



SA(MD)No.570 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 23.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

S.A.(MD)No.570 of 2017

and

C.M.P.(MD)No.12165 of 2017

K.Mahendran

... Appellant/ Appellant / Defendant

Vs.

C.Selvaraj

... Respondent / Respondent / Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 31.01.2017 passed in A.S.No.41 of 2013 on the file of the II Additional Subordinate Judge, Trichirappalli in confirming the judgment and decree dated 24.03.2011 passed in O.S.No.243 of 2000 on the file of the District Munsif Court, Munisir.

For Appellant : Mr.R.Govindaraj

For Respondent : Mr.K.Govindarajan



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JUDGMENT

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The appellant herein is the defendant, and the respondent herein is the plaintiff before the trial Court.

2.For the sake of convenience, the parties are referred to as per their rank before the trial Court.

3.The brief facts of the plaint, are as follows:

According to the plaintiff, first item of 'A' schedule suit property was originally belonged to one Annavi, S/o.Avuli Muthuraja. From him, the plaintiff had purchased the property on 24.04.1980. Likewise, he also purchased the second item of 'A' schedule property from one Muthaiah and Ponnusamy under two different sale deeds dated 24.04.1980. Thus, the plaintiff became the owner of 'A' schedule property. It is the submission of the plaintiff that 'B' schedule property is the government poramboke land, and he had been in encroachment of the same and paying 'B' memo for more than 12 years and therefore, he would submit that he has been in actual physical possession and enjoyment of 'A' and 'B' schedule property.



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He would further submit that his possession has been disturbed by the defendant. Hence, he came up with a suit for the relief of permanent injunction.

4.The brief facts of the written statement, are as follows:

The suit was resisted by the defendant by contending that the suit properties are originally belonged to one Molaiyan @ Perumal Muthuraja who was the grandfather of the defendant. He further submits that there was partition on 24.04.1972 between the heirs of Molaiyan @ Perumal Muthuraja. In the said partition, the suit properties were allotted to Perumal Muthuraja. It is the submission of the defendant that the said Perumal Muthuraja had handed over same to one Vellaiammal with a request to hand over the same to Neelambal. It is also the submission of the defendant that the suit properties were in actual possession and enjoyment of Neelambal, and the defendant is the legal heir of Neelambal. After the demise of Neelambal, the suit properties devolved on the defendant and he has been in actual possession and enjoyment of the same. Therefore, he would submit that the very suit is liable to be dismissed.



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5. Before the trial Court, on behalf of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and 21 documents were marked as Ex.A1 to Ex.A21. On behalf of the defendant, 2 witnesses were examined as D.W.1 and D.W.2 and 32 documents were marked as Ex.A1 to Ex.A32.

6. After considering the pleadings, material on record and evidence, the trial Court had found that the plaintiff has been in possession and enjoyment of the suit properties, and that the defendant has no right over the same and ultimately, granted the decree of permanent injunction in favour of the plaintiff.

7. Aggrieved with the order of the trial Court, the plaintiff / respondent has filed a first appeal in A.S.No.41 of 2013. The first Appellate Court had confirmed the judgment and decree passed by the trial Court, vide judgment and decree dated 31.01.2017.

8. Aggrieved with the said finding of the first Appellate Court, the defendant filed this Second Appeal.



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9. After hearing either side, this Court has admitted the Second Appeal, on 19.02.2018, on the following substantial questions of law:

“1) When the plaintiff has failed to establish his own case, whether the Courts below are right in decreeing the Suit on the weakness of the defendant's case against the rulings reported in 2008 (2) L.W. 817?

2) When the plaintiff sought for half share in the suit property without giving any boundaries of the suit properties, whether the Courts below are right in granting Decree for Injunction for half share?

3) When the plaintiff has failed to establish his predecessors' title to the property, whether the Courts below are right in decreeing the Suit based on Sale Deed marked under Ex.A1 and Ex.A2?

4) When the plaintiff has failed to prove his case, whether the Courts below are right in costing the burden on the defendant to prove his possession?”



