



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

S.A.No.299 of 2012

and

M.P.No.1 of 2012

Venkates Kounder

...Appellant / Respondent / Defendant

Vs.

N.M.Jayavelu

... Respondent / Appellant / Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 04.11.2011 in A.S.No.20 of 2011 on the file of Principal Sub Judge, Tindivanam, reversing the judgment and decree of the Trial Court dated 31.03.2011 in O.S.No.31 of 2007 on the file of Additional District Munsif Judge, Tindivanam.

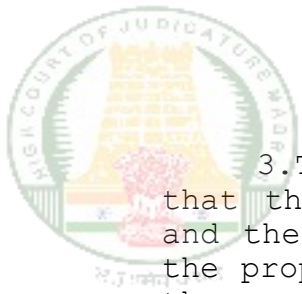
For Appellant : Mr.P.B.Balaji

For Respondents: No Appearance (Notice Served)

JUDGMENT

The defendant is the appellant in this Second Appeal.

2.The respondent/plaintiff filed a suit seeking for the relief of declaration of title and for permanent injunction. The case of the plaintiff is that the suit property was originally in possession and enjoyment of one Varadarajalu Naidu and he conveyed the property in favour of one Bangaru Ammal by registered Sale Deed dated 10.04.1939. The said Bangaru Ammal died intestate and the property was inherited by her only daughter Baby Ammal. The said Baby Ammal died intestate in the year 2005 and the property was inherited by her son Ramesh Babu. The said Ramesh Babu along with his children, executed a registered Sale Deed in favour of the plaintiff on 13.12.2006. After the purchase of the property, it is alleged that the defendant was attempting to interfere with the possession and enjoyment of the property and hence, the suit came to be filed within one month from the date of purchase of the suit property.



3.The defendant filed a written statement and took a defence that the suit property only belonged to one Varadarajalu Naidu and thereafter, the defendant and his father took possession of the property and they have been doing agricultural activities in the property. The defendant completely denied the title that was traced by the plaintiff. The defendant also took a stand that the revenue records stands in the name of the defendant and a patta has been issued in favour of the defendant in Patta No.705. Hence, the defendant had sought for the dismissal of the suit.

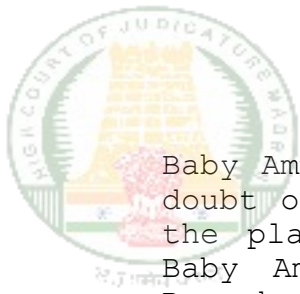
4.The trial Court on appreciation of the oral documentary evidence found that the plaintiff has not proved his case and accordingly, dismissed the suit by Judgment and Decree dated 31.03.2011. Aggrieved by the same, the plaintiff filed an appeal in A.S.No.20 of 2011. The learned Principal Sub Court, Dindivanam by a Judgment and Decree dated 04.11.2011, allowed the appeal and reversed the findings of the trial Court and thereby decreed the suit. Aggrieved by the same, the defendant has preferred this Second Appeal.

5.The following questions of law were framed:

- a) Whether the findings of the lower Appellate Court can be termed as perverse due to improper appreciation of the oral and documentary evidence available on record?
- b) Whether the lower Appellate Court has assigned proper reasons before reversing the findings of the trial Court as mandated under Order 41 Rule 31 of C.P.C.?

6.Heard, Mr.P.B.Balaji, learned counsel for the appellant. The respondent has been served with notice and the name of the respondent has also been printed in the cause list. There is no representation for the respondent either in person or through counsel.

