



SA.No.839 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2023

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

SA.No.839 of 2007

and

M.P.No.1 of 2007

1.Kandasamy Gounder (died)

2.Pavayammal

3.K.Nisanth

4.Minor. Maheshwari

[Minor Rep. by mother/next friend Pavayammal]

*[Appellants 2 to 4 brought on record as LRs of the deceased sole appellant
Viz.Kandasamy Gounder vide Court order dated 31.08.2021 made in
C.M.P.No.11889 of 2021 in S.A.No.839/2007]*

... Appellants

Vs.

1.Marayammal

2.Masiriammal

3.Chellammal

4.R.Sahasranamam

... Respondents



SA.No.839 of 2007

PRAYER: Second Appeal filed under Section 100 of the CPC, against the judgement and decree dated 28.02.2007 made in A.S.No.63 of 2006 on the file of the Principal District Court, Erode confirming the judgement and decree dated 28.10.2005 made in OS.No.75 of 2002 on the file of the Sub Court, Bhavani.

For Appellant : Mr.N.Manokaran

For Respondents : Mr.S.H.Sudarsanam [R.1 to R.3]

Mr.V.S.Kesavan [R.4]

JUDGEMENT

The Substantial question of law on which the Second Appeal was admitted is as follows:-

“ Whether the Courts below have committed an error themselves in granting the relief, especially, when as per Section 8 of the Hindu Succession Act the property inherited by the son as Class I heir from his father will be the self acquired property in the hands of the son (Appellant), in which his daughter has no right even assuming the grandfather’s property was ancestral in the hands of the father? ”



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2. However, now while making his submissions the learned counsel for the appellant would submit that the Appellate Court had failed to discharge the duty cast upon it while considering the judgment of the Trial Court. While setting it aside the Appellate Court has not assigned reasons for disagreeing with the views taken by the Trial Court and giving reasons as to why the judgment of the Trial Court is contrary to the evidence on record or is perverse. In the light of the above submission, an additional substantial question of law is framed as follows:-

“Whether the judgment of the Appellate Court reflects a conscious application of mind and whether it has recorded reasons for arriving at the finding on the points for consideration framed on the basis of the submissions made by the parties to the lis and the evidence before it?”

3. In order to appreciate the issue on hand it is necessary to very briefly touch upon the facts which have given rise to the filing of the above Second Appeal. The appellant herein is the 1st defendant before the Sub Court Judge, Bhavani in O.S.No.75 of 2002. The 1st respondent is no more



SA.No.839 of 2007

and his legal representatives have been brought on record as appellants 2 to 4 in the above appeal.

4. The plaintiffs had filed the above suit seeking partition of their $\frac{2}{4}^{\text{th}}$ share in the suit schedule property. It is their case that the defendants 1 and 2 are their parents and the suit properties are their ancestral properties. The grandfather of the plaintiffs, Marappa Gounder had two sons Rakkanna Gounder and the 1st defendant. After the demise of Marappa Gounder, the brothers had partitioned the properties under a partition deed dated 08.07.1976 in which the 1st defendant's family was allotted properties which forms the suit schedule property. Apart from the plaintiffs, the 1st defendant had a son Appachi Gounder Therefore, Appachi Gounder, the 1st defendant and the plaintiffs formed an Undivided Hindu Joint Family and they were enjoying the properties in common. Each of the sharers were therefore entitled to a $\frac{1}{4}^{\text{th}}$ share in the property. On 24.01.1999, Appachi Gounder died a bachelor, issueless. Therefore, the 2nd defendant being his mother succeeded to his share and thereby she became entitled to his $\frac{1}{4}^{\text{th}}$ undivided share in the property.



SA.No.839 of 2007

WEB COPY

5. Meanwhile, the 1st defendant started acting against the interest of the family and had contracted a second marriage illegally. As per the amended Hindu Succession Act, an unmarried daughter is also entitled to an equal share in the property as a birth right. Therefore, the plaintiffs are entitled to a share. The 1st defendant along with his son Appachi Gounder had sold the 7th item of property to the 3rd defendant ignoring the plaintiffs. The plaintiffs are not bound by the said sale. Therefore, in the light of the above activities, it is no longer possible for the plaintiffs to remain joint with the defendants. They had issued a legal notice dated 21.01.2002 calling upon the defendant to amicably partition the property. However, the 1st defendant had issued a reply setting up a plea of family arrangement of the year 1999 which according to the plaintiffs is not a valid family arrangement. The house property which is described in the 2nd item of the suit schedule is also available for partition. Therefore, the suit.



