



A.S.No.229 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.06.2023

PRONOUNCED ON : 18.07.2023

CORAM

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K.RAJASEKAR

Appeal Suit No.229 of 2023

and

Civil Miscellaneous Petition No.9530 of 2023

M/s. Mowbrays Education Society,
Represented by its Hons. Secretary and Treasurer,
Smt.K.Rajalakshmi ... Appellant / Petitioner

Versus

Radha Prakash
Former Correspondent of Mowbrays Matriculation Higher
Secondary School, No.79, T.T.K.Road,
Alwarpet, Chennai – 600 019.

Respondent/Respondent

...

The Appeal Suit filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure to set aside the Judgment and Decree made in O.S.No.275 of 2020 dated 15.06.2022 on the file of the Principal District Court, Chengalpattu.



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For Appellant : Mr.C.Jagadish
For Mr.S.Senthil

JUDGMENT

[The Judgment of the Court was delivered by K.RAJASEKAR,J.,]

The unsuccessful plaintiff in O.S.No.275 of 2020 has filed this appeal against the Judgment and decree dated 15.06.2022 passed by the learned Principal District Judge, Chengalpattu, wherein the suit for declaration filed by the plaintiffs is dismissed.

2. The parties are referred to hereunder according to status and ranking before the trial Court.

3. The plaintiff has filed the suit for declaration that they are the absolute owner of Schedule 'A' and 'B' properties and for the costs.

4. The case of the plaintiff in brief is as follows:

(a) The plaintiff is a registered Society established for the purpose of running an Educational Institution and the management consists of 8 members. During the year 1988, the plaintiff - Society had proposed to



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purchase two properties for the purpose of establishing a School in the outskirts of Chennai. The management has resolved to empower the defendant to purchase the Schedule property, who was then the Correspondent of the School. Thereafter, the Sale deeds were registered in favour of the defendant in the capacity as Correspondent of Mowbrays Matriculation School, Nanganallur, which is the school run by the Society. In the Sale deed, the name of the purchaser should have been mentioned as “Mowbrays Education Society represented by Radha Prakash”, but whereas, the name of purchaser has been described as “Radha Prakash, Correspondent, Mowbrays Matriculation School”, which has been intentionally done by the defendant. In the year 1990, there was a dispute between the defendant and the then Secretary-cum-Treasurer – T.K.Kumarasamy. Hence, the defendant filed a Civil Suit in C.S.No.1005 of 1990 before this Court and subsequently, a Compromise Memo was recorded between the parties and the defendant was relieved from the Society.

(b) Thereafter, the Society was re-constituted and the Society was functioning normally. One J.Mohanlal has filed a Civil Suit against the defendant for recovery of arrears of rent to be paid by the defendant for her



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residence and the suit was also decreed in his favour. Based on the decree, E.P.No.961 of 1998 was filed, on the file of the IX Assistant City Civil Court, Chennai and suit property herein was attached. Hence, to remove the entry of the encumbrance over the suit properties, the plaintiff herein filed E.A.No.1 of 2020 for raising attachment and the same was also allowed. As per General Body Meeting held on 26.12.2016, the Society has decided to sell the suit property and to settle the loans borrowed from the financial Institutions to develop and modify the School. Hence, separate suit for declaration of Title over suit properties filed by the Society. The defendant has not appeared before the trial Court and was remained ex-parte.

5. Before the Trial Court, the plaintiff has examined its Secretary-cum-Treasurer as P.W.1 and marked documents as Exs.A1 to A3.

6. The Trial Court has considered the claim made by the plaintiff that they are the absolute owners of the suit properties. After considering oral and other documentary evidence, the trial Court has come to the conclusion that the plaintiff has not proved its case and held that Sale deeds dated 28.03.1998 marked as Ex.A1 and Ex.A2, shows that suit properties purchased only in the individual name i.e., in the name of



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defendant. Plaintiff has not produced any document to show that the suit properties which was attached by the City Civil Court for recovery of money from Radha Prakash was subsequently raised from attachment and no sufficient proof had been produced in support of the evidence of the plaintiff, consequently dismissed the suit.

7. Aggrieved over the above finding, this appeal has been filed along with C.M.P.No.9530 of 2023 seeking permission to produce additional evidence in support of the plaintiff's case.

