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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.04.2022

Coram:

THE HONOURABLE Mr.JUSTICE N.ANAND VEKATESH

S.A.Nos.76 and 110 of 2012
and MP.No.1 of 2014 & 1 of 2014

S.A.No.76 of 2012

Prabavathy ..Appellant/5th Respondent/5th Defendant

.Vs.

1.Mani ..1st Respondent/Appellant/Plaintiff

2.Subramanian

3.Kandasamy

4.Veerasamy

5.Sambanda Achari ..Respondents 2 to 5/Respondents 1 to 4
Defendants 1 to 4

Prayer in S.A.No.76 of 2012: Second Appeal filed Under Section 100 of the Code of Civil Procedure r/w Order 41 Rule 1 of C.P.C, against the Judgment and Decree in dated 27.07.2011 made in A.S.No.1 of 2011 on the file of the Subordinate Judge, Gingee reversing the Judgment and decree dated 17.09.2010 made in O.S.No.285 of 2005 on the file of the Principal District Munsif's Gingee.

S.A.No.110 of 2012

Mani ..Plaintiff/Appellant/Appellant

.Vs.

1.Subramanian

2.Kandasamy

3.Veerasamy

4.Sambanda Achari ...Respondent/Respondent

5.Prabavathy ..Defendants



Prayer in S.A.No.110 of 2012: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 27.07.2011 made in A.S.No.1 of 2011 on the file of the Subordinate Judge, Gingee modifying the Judgment and decree dated 17.09.2010 made in O.S.No.285 of 2005 on the file of the Principal District Munsif's Gingee.

For S.A.No.76 of 2012

For Appellant : Mr.AK.Kumarasamy
Senior Counsel
for Mr.C.Munusamy

For Respondents : Mr.T.Dhanasekaran
for R1

R2 to R5 given up

For S.A.No.110 of 2012

For Appellant : Mr.T.Dhanasekaran

For Respondents : Mr.AK.Kumarasamy
Senior Counsel
for Mr.C.Munusamy
for R5

R1 to R3 - No Appearance

R4 - Not ready in notice

COMMON JUDGMENT

The issue involved in both the Second Appeals are common and hence they are taken up together, heard and disposed of through this common judgement.

2.The appellant in S.A.No.76 of 2012 was the 5th defendant in the suit. The appellant in S.A.No.110 of 2012 was the plaintiff in the suit.

3.The case of the plaintiff is that the 4th defendant and one Thirunavukkarasu are brothers. The said Thirunavukkarasu is the father-in-law of the plaintiff. The further case of the plaintiff is that the suit property originally belonged to



Government and it was allotted under Government Scheme in favour of Thirunavukkarasu. It is stated that the said Thirunavukkarasu enjoyed 6 acres of land under the said scheme and out of 6 acres, 3 acres of land is in the name of his brother, who is the 4th defendant.

4.The said Thirunavukkarasu, sold the suit property in favour of the plaintiff through a registered sale deed dated 31.01.2005 marked as Ex.A-8 and the possession was also handed over to the plaintiff. The grievance of the plaintiff is that the defendants are trying to disturb the plaintiff's peaceful possession and enjoyment of the suit property and they are also creating a cloud over the title of the plaintiff. Hence, the suit was filed seeking for the relief of declaration of title and for permanent injunction.

5.The 5th defendant took a stand that the suit property stood in the name of the 4th defendant and it was purchased by the 1st defendant under the sale deed dated 31.03.2005, marked as Ex.B-2. During the pendency of this suit, the 5th defendant purchased the property from the 1st defendant. Thus, the specific stand taken by the defendants is that the plaintiff neither has any title nor is in possession of the suit property.

6.The trial Court on considering the facts and circumstances of the case and after appreciation of the oral and documentary evidence, came to a conclusion that the plaintiff has not made out a case and the suit was dismissed through judgment and decree dated 17.09.2010. Aggrieved by the same, the plaintiff filed an appeal before the Sub Court, Gingee in A.S.No.1 of 2011.

7.The lower Appellant Court on re-appreciation of the oral and documentary evidence and on considering the findings of the trial Court, chose to interfere with the judgment and decree of the trial Court and allow the appeal partly through judgment and decree dated 27.07.2011. The lower Appellate Court granted the relief of permanent injunction in favour of the plaintiff and the defendants were restrained from interfering with the possession and enjoyment of the suit property except under due process of law.