6. The 1st defendant had filed a written statement inter alia admitting the contents of the plaint in so far as it related to the relationship of parties and the properties concerned. The 1st defendant would submit that Appachi Gounder and himself had sold the 7th item of the property to the 3rd defendant on 11.09.1991. It is the further case of the 1st defendant that since the 1st defendant had to borrow huge sums of money for getting the plaintiffs married with the requisite dowry etc; prevalent as per customs, a family arrangement was made between the plaintiffs and the defendant stating that plaintiffs will not make any claim to the ancestral property. The document was more or less a release deed. The Family Arrangement, therefore, is binding upon the plaintiffs and they are stopped from claiming any right in the suit property.

7. The 1st defendant would submit that on 15.04.1991 he had borrowed a sum of Rs.50,000/- from one Arumugham son of Ramasamy Chettiar and on 20.04.1991 he had borrowed a sum of Rs.60,000/- from one Andamuthu son of Sengoda Gounder. Once again, on 17.10.1999 and 27.10.1999, the 1st defendant had borrowed money to meet the marriage expenses of the plaintiffs. Therefore, it is the contention of the 1st defendant



that the plaintiffs have no right to claim a partition. The 1st defendant would submit that the plaintiffs were never in joint possession of the suit property and having relinquished their right, the present suit was not maintainable. The 2nd defendant, mother of the plaintiffs had filed a written statement claiming a 1/4th share in the suit schedule properties. The 3rd defendant had filed a written statement inter alia contending that he is a bonafide purchaser for proper and valuable consideration and therefore, the 7th item of the property should be allotted to him in equity.

8. The learned District Munsif had framed the following issues which are herein below translated from the Tamil language as follows:-

- 1) Whether the plaintiffs are entitled to relief of partition as claimed by them?*
- 2) Whether the plaintiffs are not in joint possession of the property as stated by the 1st defendant?*
- 3) What other relief are they entitled to?*



SA.No.839 of 2007

9. The 1st plaintiff had examined herself as P.W.1 and marked Ex.A.1 to A.6. The 1st defendant had examined himself as D.W.1, 2nd defendant as D.W.4 and the 3rd defendant D.W.5. One Arumugam and Chinnathambi were examined as D.W.2 and D.W.3 respectively and marked Ex.B.1 to B.7.

10. The learned Trial Judge ultimately declared the 1/4th share of the plaintiffs and 2nd defendant in items 1, 3, 4, 5 and 6 and their 1/4th share in the 1st item of the 7th schedule. However, a partition decree was not granted in respect of the 2nd item of the suit 7th schedule property.

11. Challenging the said judgment and decree the 1st defendant had filed A.S.No.63 of 2006 on the file of the Principal District Judge, Erode.

12. The learned Principal District Judge after extracting the pleadings and the result of the suit had framed the following points for consideration:-

"1. Whether the respondents 1 and 2 are entitled for partition?"



SA.No.839 of 2007

2. Whether the Judgement and Decree of the Trial

Court is liable to be set aside?

3.To what relief?"

13. Thereafter, the learned Judge has proceeded to simply extract portions of the judgment of the Trial Court and the documents filed. Ultimately, the learned Judge had observed as follows and dismissed the appeal.

“ Considering the above evidence, the promissory notes filed by the first defendant and the alleged family arrangements are not binding upon the plaintiffs. Considering the above facts, the suit was partly decreed and preliminary decree was passed by the Trial Court.”

Aggrieved by the same the defendant/appellant is before this Court. In so far as the portion of the judgment that had gone against them, the plaintiffs have not filed any appeal. Therefore, the findings with reference to the 1st portion of the 7th item and the 2nd item of properties have attained finality.



