



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

S.A.NO.600 OF 2019

&

C.M.P.NO.10084 OF 2019

1. Vasuki
2. Kannamal

.. Appellants/Respondents/
Defendants

..Vs..

V.M.Ramesh

.. Respondent/Appellant/
Plaintiff

Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 to set aside the judgment and decree dated 18.01.2019 made in A.S.No.27 of 2016 by the learned Subordinate Judge, Maduranthakam by reversing the order passed by the learned District Munsif, Maduramthakam dated 28.06.2016 in O.S.No.119 of 2014;

For Appellants : Mr.Swarnam J.Rajagopalan
For Respondent : Mr.K.Balakrishnan

JUDGMENT

Land admeasuring an extent of 16 cents or thereabouts with a house building thereon comprised in S.No.432/29 in 114, Akkinambattu Village, Vettakkarakuppam, Cheyyar Taluk, Kancheepuram District is the suit property and the age of the lis that has led to captioned second appeal is 7 years.

2. A plaint was presented by one V.M.Ramesh, son of Mani on 20.12.2014 in the 'District Munsif's Court, Madurantakam' (hereinafter 'trial Court' for the sake of brevity) and the same was taken on file as O.S.No.119 of 2014. In this suit, one Vasuki, wife of Dhanapal and one Kannammal, wife of Muthukrishnan were arrayed as Defendants 1 and 2. In this second appeal, from hereon parties shall be referred to by their respective ranks in the trial Court for the sake of convenience and clarity. Suit filed by the plaintiff is one for bare injunction regarding possession qua suit property. Pleadings of the plaintiff bring to light that it is plaintiff's case that



suit property was originally in possession and enjoyment of plaintiff's father for more than 50 years and plaintiff is in possession and enjoyment of the same from his birth. To be noted, plaintiff was 40 years of age on the date of presentation of plaint. Plaintiff has also pleaded that he has constructed the house building (superstructure) which forms part of the suit property and that he is paying tax qua suit property regularly. Further pleadings of the plaintiff is to the effect that defendants are utter strangers, in December 2013 they approached the plaintiff requesting him to sell some extent of suit property, plaintiff refused and this is the trigger. Thereafter there have been attempts to dispossess the plaintiff necessitating presentation of aforementioned plaint on 20.12.2014, is plaintiff's further pleading.

3. Defendants, on being served with suit summons, entered appearance, filed a written statement and completed pleadings. Pleadings of the defendants are that the plaintiff is residing far away, the plaintiff started construction of a small house on the eastern side of the suit property post suit and it is now complete. It was also pleaded that the house tax receipt filed by plaintiff pertains to another house in which the plaintiff is now residing. Defendants also pleaded that about eight cents from and out of the suit property was previously owned by one Vadivel Naicker and his family. Vadivel Naicker and his son Munusamy Naicker sold the northern side of this 8 cents under a registered sale deed dated 30.08.1981 vide Document No.1879 of 1981 on the file of jurisdictional Sub-Registrar office, namely S.R.O.Cheyyar and after purchase, one Velappa Naicker was in possession, Velappa Naicker died leaving behind Balakrishnan, Shanmugam and Dhanapal and that the defendants are claiming under Dhanapal. Most importantly, it is the specific plea of the defendants that patta was wrongly granted in the name of Mani Naicker (plaintiff's father) and that the plaintiff has purchased only undivided 2 ½ cents vide a sale deed dated 17.03.2008 from one Balakrishnan.

