



S.A.No.184 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.184 of 2014
and M.P.No.1 of 2014

1.Ganesan (Died)

2.Kumari Indira

3.Siyamala

4.Yasodhai

5.Shanmugaadivedu

6.Sukanya

7.Pichaiammal

...Appellants

Vs.

1.Rasammal

2.Lakshmi

3.Amudha

4.Arumugam

5.Rangarajan

... Respondents

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 31.10.2013 made in A.S.No.18 of 2012 on the



S.A.No.184 of 2014

file of the Court of the Subordinate Judge, Namakkal, reversing the judgment and decree dated 10.01.2012 made in O.S.No.645 of 2010 on the file of the Court of the Principal District Munsif, Namakkal.

For Appellant : Mr.T.Dhanasekaran

For Respondents : Mr.Ma.Pa.Thangavel
for R1 to R4

R5 – Served
No Appearance

JUDGMENT

The 2nd defendant has filed the present Second Appeal. During the pendency of the appeal, the appellant died and appellants 2 to 7 have been brought on record.

2.The case of the plaintiff is that the suit property was assigned in favour of her husband through Exhibit A1 and he was in possession and enjoyment of the property. After his demise, the plaintiffs became entitled to the property. While so, the defendants started claiming right over the property and an attempt was also made to construct a super structure over the suit property. In spite of protest, the 2nd defendant proceeded to put up a construction. Since the defendants were creating a cloud over the title to



S.A.No.184 of 2014

the property and were illegally in possession of the property, the plaintiffs filed the suit seeking for the relief of declaration of title and possession.

3.The defendants filed the written statement and took a stand that the suit property originally belonged to one Ravi and he was enjoying the property till the year 1995. Thereafter, he handed over the possession of the property in favour of the 2nd defendant and the 2nd defendant has constructed the house in the year 2000. The further case of the defendants is that the Revenue Department had issued a patta for the suit property in favour of Palaniappan and Subramaniam without taking into consideration the long standing possession of the defendants. The defendants took a further stand that the suit is bad for non-joinder of Arumugam who is a co-owner of the property and the plaintiffs are not entitled to claim exclusive title over the property. Accordingly, the defendants sought for the dismissal of the suit.

4.The trial Court on considering the facts and circumstances of the case and after assessing the oral and documentary evidence, dismissed the suit through a Judgment and Decree dated 10.01.2012. Aggrieved by the same, the plaintiffs filed an appeal before the Sub Court, Namakkal in A.S.No.18 of 2012. The lower Appellate Court on re-appreciation of the oral



S.A.No.184 of 2014

and documentary evidence interfered with the Judgment and Decree of the trial Court and allowed the appeal through a Judgment and Decree dated 31.10.2013. Aggrieved by the same, the 2nd defendant has filed this Second Appeal.

5. When the Second Appeal was admitted, this Court framed the following substantial question of law:

Whether the learned Subordinate Judge was right in decreeing the suit for declaration of title despite the fact that the patta stands in the name of the first plaintiff's husband Palaniappan and one Subramani

6. Heard the learned counsel for the appellants and the learned counsel appearing on behalf of the respondents.

7. This Court also carefully perused the materials available on record and the findings of both the Courts below.

8. During the course of hearing, this Court framed the following additional substantial question of law:



S.A.No.184 of 2014

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Whether the lower Appellate Court assigned proper reasons while deferring with the findings of the Trial Court as mandated under Order 41 Rule 31 of C.P.C.?

9.The plaintiffs are claiming their right and title through Exhibit A1. This document is a Manaivari Thoraya Patta issued in the name of Palaniappan and Subramaniam. Palaniappan is none other than the husband of the 1st plaintiff and father of the plaintiffs 2 to 4. The trial Court dismissed the suit mainly on the ground that Exhibit A1 patta does not confer any title and therefore, the plaintiffs are not entitled to seek for the relief of declaration of title with respect to the suit property. Consequently, the trial Court also refused to grant the relief of possession.

10.The lower Appellate Court while dealing with the appeal, has given independent findings in Paragraph Nos.12 and 13. The findings have been given on appreciation of the documents that were available on record and based on the evidence of the witnesses. Unfortunately, the lower Appellate Court while reversing the findings of the trial Court, did not follow the mandate as required under Order 41 Rule 31 of C.P.C. The said provision makes it very clear that where the trial Court judgment is sought to be



S.A.No.184 of 2014

reversed, the Appellate Court must spell out the reason and discuss the point as to why it is disagreeing with the finding of the trial Court. Useful reference can be made to the judgment of the Hon'ble Supreme Court in ***K.Karuppuraj vs. M.Ganesan*** reported in **2022 1 CTC 674**.

11.This Court while considering the findings of the Appellate Court, can look into the reasoning only if the Appellate Court specifically deals with the findings of the trial Court and gives reasons as to why it is not agreeing with the findings of the trial Court. In the absence of the same, this Court independently will have two findings before it. One is the findings of the trial Court and the other is the findings of the Appellate Court. This Court exercising its jurisdiction under Section 100 of C.P.C., is not expected to decide as to which of the findings are correct. That is why the lower Appellate Court is expected to assign reasons while reversing the judgment and decree of the trial Court. In view of the same, the Judgment and Decree of the lower Appellate Court is liable to be interfered by this Court and the additional substantial question of law is answered accordingly.

12.This Court does not want to answer the 1st substantial question of law, since it deals with the merits of the case. This Court has to necessarily remand the matter back to the file of the Sub Court, Namakkal with a



S.A.No.184 of 2014

direction to the lower Appellate Court to hear the appeal afresh on merits and render the judgment after strictly complying with the requirements under Order 41 Rule 31 of C.P.C.

13.In the result, this Second Appeal is allowed and the Judgment and Decree of the Sub Court, Namakkal made in A.S.No.18 of 2012, dated 31.10.2013 is hereby set aside. The matter is remanded back to the file of the Sub Court, Namakkal and there shall be a direction to dispose of the appeal on merits and in accordance with law, within a period of two months from the date of receipt of copy of this order. It is left open to both the parties to put forth all their contentions before the lower Appellate Court. Considering the facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

09.03.2022

Index :Yes

Internet :Yes

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S.A.No.184 of 2014

N.ANAND VENKATESH.,J

ssr

To

- 1.The Subordinate Judge, Namakkal.
- 2.The Principal District Munsif, Namakkal.

S.A.No.184 of 2014
and M.P.No.1 of 2014

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