



S.A.No.1028 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:29.09.2023

Delivered on: 24.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

S.A.No.1028 of 2007

&

C.M.P.Nos.21313 and 3846 of 2023

Francis Yagappa

... Appellant

Vs.

1.The State of Tamil Nadu
rep by the District Collector
Nagapattinam

2.The Thasildhar
Kizvelur

3.The Divisional Engineer
High Ways and Rural Department
Nagapattinam

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 29.07.2005 made in A.S.No.10 of 2005 by the learned Principal Sub-ordinate Judge, Nagapattinam reversing the judgment and decree dated 30.04.2004 made in O.S.No.372 of 2000 on the file of learned District Munsif, Nagapattinam.



S.A.No.1028 of 2007

For Appellant : Mr.A.C.Kumaragubaran

For Respondents : Dr.S.Suriya, AGP

JUDGMENT

The unsuccessful plaintiff is the appellant.

2. The plaintiff filed O.S.No.372 of 2000 on the file of learned District Munsif, Nagapattinam, seeking issuance of a patta for the property measuring 22 cents belonging to the plaintiff. The 3rd defendant Divisional Engineer, National Highways filed a written statement denying the claim of the plaintiff. It is also contended by the 3rd defendant that the said 22 cents belong to the Government and the relief sought for by the plaintiff cannot be granted.

3. Before the Trial Court, the plaintiff did not lead any oral evidence. However, Exs.A1 to A7 were marked on the side of the plaintiff. On the side of the defendants, D.W.1, one Mr.Govindaraj was examined and Ex.B1 'A' Register was marked. The Trial Court relying on the the judgment and decree in O.S.No.32 of 1977, held that the plaintiff was the owner of the suit



S.A.No.1028 of 2007

property and therefore granted a decree directing the defendants to issue patta to the plaintiff. Aggrieved by the said judgment and decree, the defendants, Viz., the District Collector, Nagapattinam, Thasildhar, Kizhvelur and Divisional Engineer, Highways and Rural Department, Nagapattinam preferred A.S.No.10 of 2005, raising the grounds that the Trial Court failed to see that the property has been classified as Natham poromboke and the plaintiff was therefore not entitled to patta and that the Trial Court failed to see that the plaintiff did not even enter the witness box and prove his case.

4. The First Appellate Court, by holding that the decree in O.S.No.32 of 1977 did not even declare the title of the plaintiff but only granted a permanent injunction to restrain the defendants in the said suit from interfering with the plaintiff's possession and enjoyment of the suit property by issuance of permanent injunction, held that the plaintiff was not entitled to grant of patta and reversed the finding of the Trial Court.

5. Aggrieved by the reversing finding rendered by the First Appellate



S.A.No.1028 of 2007

Court, the plaintiff has filed the present Second Appeal. At the time of admission of the Second Appeal, the following substantial question of law has been framed:

“ Whether the Lower Appellate Court has committed an error of law in totally ignoring clause(1) of the decree, dated 02.08.1979, passed in O.S.No.32 of 1977 on the file of the Sub-Court, Nagapattinam and erroneously observing that the plaintiff's title has not been declared in O.S.No.32 of 1977 and whether that has vitiated the judgment and decree passed by the Lower Appellate Court ?”

6. An application in C.M.P.No. 3846 of 2023 has also been taken out to let in additional evidence viz., the certified copy of judgment in O.S.No.32 of 1977 to establish the nature of the judgment and decree passed in the said suit as it has a direct bearing on the substantial question of law involved in the present Second Appeal.

7. No counter has been filed by the respondents/defendants opposing the said application. The said application is also being considered along with



S.A.No.1028 of 2007

the present Second Appeal.

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8. I have heard Mr.A.C.Kumaragurubaran, learned counsel for the appellant and Dr.S.Suriya, learned Additional Government Pleader for the respondents. At the request of the learned Additional Government Pleader, the matter was adjourned for final hearing on two occasions and on both the occasions, the learned Additional Government Pleader sought for time. However, I chose to grant liberty to both the appellant as well as the learned Additional Government Pleader for the respondents to file their written submissions as well. The counsel for the appellant has filed his written submissions. Till date, the respondents have not chosen to file their written submissions.

9. The District Munsif has framed a specific issue as to whether the plaintiff is the owner of the suit schedule property and after assessing the pleadings as well as evidence on record, the Trial Court held that in an earlier suit in O.S.No.32 of 1977, the plaintiff's title had been declared and



S.A.No.1028 of 2007

consequential permanent injunction had also been granted and therefore answered the said issue in favour of the plaintiff. The said decree in O.S.No.32 of 1977 alone was marked as Ex.A.2 and the judgment was not marked on the side of the plaintiff. However, the First Appellate Court on perusing Ex.A.2 viz., the decree in O.S.No.32 of 1977, held that the relief granted to the appellant was only in the nature of a permanent injunction and not a decree for declaration and proceeded to reverse the finding of the Trial Court with regard to the ownership of the suit property at the hands of the appellant/plaintiff.