4. On the aforementioned rival pleadings, trial Court framed three issues and the parties went to trial on these three issues. Of the three issues, Issue No.1 which reads 'Whether the Plaintiff is in possession and enjoyment of the suit property?' is the most critical and crucial issue as the suit is one for bare injunction qua suit property. As parties went to trial on the issues framed, plaintiff examined himself as PW1 and a third party to the lis, one Thangavel, whom this Court is informed is a local villager, was examined as PW2. Five exhibits, namely Exs.A1 to A5 which include certified copy of patta dated 28.06.2013 (Ex.A1), five original House Tax receipts dated 16.06.2001, 01.03.2007, March 2009, 23.03.2011 and 31.03.2013 were marked as Ex.A2. Ideally in the considered



opinion of this Court it should have been marked as Ex.A2 (series) as there are five receipts in all. Be that as it may, the judgment as placed before this Court shows that it has been marked as Ex.A2. Original receipt for water connection pertaining to year 2002 and other seven numbers original house tax receipts and 22 numbers EB consumption original receipts have been marked as Exs.A3, A4 and A5. Ideally, Exs.A4 and A5 should also have been marked as Exhibit series. To be noted, this is based on the description in the judgment as placed before this Court as part of the case file. On the side of defendants, first defendant examined herself as DW1, plaintiff's vendor Balakrishnan was examined as DW2 and one Manikam, a third party was examined as DW2. Four exhibits, namely Exs.B1 to B4 being certified copy of sale deed in favour of Velappa Gounder dated 30.08.1981, certified copy of sale deed in favour of plaintiff dated 17.03.2008, certified copy of registered settlement deed and a house tax receipt in favour of defendant (undated) were marked as Exs.B1, B2, B3 and B4 respectively.

5. After full contest, trial Court in and by judgment and decree dated 28.06.2016 dismissed the suit albeit without costs.

6. The non-suited plaintiff carried the matter in appeal by way of a regular first appeal under Section 96 of 'The Code of Civil Procedure, 1908' ('CPC' for the sake of brevity) vide A.S.No.27 of 2016 on the file of 'Subordinate Judge's Court, Maduranthakam' (hereinafter 'first Appellate Court' for the sake of convenience and clarity). First Appellate Court, after full contest, by judgment and decree dated 18.01.2019 allowed the appeal i.e, granted bare injunction decree qua suit property in favour of plaintiff, who was non-suited by the trial Court. Aggrieved, two defendants have filed the captioned second appeal contending that substantial questions of law arise in the case on hand.

7. A perusal of the order sheet forming part of the case file reveals that the captioned second appeal has not been admitted, but merely notice has been issued by Hon'ble predecessor judge on 24.04.2019 and those proceedings read as follows:

'Notice to the Respondent returnable by 11.06.2019.
Private notice to the respondent is also permitted.
Post the matter on 11.06.2019.
There is an order of interim stay till 11.06.2019.'

8. Owing to the aforesaid trajectory, there is no disputation or disagreement before this second appeal Court that a case has to be made out by appellant for admission.



9. In the aforesaid setting, Mr.Swarnam J Rajagopalan, learned counsel for defendants (appellants before this Court) and Mr.K.Balakrishnan, learned counsel for plaintiff (lone respondent before this Second Appeal Court in the captioned second appeal) were heard out.

10. Learned counsel for defendants made submissions broad summation of which is as follows:

a) Plaintiff having purchased only 2½ cents vide Ex.B2 ought not to have filed the suit for the entire 16 cents or thereabouts;

b) First Appellate Court has proceeded on the basis that the defendants have to establish title, which is incorrect;

c) First Appellate Court erred in misapplying the ratio in Anuthula Sudhakar Vs. Puchi Reddy represented by its LRs and others reported in AIR 2008 SC 2033 case as declaration of title became imperative.

11. In response to the above submissions, learned counsel for plaintiff made submissions, a broad summation of which is as follows:

a) Plaintiff has merely sought for bare injunction (possession) regarding suit property and therefore, the question of going into the title qua suit property does not arise.

b) All the determinants for injunction have been satisfied in this case as the plaintiff has established possession of the suit property by way of oral and documentary evidence;

c) Plaintiff in the case on hand has not sought for declaration of title but has only sought for a bare injunction to protect his possession.

