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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

S.A.NO.421 OF 2013

Narayanasamy (Died)
Kullammal (Died)

1. Palanivelu
2. Panneerselvam
3. Masilamani
4. Poongothai
5. Valarmathi

... Appellants/
Respondents 3 to 7/
Plaintiffs 3 to 7

Vs

1. Sinnaponnu (Died)

... Respondent/Appellant/Defendant

2. Subramani
3. Mani
4. Rajendran
5. Segar @ Gunasekaran
(RR2 to 5 brought on record as LRs
of the deceased sole respondent viz.,
Sinnaponnu vide order of Court dated
12.11.2019 made in CMP No.15867,
15868 & 15869 of 2019 in S.A.No.421/2013)

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree dated 29.11.2011 in A.S.No.15 of 2010 on the file of the Principal Sub Court at Pondicherry and reversing the Judgment and Decree dated 27.10.1999 in O.S.No.941 of 1983 on the file of the I Additional District Munsif at Pondicherry.

For Appellants : Mr.V.Anandhamoorthy

For Respondents : Mr.V.P.Chamuraj
for Mr.A.Gandhi Raj



JUDGMENT

The plaintiffs are the appellants in this second appeal.

2. The case of the plaintiffs is that they are the owners of the suit property by virtue of a registered sale deed dated 22.08.1977, marked as Ex.A4. The property was leased in favour of the defendant and a lease deed was also entered into in this regard on 13.02.1978. According to the plaintiffs, the period of lease was for three years. The grievance of the plaintiffs is that the defendant failed to pay the lease amount from the year 1979 onwards and hence, a legal notice was issued on 27.08.1983, calling upon the defendant to vacate and hand over the possession of the property. In spite of receipt of the notice, the defendant did not act upon the same. That apart, the defendant also attempted to cause a cloud over the title of the plaintiffs. Hence, the suit was filed seeking for the relief of declaration of title and possession and also for a direction to the defendant to pay arrears of rent from the year 1979 onwards.

3. The defendant filed a written statement. Initially, the defendant took a stand that she is not a tenant under the plaintiffs and there is no landlord and tenant relationship between the parties. Thereafter, the defendant took a stand that the suit has not been properly valued and that the suit is barred by limitation and sought for protection under the Pondicherry Non-Agriculture Kudiyrupudars (stay or eviction proceedings) (Amendment) Act, 1983. The defendant also raised the plea of adverse possession. Accordingly, the defendant sought for the dismissal of the suit.

4. The Trial Court, on considering the facts and circumstances of the case, framed the following issues :-

1. Whether the suit has been properly valued and correct court fee has been paid by the plaintiffs ?

2. Whether this Court has got pecuniary jurisdiction to try the suit since the value of the suit property exceeds the pecuniary jurisdiction this Court as pleaded by the defendant ?

3. Whether the plaintiffs are the absolute owners of the suit property ?

4. Whether the plaintiffs are entitled to recover vacant possession of the suit property from the defendants ?



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5. Whether the plaintiffs are entitled to recover arrears of rent from the defendant from the month of June 1979 ?

6. Whether the plaintiffs are entitled to a Judgment and decree as prayed by them ?

The Trial Court also framed the following additional issue :-

Whether the suit is hit by res-judicate ?

5. The Trial Court thereafter, on appreciation of oral and documentary evidence, found that the plaintiffs has made out a case and decreed the suit insofar as the relief of declaration of title and possession is concerned. Insofar as the rent that was claimed by the plaintiffs, the same was rejected. Aggrieved by the same, the defendant filed an appeal before the Principal Subordinate Judge at Pondicherry in A.S.No.15 of 2010. The lower Appellate Court, through a Judgment and Decree dated 29.11.2011, allowed the appeal and set aside the Judgment and Decree of the Trial Court and consequently the suit was dismissed. Aggrieved by the same, the plaintiffs have filed this second appeal.

6. When the second appeal was admitted, the following substantial questions of law were framed by this Court :-

"a) Whether the decision of the first Appellate Court is vitiated for non-consideration of the entire oral and documentary evidence while reversing the findings of the Trial Court when there are documentary to prove the title of the plaintiff ?

b) Whether the first Appellate Court under Section 96 of Civil Procedure Code being the final Court of fact is duty bound to give reasons to take different view than one taken by the Trial Court or not ?

c) Whether the first Appellate Court is correct in deciding the issue of adverse possession especially the defendant failed to plead and establish the fact of adverse possession as held in Karnataka Board of Wakf v. Government of India and Ors (2004) 10 SCC 779 ?"