8.Aggrieved by the above judgment, the 5th defendant has filed S.A.No.76 of 2012. The plaintiff has filed S.A.No.110 of 2012 insofar as the dismissal of the suit for the relief of declaration.



9. This Court framed the following substantial questions of law:

- a) Whether the judgment of the lower Appellate Court suffers from illegality due to non-compliance of the mandate prescribed under Order 41 Rule 31 CPC ?
- b) Whether the findings of the lower Appellate Court suffers from perversity due to improper appreciation of the oral and documentary evidence ?

10. Heard the learned Senior Counsel for the appellant and the learned counsel for the 1st respondent. This Court also carefully perused the materials available on record and the findings of both the Courts below.

11. The trial Court on appreciation of the oral and documentary evidence, came to a very categorical conclusion that there is absolutely no material available to establish the title of the plaintiff since Thirunavukkarasu from whom the plaintiff purchased the property did not have any document in his name except his claim that he was in possession and enjoyment of the property. The trial Court also found that the said Thirunavukkarasu cannot claim adverse possession over the suit property since none of the ingredients were satisfied to claim title through adverse possession. The trial Court also found that the patta was issued only in favour of the 4th defendant and the 4th defendant had sold the suit property in favour of the 1st defendant and the 1st defendant in turn had filed all the relevant documents to show his possession and enjoyment in the property. Accordingly, the trial Court gave a finding that neither title nor possession was established by the plaintiff.

12. A careful reading of the lower Appellate Court judgement shows that the lower Appellate Court did not even properly frame the points for consideration as mandated under Order 41 Rule 31 CPC. That apart, the Lower Appellate Court has rendered findings without any discussion. When the lower Appellate Court was reversing the findings of the trial Court, it was expected to discuss the findings of the trial Court and assign reasons as to why the Appellate Court is differing from the findings. This mandate has not been followed by the lower Appellate Court. Accordingly, the judgment of the lower Appellate Court suffers from illegality due to non-compliance of the requirement mandated under Order 41 Rule 31 CPC. The first substantial question of law is answered accordingly.



13. Insofar as the findings rendered by the lower Appellate Court is concerned, even though it is specifically observed that the patta was issued in the name of the 4th defendant, the lower Appellate Court renders a finding as if, Thirunavukkarasu was in possession and enjoyment of the suit property. The lower Appellate Court does not even discuss the evidence available on record and straight away comes to a conclusion that the possession of the plaintiff has been proved and that it has also been admitted by the defendants. This finding of the lower Appellate Court suffers from patent illegality since the patta was only given in the name of the 4th defendant and the 4th defendant sold the property in favour of the 1st defendant and the 1st defendant in turn sold the property in favour of the 5th defendant. The said Thirunavukkarasu did not have any right over the property and it is not known as to how he can convey a right or title in favour of the plaintiff. This crucial aspect has not even been discussed by the lower Appellate Court.

14. The lower Appellate Court has completely disregarded the documents filed on the side of the defendants to establish their possession. However, the lower Appellate Court proceeds to hold that Thirunavukkarasu has always been in possession of the suit property and the 4th defendant has never been in possession of the suit property. If that is the case, it is not known as how the Government had granted patta in the name of the 4th defendant. The findings of the lower Appellate Court is not backed with any reasons and hence, it suffers from perversity. The second substantial question of law is answered accordingly.

15. In view of the above discussion, this Court has to necessarily remand the matter back to the file of the lower Appellate Court with a direction to the lower Appellate Court to hear both the sides on merits and to pass a judgment and decree within the time stipulated by this Court.

16. In the result, the judgment and decree passed by the Sub Court, Gingee in A.S.No.1 of 2011 dated 27.07.2011 is hereby set aside. The matter is remanded back to the file of the Subordinate Judge, Gingee, with a direction to the lower Appellate Court to hear the counsel appearing on either side afresh and pass the final judgment strictly in accordance with law on or before 15.07.2022. The lower Appellate Court after delivering the judgment shall report compliance to the Registry.



17.Both the Second Appeals are allowed in the above terms. Considering the facts and circumstances of the case there shall be no order as to cost. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

KP

To

1.Subordinate Judge, Gingee.

2.The Principal District Munsif,
Gingee

3.The Section Officer
V.R.Section, High Court, Madras.

Common Judgment in
S.A.Nos.76 and 110 of 2012

NRL (CO)
CB(21/04/2022)