



SA(MD)No.99 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 27.09.2023

Delivered on : 29.09.2023

CORAM:

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

S.A.(MD)No.99 of 2017

and

C.M.P.(MD)No.1751 of 2017 & 13149 of 2023

Panneerselvam

... Appellant/ Appellant/Plaintiff

Vs.

Yuvaraj

... Respondent / Respondent /Defendant

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree, dated 22.03.2016 in A.S.No.65 of 2014 on the file of the Principal Subordinate Judge, Thanjavur, confirming the judgment and decree dated 26.08.2014 in O.S.No.102 of 2011 on the file of the District Munsif, Thiruvaiyaru.

Prayer in C.M.P.(MD)No.1751 of 2017 : This Petition filed under Order 41 Rule 27 C.P.C., to receive the xerox copy of the patta, original of the chitta, original of the adangal and certified copy of the judgment and decree in O.S.No.185 of 2002, on the file of the District Munsif, Thiruvaiyaru as additional document.



SA(MD)No.99 of 2017

Prayer in C.M.P.(MD)No.13149 of 2023 : This Petition filed under Order 41 Rule 27 C.P.C., to receive the original documents mentioned in the list of documents as additional evidence in the second appeal.

For Appellant : Mr.H.Arumugam
for Mr.P.Athimoolapandian

For Respondent : Mr.C.Padmaraj

JUDGMENT

The appellant herein is the appellant / plaintiff and the respondent herein is the respondent / defendant before the Court below. Both are brothers.

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

3. The brief facts, as referred to in the plaint, are as follows:

The plaintiff and the defendant are the children of one Mr.Govindasamy Vanniyar. According to this plaintiff, the suit property belongs to him, by virtue of the settlement deed, dated 15.12.2003. The plaintiff further submits that, ever since date of settlement deed, the suit property has been in his actual physical possession, and that the revenue



SA(MD)No.99 of 2017

records are also standing in his name. This plaintiff submits that, since the defendant has interfered with the possession of their father and compelled their father to divide the property, the plaintiff was constrained to file a suit in O.S.No.90 of 2002, by contending that the suit property belongs to the joint family. In the said suit, the said Govindasamy Vanniyar has set up a defence that, the suit property is his absolute property. Considering his defence, the partition suit in O.S.No.90 of 2002 was dismissed. In the meanwhile, the plaintiff as well as the defendant's father, viz., Govindasamy Vanniyar, died on 18.07.2009. However, even on the date of death of their father, the defendant has falsely given a police complaint, against this plaintiff, that death of their father was not the natural death. Not stopping with that, the defendant has also interfered with plaintiff's agricultural activity. More particularly, on 03.07.2011 the defendant interfered with the possession of the plaintiff. Therefore, the plaintiff filed a suit for a relief of injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the plaintiff.

4. The Brief averment in the written statement is as follows:-

This defendant submits that he used to send his earnings to his father, and only out of his earnings, some of the properties have been



SA(MD)No.99 of 2017

purchased. However, the defendant's father on the instigation of his wife has denied the share in the property, which affected the relationship between the defendant and his father. In the meanwhile, the plaintiff herein has filed a suit for partition by contending that the suit property is the joint family property. However, the said suit was dismissed. Against which, the plaintiff did not prefer an appeal. However, this defendant preferred an appeal in A.S.No.93 of 2006, before the II Additional District Court, Thanjavur, which factum was suppressed by the plaintiff. In the meanwhile, since there was an altercation between the members of their family, a police complaint came to be filed by the defendant's wife. After that, due to Mediation, an agreement was entered into between the plaintiff, the defendant and their parents. Based upon the Mediation, a partition took place on 03.10.2005 and the same was reduced into writing and all the sharers have signed in the document. As per the said settlement, the parties were agreed to withdraw the criminal cases. However, after withdrawal of the criminal cases, the plaintiff as well as their parents retracted from their promise. This defendant submits that, since the plaintiff is a party to the said document, he is estopped to dispute the same. The defendant further submits that the very execution of the settlement deed is disputed. It is his



SA(MD)No.99 of 2017

further submission that, even if the settlement deed is executed, it has not been acted upon. Therefore, the defendant contends that the suit is liable to be dismissed.

5. Before the trial Court, on behalf of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and one document was marked as Ex.A1. On behalf of the defendant, three witnesses were examined as D.W.1 to D.W.3 and 3 documents were marked as Ex.B1 to Ex.B3.

6. After considering the submissions of either side and upon oral and documentary evidence, the trial Court has dismissed the suit with the finding that the alleged partition deed, namely, Ex.B3 is not admissible in evidence, in view of lack of registration. Further, the trial Court has found that there were certain admissions made by P.W.2 in respect of the partition and that no document has been submitted by the plaintiff to prove his possession. Hence, the Trial Court has ultimately dismissed the suit.

7. Aggrieved with the said finding, the plaintiff has preferred an Appeal in A.S.No.65 of 2014. Wherein, the First Appellate Court has also confirmed the finding of the trial Court and has dismissed the First Appeal.