12. By way of reply, learned counsel for defendants submitted that equitable remedy of injunction ought not to have been granted to the plaintiff as the plaintiff has suppressed purchase of 2½ cents vide Ex.B2 in the pleadings. Learned counsel further submitted that evidence/deposition that only 2½ cents was purchased has been ignored.

13. This second appeal Court now embarks upon the exercise of discussing the case matrix and giving its dispositive reasoning infra i.e., in the paragraphs to follow.

14. The suit is clearly one for bare injunction. In a suit for bare injunction, the pivotal issue that needs to be decided is, whether plaintiff is able to establish that he was in possession of the suit property on the date of the suit, which is 20.12.2014 in the case on hand. As already alluded to supra,



Issue No.1 framed by the trial Court in this regard is therefore the most critical issue.

15. A careful perusal of the judgment of the trial Court brings to light that it has largely proceeded on purchase of only 2½ cents by the plaintiff vide Ex.B2 and has proceeded on the basis of title examination. A perusal of the judgment of the first Appellate Court reveals that it has proceeded on the basis that the suit on hand is a suit for injunction simplicitor i.e., bare injunction and therefore it is concerned only with possession and the question of title will not be directly and substantially in issue.

16. First Appellate Court has also proceeded on the basis that trial Court has fallen in error in appreciation of exhibits filed on behalf of the plaintiff and the trial Court has been carried away by the impression that plaintiff has concealed some important facts before it.

17. There can be no two opinions that in a suit for bare injunction, primary consideration is whether a plaintiff is able to demonstrate that he was in possession of the suit property on the date of the suit. In the instant case, aforementioned Exs.A1 to A5 have passed the muster in trial and this coupled with the buttressing deposition, clinches the issue with regard to plaintiff being in possession on the date of the suit. With regard to title, the approach of the first Appellate Court cannot be taken exception to as it has said that in a case of vacant land possession follows title may be the norm and in a case of this nature, property tax receipts, electricity bills and patta establish possession of the plaintiff on the date of the suit. This is not a case where the onus shifts to the defendants as title is not substantially and directly in issue. The plaintiff's exhibits and oral evidence demonstrate possession on the date of the suit and therefore, the approach of the first Appellate Court is unexceptionable.

18. With regard to the argument that plaintiff has purchased only 2 ½ cents from and out of 16 cents or thereabouts of the suit property and this was suppressed, every omission may not tantamount to suppression as one should be able to demonstrate that a party omitting to mention a particular fact has done it (a) deliberately and (b) has omitted with the intention of gaining from same or has gained from the same. Absent any such demonstrable phenomena, it cannot be gainsaid that every omission gets elevated to the level of suppression. In the instant case on hand, there is nothing demonstrable to show that omission was deliberate and/or that plaintiff stands to gain as the entire matter turns on possession of suit property by plaintiff. The argument that the Courts below have proceeded on



the basis that the defendants have to establish title does not hold water as the first Appellate Court has proceeded primarily on the basis of deposition and the first Appellate Court has said so in as many words, more particularly in the penultimate paragraph of its judgment at Pages 66 to 70 of the typed-set of papers placed before this Court.

19. This takes us to the argument of learned counsel for defendants turning on Anuthula Sudhakar's case. First Appellate Court has relied on Anuthula Sudhakar's case, but only the name of the case has been given and reference to the report has not been given. To be noted, First Appellate Court besides giving title has also given the Civil Appeal Number and date of the judgment i.e., Civil Appeal No.6191 of 2001 dated 25.03.2008. Learned counsel for defendants submitted that he has referred to Anuthula Sudhakar's case from CaseMine (a case reporter software) and he drew the attention of this Court to Paragraph 21 and sub-paragraph (a) and (b) of paragraph 21 thereat. This Court, at this end in this virtual hearing, noticed that Anuthula Sudhakar's case is reported in AIR 2008 SC 2033. Paragraph 21 referred to by learned counsel for defendants in CaseMine is paragraph 17 in the AIR report. Referring to this paragraph 21 in CaseMine i.e., paragraph 17 in AIR, learned counsel submitted that when the defendants deny the title of the plaintiff, title ought to have been examined. Anuthula Sudhakar's case is one where the plaintiff was found to be out of possession.