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14. The learned counsel Mr.N.Manokaran appearing on behalf of the 1st defendant/appellant would submit that a mere perusal of the judgement of the Appellate Court would clearly demonstrate the total non-application of mind on the part of the First Appellate Court which is the final Court of fact. He would submit that the Court below has given a complete go by to the provisions of the Code of Civil Procedures while passing the judgement. He would rely upon the following judgements:-

- i) (2001) 3 SCC 179 – Santhosh Hazari Vs. Purushottam Tiwari.*
- ii) (2016) 13 SCC 124 – Union of India Vs. K.V.Lakshman and Others.*
- iii) (2021) 10 SCC 777 – K.Karuppuraj Vs. M.Ganesan.*

He would submit that the judgment of the Appellate Court cannot be called a judgment in the strict legal sense.

15. Mr.S.H.Sudarsanan, learned counsel for the respondent was not able to countenance this argument on the face of the record. I have considered the appeal on this preliminary point. As rightly pointed out by the learned counsel for the appellant, the lower Appellate Court has not



SA.No.839 of 2007

independently considered the evidence on record. On the contrary, the learned Judge has simply set out what had transpired before the Trial Court and has passed a judgement which on the face of it is non-speaking and does not give any findings or reasonings for such findings. The learned Judge has also not touched upon the grounds raised by the appellant in his grounds of appeal. The Appellate Court is bound to frame points for consideration, consider the appeal on the basis of these points and ultimately if the Appellate Court is reversing the judgement and decree of the Trial Court then it must give cogent reasons as to why the judgement and decree of the Trial Court was perverse or erroneous. Therefore, since on this preliminary point I find the Judgement of the Trial Court to be perverse, I am not traversing into the merits of the case.

16. The Hon'ble Supreme Court in the judgment reported in **(2001) 3 SCC 179 – Santhosh Hazari Vs. Purushottam Tiwari** had stated as follows:-

"The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is



WEB COPY



SA.No.839 of 2007

therein open for rehearing both on questions of fact and law.

The judgment of the appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. The task of an appellate Court affirming the findings of the trial Court is an easier one. The appellate Court agreeing with the view of the trial Court need not restate the effect of the evidence or reiterate the reasons given by the trial Court; expression of general agreement with reasons given by the Court, decision of which is under appeal, would ordinarily suffice (Girijanandini Devi & Ors. Vs. Bijendra Narain Choudhary, AIR 1967 SC 1124). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate Court for shirking the duty cast on it. While writing a judgment of reversal the appellate Court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial Court must weigh with the appellate Court, more



SA.No.839 of 2007

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so when the findings are based on oral evidence recorded by the same presiding Judge who authors the judgment.

17. Likewise, in the Judgement of the Hon'ble Supreme Court reported in **(2016) 13 SCC 124 – Union of India Vs. K.V.Lakshman and Others** the earlier judgement had been referred to with appreciation as follows:-

" Order 41 Rule 27 of the Code is a provision which enables the party to file additional evidence at the first and second appellate stage. If the party to appeal is able to satisfy the appellate Court that there is justifiable reason for not filing such evidence at the trial stage and that the additional evidence is relevant and material for deciding the rights of the parties which are the subject matter of the lis, the Court should allow the party to file such additional evidence. After all, the Court has to do substantial justice to the parties. Merely because the Court allowed one party to file additional evidence in appeal would not by itself mean that the Court has also decided the entire case in his favour and accepted such evidence. Indeed once the additional evidence is allowed to be taken on record, the appellate Court is under obligation to give opportunity to the other side to file additional evidence by way of rebuttal. "



SA.No.839 of 2007

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18. Therefore, the Additional Substantial question of law raised today is held against the defendant and the Second Appeal is allowed. The matter is remitted back to the Principal District Court, Judge, Erode who shall within a period of one month from the date of receipt of the copy of the judgement and records hear and pass judgment in the First Appeal. Since the Second Appeal is allowed a ground that the judgment in appeal is a non speaking one and the same is remitted back to the Lower Appellate Court, there is no necessity to answer the substantial questions of law framed originally. No costs. Consequently, the connected Miscellaneous Petition is closed, if any.

07.02.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To

1. The Principal District Court, Erode
2. The Sub Court, Bhavani.



WEB COPY



SA.No.839 of 2007

P.T. ASHA, J,

shr

SA.No.839 of 2007
and
M.P.No.1 of 2007

07.02.2023