SA(MD)No.99 of 2017

WEB COPY

8. Aggrieved with the concurrent findings of the both Courts below, the appellant / plaintiff is before this Court by way of this Second Appeal.

9. This Court, by its order, dated 21.02.2023, admitted the Second Appeal on the following substantial questions of law:

(i) Whether the Courts below are correct in holding the appellant did not produce Chitta, Adangal to prove the possession without marking the document submitted by the appellant as against the principle of fair procedure which is the fundamental right of the appellant?

(ii) Whether the Courts below are correct in holding that the appellant is entitled to decree for injunction on the basis of the undisputed settlement deed executed by the father of the appellant when the joint title and possession on the basis of the Ex.B.3 was rejected by the both the courts below on the ground that Ex.B.3 was inadmissible?

(iii) Whether the appellant is entitled in the decree for bare injunction on the basis of the additional documents submitted along with this second appeal?



SA(MD)No.99 of 2017

10. The learned counsel for the plaintiff, before going into the merits of the matter, would invite the attention of this Court to C.M.P.(MD) No.1751 of 2017 and C.M.P.(MD)No.13149 of 2023. Both the applications have been filed to receive additional evidence under Order 41 Rule 27 of CPC. In CMP.(MD) No.1751 of 2017, the plaintiff seeks leave of the Court to receive adangal and Chitta. In CMP.(MD).No.13149 of 2023, the plaintiff seeks leave of the Court to receive original sale deed, Patta, Pass Book & Kist receipt.

11. In C.M.P.(MD)No.1751 of 2017, it is the submission of the learned counsel for the plaintiff that they have already marked adangal & Chitta as Ex.A2 and Ex.A3. However, the Court below has not considered these documents and striked of the reference of marking, in the judgment. Therefore, contended that it becomes necessary for them to submit these documents before this Court by way of an additional evidence. Hence, he prayed to allow the application.

12. Similarly, as stated supra they have also moved another application in C.M.P.(MD)No.13149 of 2023. In which, they have submitted as many as 3 documents mentioned in the petition and the ground urged by the plaintiff is that they mistook that the computer patta



SA(MD)No.99 of 2017

would supersede with the manual patta, and that they are also having the kist receipt which would very much relevant to prove their possession. It is the further submission of the plaintiff that, the original settlement deed could not be produced before the Trial Court as the same was already submitted in another suit in O.S.No.90 of 2002. After dismissal of the above suit, an appeal in A.S.No.93 of 2006 was also pending. Therefore, he would submit that, there was delay in submitting the original settlement deed and that these documents would enable the Court to pronounce judgment. Hence, he prayed to allow both the applications and prayed to permit them to produce additional evidence.

13. It is pertinent to mention here that the plaintiff has filed two civil miscellaneous petitions for receipt of the additional documents and therefore, subject to the outcome of the said application, the main appeal could be taken into consideration. Therefore, this Court deems it appropriate to consider whether the application filed in CMP(MD).Nos. 1751 of 2017 & 13149 of 2023 to receive the additional document is liable to be allowed or not.

14. The learned counsel for the plaintiff in all fairness would submit that in the event of the document is ordered to be received, he



SA(MD)No.99 of 2017

prayed to remit back the matter, so as to give opportunity to the defendant to let in rebuttal evidence.

15. Per contra, The learned counsel for the defendant would submit that the very production of the document at the Second Appeal stage would show the absence of due diligence and would submit that when there is a finding by the trial Court towards non-production of the chitta and adangal, the non-filing of such document before the First Appellate Court would disentitle them to produce the same before this Court.

16. The learned counsel for the defendant would rely upon the judgment of the Hon'ble Supreme Court reported in ***2011-1-CTC-122 (Malayalam Plantations Ltd V. State of Kerala)*** and would contend that the additional evidence cannot be permitted to fill up the *lacuna*.

17. It is the submission of the learned counsel for the defendant that when there is a cloud over the title, the plaintiff ought to have come forward with a suit for declaration and injunction. Since the suit was filed only for permanent injunction, the receipt of the document will in no way helpful for deciding this case, and would submit that the plaintiff has suffered the dismissal of suit, for non-production of the adangal, chitta, but



SA(MD)No.99 of 2017

even here such document has not been filed. Hence, prayed for the dismissal of the applications.

18. I have given my anxious consideration of either side submissions.

19. Here, the very suit has been filed for the relief of injunction. The case of the plaintiff is that he has been in physical possession and enjoyment by virtue of the settlement deed of the year 2003. Whereas, the defendant contended that the property dealt in Ex.A1- settlement deed, has subsequently, by virtue of Ex.B3 - partition deed, allotted to the plaintiff's father. Therefore, it is the submission of the defendant that the settlement deed is not valid and that the plaintiff is not in possession according to the settlement deed.