20. Notwithstanding this factual distinction, in the considered view of this Court, the principle laid down by Hon'ble Supreme Court in Anuthula Sudhakar's case, more particularly in Paragraph 17(b) applies in all force to the case on hand. Paragraph 17(b) of Anuthula Sudhakar's case as reported in AIR 2008 SC 2033 reads as follows:

'17.To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a)

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a



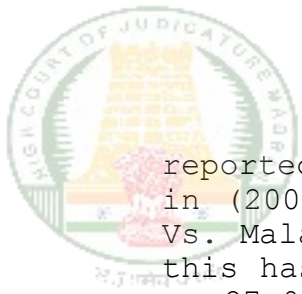
finding thereon, it will not be possible to decide the issue of possession'

20. Be that as it may, it will suffice to say that the approach of the first Appellate Court by proceeding on the basis of possession on the date of the suit cannot be found fault with.

21. This is not a case where de jure possession has to be established on the basis of title to suit property as in the case of vacant sites wherein the issue of title may directly and substantially arise for consideration. Therefore, Anuthula Sudhakar's principle as applicable to the case on hand is to the effect that in a suit for injunction simplicitor i.e., suit for bare injunction possession is paramount phenomenon and it is therefore axiomatic that the issue of title will not be directly and substantially in issue. In this view of the matter, this Court is unable to persuade itself to take exception to the approach of the first Appellate Court.

22. With regard to the reply submission on suppression, this Court has already delineated supra that every omission cannot be suppression and in the case on hand view of the first Appellate Court that the omission is not a case of suppression is unexceptionable. As the plaintiff has proved possession vide Exs.A1 to A5 which have been looked into, the first Appellate Court exercising powers under Section 96 CPC can certainly look into the exhibits and deposition before the trial Court and first Appellate Court is also a Court of fact albeit, a last Court of fact. Therefore, the submission of learned counsel for plaintiff that this is only a suit to protect possession of suit property and the plaintiff is not claiming title is clearly acceptable.

23. This takes us the discussion back to the trajectory of the captioned second appeal. As already alluded to supra, a case has to be made out for admission and for a case for admission to be made out, a protagonist of a second appeal should be able to demonstrate that a substantial question of law arises. The expression 'substantial question of law' occurring in Section 100 CPC has been elucidatively explained in a long line of authorities and a catena of case laws starting from the celebrated Sir Chunilal Mehta's case [Sir Chunilal V.Mehta and Sons Ltd., Vs. Century Spinning and Manufacturing Co. Ltd., reported in AIR 1962 SC 1314] wherein a Constitution Bench of Hon'ble Supreme Court affirmed the view taken by a Hon'ble Full Bench of this Court in Rimmalapudi Subba Rao's case [Rimmalapudi Subba Rao Vs. Noony Veeraju And Others reported in AIR 1951 Madras 969 (FB)]. Long line of authorities passes through Santosh Hazari case being Santosh Hazari Vs. Purushottam Tiwari



reported in (2001) 3 SCC 179, Hero Vinoth Vs. Seshammal reported in (2006) 5 SCC 545 and Malan Bi case being Syeda Rahimunnisa Vs. Malan Bi reported in (2016) 10 SCC 315. Suffice to say that this has been reiterated by Hon'ble Supreme Court as recently as on 27.08.2020 in Nazir Mohamed case [Nazir Mohamed Vs. J.Kamala reported in 2020 SCC OnLine SC 676]. The most relevant paragraphs are paragraphs 29, 30, 35 to 37 and the same read as follows:

' 29. The principles for deciding when a question of law becomes a substantial question of law, have been enunciated by a Constitution Bench of this Court in Sir Chunilal v. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd.1, where this Court held:-

"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."