10. It is in this context only that C.M.P.No.3846 of 2023 has been taken out to mark the certified copy of the judgment dated 02.08.1979 in O.S. No.32 of 1977. The defendant in the said suit is the State of Tamil Nadu represented by its Collector, Thanjavur. In view of the peculiar situation that has arisen in the present case viz., the Trial Court relying on the decree in O.S.No.32 of 1977 and holding that the plaintiff's title has been declared in the said suit, however, on appeal, the First Appellate Court on referring to the



S.A.No.1028 of 2007

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very same decree, held that only a relief of permanent injunction has been granted, it has become necessary to allow C.M.P.No.3846 of 2023 and receive the certified copy of the judgment in O.S.No.32 of 1977. No prejudice would be caused to the respondents, if the said application is allowed and the certified copy of the judgment in O.S.No.32 of 1977 is received as the said document would only assist the Court in adjudication of the issue involved in this appeal and it would also enable this Court to pronounce judgment as the additional evidence sought to be produced has a direct bearing on the case on hand. Infact, the learned counsel for the appellant would place reliance on the judgment of the Hon'ble Supreme Court in *Sanjay Kumar Singh Vs. State of Jharkhand*, reported in (2022) 7 SCC 247, wherein the Hon'ble Supreme Court held that admissibility of additional evidence under Or.41 R.27 does not depend upon the relevancy of the issue on hand or whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the Appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment, or for any other substantial cause. In view of the ratio



S.A.No.1028 of 2007

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laid down by the Hon'ble Supreme Court, I am of the view that C.M.P.No. 3846 of 2023 merits consideration and accordingly C.M.P.No.3846 of 2023 is allowed and the certified copy of judgment in O.S.No.32 of 1977 is taken on file and marked as Ex.A.8.

11. On going through Ex.A.8-certified copy of the judgment, it is evident and clear that the Court has specifically framed an issue as to whether the plaintiff has perfect title to 22 cents in R.S.No.99/3 by adverse possession against the defendant and in paragraph 11 of the judgment, the Trial Court has decided the issue in favour of the plaintiff. Consequently, in view of the findings with regard to plaintiff's title, the relief of permanent injunction has also been granted at para 14. Even in para 15, the Trial Court has held as follows:

“ 15. In view of my findings on the issue Nos.1 to 3 the suit is decreed with pro-costs with regard to the declaration and injunction prayed for. In other respects the suit till stand dismissed.”



S.A.No.1028 of 2007

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12. Moreover, even in the earlier suit, the State of Tamil Nadu represented by its Collector was a party/defendant. Moreover, in the present suit, D.W.1-the Village Administrative Officer has also admitted that the plaintiff was granted the relief of declaration of title in respect of the present suit property. I have also gone through the decree in O.S.No.32 of 1977, which has been marked as Ex.A.2. In so far as first clause in the decree, it pertains to the relief of declaration and in the certified copy marked as Ex.A.2 the print is not very clear and therefore the First Appellate Court has misinterpreted the decree and referred to Clause 2 of the decree which grants only the relief of permanent injunction and proceeded to hold that the plaintiff was not granted the relief of declaration in O.S.No.32 of 1977.

13. The First Appellate Court has unfortunately misdirected itself in construing EX.A.2 decree in a proper and right perspective. The First Appellate Court ought to have seen that the print was not clear or legible and Clause 2 of the decree alone dealt with the relief of permanent injunction. However, now in the light of the additional evidence being received vide



S.A.No.1028 of 2007

Ex.A.8, it is crystal clear that the plaintiff was declared to be the owner of the suit schedule property in O.S.No.32 of 1977, in which the State of Tamil Nadu was the defendant. This factum has also been admitted to by D.W.1, who was examined on the side of defendants in the present suit. Therefore, a case has been made out for interference u/s. 100 C.P.C. Infact, the counsel for the appellant relied on a judgment of the Hon'ble Supreme Court in ***P.Chandrasekharan and Ors Vs. S.Kanakarajan and Ors***, reported in ***(2007) 5 SCC 669***, wherein the Hon'ble Supreme Court has held that if a Court misreads or misinterprets a document, then it would be a substantial question of law for determination of the High Court. Here, Ex.A.2 has been misread by the First Appellate Court in reversing the well considered findings of the Trial Court. Hence, the appellant is entitled to relief and the substantial question of law is answered in favour of the appellant.

14. In fine, the Second Appeal is allowed and the judgment and decree passed in A.S.No.10 of 2005 dated 29.07.2005 by the learned Principal Sub-ordinate Judge, Nagapattinam is set aside and the the judgment and decree



S.A.No.1028 of 2007

dated 30.04.2004 made in O.S.No.372 of 2000 on the file of learned District

Munsif, Nagapattinam is restored. There shall be no order as to costs.

Consequently, connected C.M.P.No.21313 of 2023 is closed.

24.11.2023.

Internet:Yes

Index:Yes/No

Neutral Citation:Yes/No

Speaking/Non-speaking order

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To

1.The Principal Sub-ordinate Judge, Nagapattinam

2.The District Munsif, Nagapattinam.



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S.A.No.1028 of 2007

P.B.BALAJI, J.,

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Pre-delivery Judgment in
S.A.No.1028 of 2007

24.11.2023