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10.The learned counsel for the appellant / defendant would submit that the judgment and decree passed by the first Appellate Court is not in compliance with Order 41, Rule 31 of CPC. He would vehemently submit that the first Appellate Court is the final Court of facts. Therefore, it is the duty of the first Appellate Court to reassess the evidence and to answer the materials proposition of law affirmed by one party and denied by the another party. Whereas in the first instance, the first Appellate Court had not at all framed any issue and had not answered the issue based upon the evidence. Therefore, he would also submit that the very judgment and decree of the first Appellate Court is liable to be interfered with. In this regard, he relied on the following judgments:-

“(1) Munivel Vs. Munusamy Mudaliar reported in 1997 (1) CTC 26 and

(2) Chinnammal v. M.Ramasamy Naicker reported in (2002) 3 M.L.J. 501”

11.Per contra, the learned counsel for the respondent / plaintiff strenuously submitted that the first Appellate Court though has not framed any issue, on a harmonious reading of the judgment would show substantial



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compliance of Order 41 Rule 31. Since because there is no separate issue framed in respect of each material proposition of law affirmed by one party and denied by the another party, that does not mean that the entire appeal is to be thrown on the basis of such superficial defect. The learned counsel for the respondent / plaintiff would also submit that he was in actual physical possession and enjoyment of the suit properties. Therefore, he would contend that the very finding of the trial Court as well as the first Appellate Court is based upon the evidence and documents and granted the relief of permanent injunction. Hence, he would submit that the judgment and decree of the Courts below does not require any interference and prayed for dismissal of the second appeal. He also relied on the judgment of the Hon'ble Supreme Court reported in ***(2006) 2 M.L.J. 63 (G.Amalorpavam vs R.C.Diocese of Madurai)***.

12.I have given my anxious consideration to the either side submissions and also perused the materials.

13.The learned counsel for the appellant's foremost submission is in respect of non-compliance of provision under Order 41, Rule 31 of CPC.



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This Court has perused the judgment of the first Appellate Court. As rightly submitted by the learned counsel for the respondent, the first Appellate Court did not frame any issue in respect of each and every material proposition of law affirmed by one party and denied by the another party, however, framed an omnibus point for consideration, as to whether the appeal deserves any admittance. Therefore, the learned counsel for the appellant submitted that such procedure is in utter violation of Order 41, Rule 31.

14. At this stage, it is relevant to rely on the judgment of the Hon'ble Supreme Court reported in **1997 (1) CTC 26 (Munivel Vs. Munusamy Mudaliar)**. Wherein it is held as follows:-

“11. In this case, the first appellate court has not conformed strictly to the provisions of Rule 31. This Court has held that the provisions of this Rule are mandatory. A judgment which does not comply with the provisions of Rule 31 is no judgment in law. The judgment of the appellate court should briefly but clearly set out the allegations of the plaintiff, the pleas in defence and the findings of the court below on the issues arising out of the pleadings and then it should give the points for determination the decision thereon and the reasons.”



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15.In another judgment, the learned Single Judge of this Court in the decision reported in **(2002) 3 M.L.J. 501 (Chinnammal v. M.Ramasamy Naicker)** had held as follows:-

"13.After careful consideration of the rival submissions and the scrutiny of the available materials what are all required to be stated is that the judgment of the First Appellate Court has got to be set aside in view of the non-compliance of the mandatory provisions under O.41 Rule 31 CPC. The First Appellate Court instead of setting the points for determination has stated as follows:

மேல் முறையீட்டில் தீர்வு காண வேண்டிய
பிரச்சனையாதெனில் □இம்மேல் முறையீடு அனுமதிக்கக்
கூடியதா என்பதேயாகும்?"

From above judgments, the learned counsel for the defendant would pray to set aside this judgment as the first Appellate Court had not gone into the material facts and marshalled the evidence based on each issue.

16.At this juncture, the learned counsel for the respondent drew the attention of this Court about the judgment of the Hon'ble Supreme



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Court reported in **(2006) 2 M.L.J. 63 (G.Amalorpavam vs R.C.Diocese of Madurai)**. In Paragraph No.9, it has stated as follows:-

" 9.The question whether in a particular case there has been a substantial compliance with the provisions of Order 41 Rule 31 CPC has to be determined on the nature of the judgment delivered in each case. Non-compliance with the provisions may not vitiate the judgment and make it wholly void, and may be ignored if there has been substantial compliance with it and the second appellate Court is in a position to ascertain the findings of the lower appellate Court. It is no doubt desirable that the appellate court should comply with all the requirements of Order 41 Rule 31 CPC. But if it is possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not thereby suffered, that would be sufficient. Where the appellate court has considered the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate Court there is substantial compliance with the provisions of Order 41 Rule 31 CPC and the judgment is not in any manner vitiated by the absence of a point of determination. Where there is an honest endeavour on the part of the lower appellate court to consider the controversy between the parties and there is proper appraisalment of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifest by the perusal of the judgment of the lower appellate court, it would be a