30. In Hero Vinoth v. Seshammal , this Court referred to and relied upon Chunilal v. Mehta and Sons (supra) and other judgments and summarised the tests to find out whether a given set of questions of law were mere questions of law or substantial questions of law.'

35. Whether a question of law is a substantial one and whether such question is involved in the case or not, would depend on the facts and circumstances of each case. The paramount overall consideration is the need for striking a judicious balance between the indispensable obligation to do justice at all stages and the impelling necessity of avoiding prolongation in the life of any lis. This proposition finds support from Santosh Hazari v. Purushottam Tiwari .

36. In a Second Appeal, the jurisdiction of the High Court being confined to substantial question of law, a finding of fact is not open to challenge in second appeal, even if the appreciation of evidence



WEB COPY

is palpably erroneous and the finding of fact incorrect as held in Ramchandra v. Ramalingam . An entirely new point, raised for the first time, before the High Court, is not a question involved in the case, unless it goes to the root of the matter.

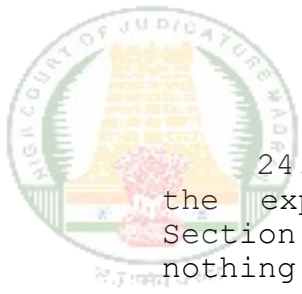
37. The principles relating to Section 100 CPC relevant for this case may be summarised thus:

(i) An inference of fact from the recitals or contents of a document is a question of fact, but the legal effect of the terms of a document is a question of law. Construction of a document, involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue.

(iii) A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the Court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iv) The general rule is, that High Court will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. Some of the wellrecognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.'



24. Applying the aforementioned principles/determinants qua the expression 'substantial question of law' occurring in Section 100 CPC, this Court is of the considered view that nothing res integra, nothing that is debatable arises in the case on hand. Likewise, there is nothing demonstrable to say that any settled principle of law has been disregarded or given a go by. There is also nothing to demonstrate that some vital evidence has been ignored, much less that disregarding of vital evidence is such that consideration of the same would have led to a bipolar opposite decree by the first appellate Court. All these go to show that no substantial question of law arises in the case on hand.

25. In the light of Kanailal principle i.e., Kanailal and Others Vs. Ram Chandra Singh and Others reported in (2018) 13 SCC 715 wherein Order XLI Rule 31 has been telescoped into a Section 100 CPC legal drill also, this Court deems it appropriate to say that the points for consideration is whether a substantial question of law arises in the light of approach of first Appellate Court that title is not directly and substantially in issue owing to case on hand being a bare injunction suit where possession is paramount.

26. This takes us to Kirpa Ram principle being law laid down by Hon'ble Supreme Court in Kirpa Ram Vs. Surendra Deo Gaur and others reported in 2020 SCC Online SC 935. Law reiterated in this case law is that a second appeal can be dismissed at the admission stage without formulation of a substantial question of law, if none arises. From the undisputed trajectory that has been delineated supra, it is clear that this second appeal is still at the admission stage. As no case has been made out for admission i.e., no substantial question of law arises, this Court drawing inspiration from Kirpa Ram principle, deems it appropriate to hold that captioned second appeal deserves to be dismissed holding that no substantial question of law arises.

27. In the light of narrative, discussion and dispositive reasoning set out supra, captioned second appeal is dismissed. Considering the nature of the matter and the nature of the submissions made before this Court, there shall be no order as to costs. Consequently CMP is also dismissed.

Sd/-

Assistant Registrar(P & A)

//True Copy//

Sub Assistant Registrar

gpa



To

1. The Subordinate Judge
Maduranthakam

2. The District Munsif
Maduramthakam

+1cc to Mr.K.Balakrishnan, Advocate, S.R.No.32392

S.A.No.600 of 2019 &
C.M.P.No.10084 of 2019

SMI (CO)
CS/29/10/2021