that while the view taken by the Bombay High Court is rather narrow the one taken by the former High Court



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of Nagpur is too wide. The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.'

Paragraph No.12 of Santosh Hazari's case:

12. The phrase "substantial question of law", as occurring in the amended Section 100 is not defined in the Code. The word substantial, as qualifying "question of law", means – of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with – technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In Guran Ditta v. T. Ram Ditta [AIR 1928 PC 172 : 55 IA 235] , the phrase "substantial question of law" as it was employed in the last clause of the then existing Section 110 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which



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was involved in the case as between the parties. In Sir Chunilal V. Mehta & Sons Ltd. v. Century Spg. and Mfg. Co. Ltd. [AIR 1962 SC 1314 : 1962 Supp (3) SCR 549] the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in Rimmalapudi Subba Rao v. Noony Veeraju [ILR 1952 Mad 264 : AIR 1951 Mad 969] :

“[W]hen a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular facts of the case it would not be a substantial question of law.”

and laid down the following test as proper test, for determining whether a question of law raised in the case is substantial:

“The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.”



14. In the light of the narrative thus far, if the expression 'substantial question of law' occurring in Section 100 of CPC is applied to the case on hand, this Court finds that no substantial question of law arises in the case on hand as nothing debatable, res integra or nothing touching upon disregarding of settled position of law arises in instant case. It is also clear from the narrative thus far, discussion and dispositive reasoning that there is nothing demonstrable qua errors regarding factual findings about possession much less serious errors leading to substantial question of law warranting interference in concurrent factual findings returned by the Courts below that the plaintiff is not in possession of the suit property.

15. As both points for determination set out supra stand answered against the appellant, as an inevitable sequitur the captioned Second Appeal is dismissed at the admission stage on the ground that no substantial question/s of law arise/s. Consequently, CMP is dismissed. Owing to the nature of the matter and nature of the submissions made before this Court, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mk

To

1. The Subordinate Judge,
Sub-Court,
Madurantakam.

2. The District Munsif
District Munsif Court
Madurantakam.

+1cc to Mr.A.Bala Sing Ramanujam, Advocate, S.R.No.25232

S.A.No.388 of 2021

VBM(CO)
SB(22/10/2021)