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valid judgment even though it does not contain the points for determination. The object of the Rule in making it incumbent upon the appellate court to frame points for determination and to cite reasons for the decision is to focus attention of the Court on the rival contentions which arise for determination and also to provide litigant parties opportunity in understanding the ground upon which the decision is founded with a view to enable them to know the basis of the decision and if so considered appropriate and so advised to avail the remedy of Second Appeal conferred by Section 100 CPC. "

(Emphasis supplied by this Court)

17. According to the above Hon'ble Supreme Court judgment, if it is possible to make out from the judgment, that there is substantial compliance of Order 41, Rule 31 of CPC and that the justice has not thereby suffered, mere non-framing of issue in respect of each material proposition of law and facts is not a material irregularity.

18. Keeping in mind with the ratio of the above judgment, if we read the judgment of the the first Appellate Court, though an omnibus issue such as “whether appeal is liable to be allowed”, framed, while going through the judgment, harmoniously, it comes to our light that, the first Appellate Court has gone into all material aspects and answered all the



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issues framed by the trial Court, though no independent issues were framed in the first appeal. It is pertinent to mention here that, the first Appellate Court has given a finding that the defendant has not proved the ownership over the suit properties. The first Appellate Court also relied upon Ex.A1 and Ex.A2 and ultimately, concluded that the suit properties is absolute property of the plaintiff. Therefore, this Court is of the view that though the first Appellate Court's judgment did not have separate issue, still the judgment had complied with the principle under Order 41 Rule 31 of CPC. Therefore, this Court is of the firm view that, since because there was no separate issues framed by the first Appellate Court, the judgment of the first Appellate Court need not be set aside on that, score alone.

19. At this juncture, the learned counsel for the respondent invited the attention of this Court in respect of the various admissions made by the defendant during cross-examination. Though the defendant in many places had admitted the possession and ownership of the plaintiff, this Court is inclined to refer few admissions made by the defendant during cross-examination, which has been extracted by the trial Court. For ready reference, the same is extracted hereunder:-



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□வழக்கு சொத்து எப்படி பாத்தியம் என்றால் என் அம்மா வீட்டு வகையில் கிடைத்ததாக சொல்லியுள்ளேன். என் அம்மாவுக்கு எப்படி பாத்தியம் என்று எனக்கு தெரியாது. என் அம்மா பெயர் நீலாம்பாள். செல்வராஜ் கிரயம் வாங்கிய சொத்தில் என் அம்மாவுக்கு பாத்தியம் இல்லை.
..... மோளையன் மற்றும் என் தாயாருக்கு பிரிந்த சொத்துக்களை பொறுத்து செல்வராஜ் இந்த வழக்கை தாக்கல் செய்யவில்லை என்றால் சரிதான்□

But he pleads contrary to the above admission.

20.According to the written statement, the suit property belongs to the defendant as a legal heir of one Moliyan @ Perumal Muthuraja. Further, he also pleaded that the partition deed dated 24.04.1972 contain the suit property. But the above admission goes counter to the defendant's case. It is settled principle of law that admission of the other side is the best evidence. Here, the defendant himself admits that the defendant did not file suit in respect of his mother's property, who is admittedly predecessor in title of the defendant.

21.As such, it is crystal clear that the suit properties belong to the



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plaintiff. Coming to the possession, the trial Court relied upon the numerous revenue records and confirmed the possession of the defendant.

To contradict such finding, the defendant did not produce any document before the Court below. When the defendant himself admitted the ownership of the plaintiff, and when the possession was proved by the plaintiff through the revenue records, this Court could not find any infirmity in the order of the trial Court as well as well as the first Appellate Court. Here, though a substantial question of law framed on the basis of the precedent reported in ***2008-2-L.W. 817 (Arulmighu Sri.Subramaniaswami Thirukovil v. Thiruchendur Panchayat Union)***, the ratio of the above judgment is not applicable to the facts of this case. According to the reported judgment, weakness of the defendant's case was considered. Here, we are relying only the admission of the defendant and not their weakness.

22. Thus, from the submissions of the learned counsel for the appellant, this Court finds no material so as to interfere with the well considered order of both the Courts below.



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23.In the result, the Second Appeal is **dismissed** as no substantial question of law arises. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

23.08.2023

NCC : Yes/No
Index :Yes/No
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To:-

- 1.The Principal District Court,
Tirunelveli.
2. The Principal Sub Court,
Tirunelveli.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN.,J.

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Judgment made in
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