7.This Court carefully went through the judgment of the trial Court. The trial Court on carefully marshalling the evidence found that the plaintiff has not proved the title to the property. The trial Court held that there was absolutely no evidence to show that revenue records stood in the name of Bangaru Ammal at any point of time. It was also found that there is no evidence to show that the Baby Ammal is the daughter of the above said Bangaru Ammal. The trial Court also found that there was no evidence to show that Ramesh Babu is the son of



Baby Ammal. It is therefore clear that there was a very serious doubt on the very tracing of title in the present case. Unless, the plaintiff is able to establish through some document that Baby Ammal is the daughter of Bangaru Ammal and similarly, Ramesh Babu is the son of Baby Ammal, the Court cannot assume that they are the descendants of Bangaru Ammal. The trial Court also took into consideration the fact that the suit was filed almost within a month from the date of the Sale Deed executed in favour of the plaintiff and all the documents that were relied upon by the plaintiff pertained to the period after the filing of the suit. Thus, the trial Court had given cogent reasons as to why the relief sought for by the plaintiff cannot be granted.

8. Before the lower Appellate Court, the plaintiff had filed I.A.No.97 of 2011 for additional evidence under Order 41 Rule 27 of C.P.C. Accordingly, Exhibits A9 to A15 were marked as additional documents. The Appellate Court took into consideration Ex.A11 which is a certified copy of a Sale Deed wherein, it was mentioned that Baby Ammal is the wife of Srinivasa Naidu. In this document, Ramesh Babu had stood as the witness. On the basis of this document, the lower Appellate Court comes to the conclusion that Ramesh Babu is the son of Baby Ammal. The lower Appellate Court also took into consideration other additional documents that were marked and came to a conclusion that the plaintiff has properly traced the title and hence, proceeded to interfere with the judgment of the trial Court.

9. In the considered view of this Court, while considering an additional evidence particularly where there is a serious dispute with regard to the relationship between the parties, the Appellate Court ought to have complied with the procedure contemplated under Order 41 Rule 28 of C.P.C. The law on this issue has been abundantly made clear in Akhilesh Singh @ Akhileshwar Singh vs. Lal Babu Singh & Others reported in 2018 3 CTC 883 and Bhanu & Others vs. V.K.Iyyanathan reported in 2018 3 LW 618. It is clear from these judgments that once the Appellate Court decides to rely upon the additional evidence while deciding the appeal, it is the duty of the Appellate Court to take such evidence either by itself or by directing the trial Court to record the evidence and only there upon act on the additional evidence. The Appellate Court is not supposed to directly take into evidence the documents that are brought in at the stage of appeal without recording the evidence. If such a procedure is followed, it virtually amounts to depriving the other side an opportunity to cross-examine the witness and to challenge those documents in the course of evidence. The non-compliance of the mandatory procedure under Order 41 Rule 28 of



10. It is seen from the findings from the Appellate Court that the burden was shifted on the defendant and the Appellate Court finds that the defendant did not prove that Baby Ammal was not the daughter of Bangaru Ammal. The lower Appellate Court lost sight of Section 101 of the Indian Evidence Act, where the burden of proof lies on the plaintiff to prove his case and that burden can never be shifted to the defendant till the plaintiff proves his case.

12. There is duty cast upon the Appellate Court to specifically give reasons while reversing the findings of the trial Court under Order 41 Rule 31(c) of C.P.C. This mandate has not been fulfilled by the lower Appellate Court. The lower Appellate Court has not spelt out any reasons as to why the findings of the trial Court is being reversed and as to what is the point of disagreement with the findings of the trial Court. This procedure has been held to be mandatory and the latest judgment on this issue is the judgment of the Hon'ble Supreme Court in K.Karuppuraj vs. M.Ganesan reported in 2022 1 CTC 674. In view of the same, the judgment of the lower Appellate Court also stands vitiated due to the non-compliance of the mandate prescribed under Order 41 Rule 31(c) of C.P.C. The second substantial question of law is answered accordingly.

<https://hcservices.ecourts.gov.in/hcservices/>



Decree of the trial Court is restored and the suit filed by the respondent is dismissed.

14. In the result, the Second Appeal is allowed. Considering the facts and circumstances of the case, parties shall bear their own costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Principal Sub Judge,
Tindivanam.
2. The Additional District Munsif Judge,
Tindivanam.

+1cc to Mr.P.B.Ramanujam, Advocate, S.R.No.10449

S.A.No.299 of 2012
and
M.P.No.1 of 2012

VG-II[co]
NSK/19/05/2022