8. Before the trial Court, the plaintiffs have marked certified copies of the Sale deeds relating to Schedule 'A' and 'B' Properties as Exs.A1 and A2 respectively. Ex.A3 is the copy of the order passed by this Court in C.S.No.1005 of 1990 and Application No.1374 of 1992.

9. The learned counsel for the appellant would submit that the plaintiff – Society, at the time of filing the suit, filed 27 plaint documents along with plaint but those have not been marked as exhibits. Those documents are very vital to prove the case of the plaintiff and that the suit properties were purchased only by the plaintiff - Society. Similarly, the vital



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documents relating to the order passed by the IX Assistant City Civil Court, Chennai in E.A.No.1 of 2020 in E.P.No.961 of 1998 is sufficient to prove that already the Society has taken steps to raise attachment and succeeded in their claim and prays to permit the plaintiff Society to adduce additional evidence in this appeal.

10. Order XLI Rule 27 deals with the scope, powers of Appellate Court and permissible circumstances for production of additional evidence. Order XLI Rule 21 reads as follows:

“Order XLI Rule 27 of the Code of Civil Procedure, production of additional evidence, whether oral or documentary, is permitted only under three circumstances which are: Where

(i) the trial Court had refused to admit the evidence though it ought to have been admitted;

(ii) the evidence was not available to the party despite exercise of due diligence; and

(iii) the appellate Court required the additional evidence so as to enable it to pronounce better judgment or for any other substantial cause of like nature.”

11. In this case, the documents purported to be marked as additional evidence have already been produced before the trial Court and



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the copies of those documents have been produced before this Court including the Order passed in E.A.No.1 of 1990 by the IX Assistant City Civil Court, Chennai. Copy of plaint also shows that the plaintiff had filed those documents before the trial Court but failed to mark it as evidence and has not properly submitted their case before the trial Court.

12. In ***Municipal Corporation of Greater Bombay vs. Lala Pancham of Bombay & Others*** reported in ***AIR 1965 SC 1008 (CB)***, the Hon'ble Apex Court has observed that “*When the appellate Court finds itself unable to pronounce Judgment owing to a lacuna or defect in the evidence as it stands, it may admit additional evidence. The ability to pronounce Judgment is to be understand as the ability to pronounce Judgment satisfactorily to the mind Court delivering it. It is only a lacuna in the evidence that will empower the Court to admit additional evidence.*”

13. In ***Union of India vs. Ibrahim Uddin and Another*** reported in ***(2012) 8 SCC 148***, the Hon'ble Apex Court has held in paragraph No.36 reads as follows:

“36. *Where the additional evidence sought to be*



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adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record such application may be allowed.”

14. Even though, the plaintiff has not vigilantly exhibited those documents before the trial Court, this Court is of the view that if the additional evidence is allowed to be recorded, it would enable the Court to pronounce the Judgment in a more satisfactory manner. Without marking those documents, this Court could not pronounce the Judgment on the merits of the claim of the plaintiff.

15. The trial Court also has not properly appreciated the oral evidence adduced on the side of the plaintiff regarding their contention including previous litigations held between the plaintiff and the defendant. Order passed in Compromise Memo - Ex.A3 marked before the trial Court shows that there was a negotiation and settlement between the plaintiff and defendant is recorded. By relying on the recitals in Sale deeds Exs.A1 and A2, the trial Court has dismissed the suit. The non consideration of Ex.A3 is bad and the trial Court ought to have considered the settlement and Order



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passed therein by this Court regarding the dispute is vital to decide the claim of the plaintiff. Hence this Court is of the view that the matter requires re-consideration by the trial Court and recording of additional evidence is also necessary for the reason stated supra.

16. Accordingly, the Judgment and decree passed by the trial Court is set aside and the suit is remanded back to the trial Court for fresh consideration and the trial Court is directed to dispose of the case at the earliest by affording opportunities to both sides.

17. In the result, the Appeal Suit is allowed and the Judgment and Decree in O.S.No.275 of 2020 passed by the file of the Principal District Judge, Chengalpattu, dated 15.06.2022 is set aside and the suit is remanded back to the trial Court for fresh consideration and the parties are entitled to adduce additional evidence in support of their case. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

(S.V.N.,J.) (K.R.S.,J.)

18.07.2023

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

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To:

1. The Principal District Judge,
Chengalpattu.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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S.VAIDYANATHAN
and
K.RAJASEKAR

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Pre-delivery Judgment in
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