7. Heard, Mr.V.Anandhamoorthy, learned counsel for the appellants and Mr.V.P.Chamuraj, learned counsel for the respondents. This Court carefully considered the materials



placed on record and the findings rendered by both the Courts below.

8. Before this Court ventures to deal with the Judgment of the Appellate Court, it is seen from the records that the suit was instituted in the year 1983 and the Trial Court decreed the suit through a Judgment and Decree dated 27.10.1999. Aggrieved by the same, the defendant filed an appeal in A.S.No.11 of 2000. Since the suit was dismissed insofar as the plaintiffs 3, 5, 6 and 7 are concerned, they filed a separate appeal in A.S.No.99 of 2000. Both the appeals were taken up together and the Additional District Judge at Pondicherry, through Judgment and Decree dated 31.01.2002, allowed both the appeals and the matter was remanded back to the file of the Trial Court under Order 41 Rule 23A of CPC. Hence, the matter was once again taken up by the Trial Court and after yet another round, it came to the file of this Court in the second appeal in the year 2013 and the second appeal is taken up for hearing in the year 2022. The case has been pending for the last 39 years.

9. The Trial Court had given elaborate findings for every issue that was framed and ultimately granted the relief of declaration of title and possession in favour of the plaintiffs. When the matter was taken up for appeal by the Principal Subordinate Judge, Pondicherry, the lower Appellate Court was supposed to follow the mandate under Section 96 of CPC. Since, the lower Appellate Court is the last Court of facts, it is expected to re-appreciate the oral and documentary evidence and consider the findings of the Trial Court. If the lower Appellate Court defers with the findings of the Trial Court, the lower Appellate Court is mandated to spell out the reason and discuss the point as to why it is disagreeing with the findings of the Trial Court. It will be relevant to take note of the latest Judgment of the Supreme Court in this regard in K.Karupparaj Vs. M. Ganesan reported in 2022 (1) CTC 674.

10. This Court is thoroughly disappointed with the manner in which the lower Appellate Court has dealt with the appeal. The lower Appellate Court has virtually gone on a tangent and has not even considered a single finding given by the Trial Court or assigned any reason as to why it is disagreeing with the findings of the Trial Court. The lower Appellate Court ought to have kept in mind that the matter is coming up on appeal for the second round, since during the earlier occasion, the matter was remanded back to the file of the Trial Court. The lower Appellate Court has virtually dealt with the appeal in a slipshod manner and the Principal Subordinate Judge, has forgotten to apply even the rudimentary principles while deciding the appeal. It is quite unfortunate that this Court



has to once again remand the matter back to the lower Appellate Court since this Court, exercising its jurisdiction under Section 100 of CPC, cannot undertake the exercise of re-appreciating the evidence and dealing with the findings of the Trial Court. When it comes to dealing with the findings, this Court, in second appeal can only test if the findings suffer from any perversity.

11. The lower Appellate Court, being the final Court of fact, failed in its duty by not giving reasons to take a different view than the one taken by the Trial Court. The Judgment of the lower Appellate Court is liable to be interfered with on this ground alone. The second substantial question of law is answered accordingly.

12. There is no requirement to give an answer to the first and third substantial questions of law, since it goes into the merits of the case and this Court does not want to give any findings. Since the matter is remanded back to the file of the lower Appellate Court, any findings on merits will have a bearing.

13. In the result, the Judgment and Decree of the lower Appellate Court made in A.S.No.15 of 2010, dated 29.11.2011, is hereby set aside and the matter is remanded back to the file of the Principal Subordinate Judge at Puducherry. The learned Principal Subordinate Judge, is directed to hear the appeal afresh on merits and the final Judgment shall be delivered on or before 15.07.2022. The lower Appellate Court is expected to strictly comply with the provisions of CPC, while dealing with the appeal. The lower Appellate Court shall report compliance after passing the final Judgment.

14. Accordingly, the second appeal is allowed in the above terms. Considering the facts and circumstances of the case, there will be no order as to costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,
Pondicherry.



2. The I Additional District Munsif,
Pondicherry.

3. The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to M/s.A.Gandhi Raj, Advocate, S.R.No.23610

S.A.No.421 of 2013

NRL (CO)
RLP (12/05/2022)