20. However, the plaintiff has come forward with two civil miscellaneous petitions for receipt of the additional document, and in 1st application pleaded that, those documents have been filed before the Trial Court, but not marked. The second application has been filed on the ground that the original sale deed could not be produced as it was filed in the other case viz. A.S.No.93 of 2006 and marked as exhibit and that the patta



SA(MD)No.99 of 2017

passbook could not be produced as he was under the impression that the computerised patta would supersede manual patta. As rightly observed by the Court below the revenue records were essential to prove the possession.

21. At this juncture, this Court deem it appropriate to refer the judgment reported in **2012-8-SCC-148 (Union of India V. Ibrahim Uddin)**. The relevant portion of the judgment reads as follows:-

“36. The general principle is that the Appellate Court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order XLI Rule 27 CPC enables the Appellate Court to take additional evidence in exceptional circumstances. The Appellate Court may permit additional evidence only and only if the conditions laid down in this rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, provision does not apply, when on the basis of evidence on record, the Appellate Court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the rule itself. (Vide: K. Venkataramiah v. A. Seetharama Reddy & Ors., AIR 1963 SC 1526; The Municipal Corporation of Greater Bombay v. Lala Pancham &



SA(MD)No.99 of 2017

WEB COPY

Ors., AIR 1965 SC 1008; Soonda Ram & Anr. v. Rameshwaralal & Anr., AIR 1975 SC 479; and Syed Abdul Khader v. Rami Reddy & Ors., AIR 1979 SC 553).

37. *The Appellate Court should not, ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the Court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment. (Vide: Haji Mohammed Ishaq Wd. S. K. Mohammed & Ors. v. Mohamed Iqbal and Mohamed Ali and Co., AIR 1978 SC 798).*

38.

39.

40. *The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a "substantial cause" within the meaning of this rule. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.*

41.

42.

43.

44.



WEB COPY



SA(MD)No.99 of 2017

45.

46.

47. *Where the additional evidence sought to be 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.*

48. *To sum up on the issue, it may be held that application for taking additional evidence on record at a belated stage cannot be filed as a matter of right. The court can consider such an application with circumspection, provided it is covered under either of the prerequisite condition incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led in the court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. In case the court comes to the conclusion that the application filed comes within the four corners of the statutory provisions itself, the evidence may be taken on record, however, the court must record reasons as on what basis such an application has been*



SA(MD)No.99 of 2017

WEB COPY *allowed. However, the application should not be moved at a belated stage.”*

(Emphasis supplied by this Court)

22. As per the ratio of the above judgment, inadvertence of the party or in-ability to understand the legal issues involves, or the wrong advice of the pleader, or the negligence of the pleader, does not constitute a substantial cause. In this case, as rightly contended by the learned counsel for the defendant at the time of dismissal of the suit, it was the specific observation that, no revenue records such as Adangal and chitta have been filed to prove the possession. In spite of such categorical observation, the plaintiff did not think fit to file such document before the First Appellate Court. Even the document filed before this Court in C.M.P.(MD)No.1751 of 2017 is the adangal for the Falsi year 1425, the relevant Gregorian year is 2015, namely subsequent to the suit, so also the chitta was obtained on 30.01.2017. This only shows the name of the owner, this too was obtained subsequent to the suit. More pertinently, the chitta was issued by the Village Administrative Officer and was not obtained from the Thasildhar.



WEB COPY



SA(MD)No.99 of 2017



SA(MD)No.99 of 2017

23. Similarly, in C.M.P.(MD)No.13149 of 2023, the plaintiff filed the original settlement deed and the patta passbook which allegedly issued during 2003 and some of the kist receipt. Here, again the patta passbook is a prima facie proof regarding the ownership and the patta neither be a document for title nor be a document to prove the physical possession. More pertinently, still adangal which is relevant document to prove the possession has not been submitted before this Court. To top of all, the CMP(MD)No.13149 of 2023 was filed only after this Second appeal posted for clarification. Therefore, this court is of the view that the above two applications is not come within the purview of Order 41 Rule 27 C.P.C.

24. At this juncture, this Court would like to extract Order 41 Rule 27 C.P.C.

27. Production of additional evidence in Appellate Court.- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or



SA(MD)No.99 of 2017

WEB COPY

could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to the produced, by an Appellate Court, the court shall record the reason for its admission.

25. From the above provision, both the C.M.Ps, if there is any ground, may be come under Order 41 Rule 27 (1b). As stated supra, the reason assigned in both the affidavits will not come under the substantial cause. Therefore, both the C.M.P.s are liable to be dismissed and accordingly dismissed.

26. Therefore, now we must consider whether from the available material, the plaintiff has established his case. It is the specific submission of the learned counsel for the plaintiff that by virtue of the settlement deed, they become the owner of the suit property and that being the owner of the suit property, the possession will follow with the title. Though the



SA(MD)No.99 of 2017

defendant dispute such settlement deed, even for arguments sake if we construe that the plaintiff is the owner of the property, by virtue of the settlement deed, the recitals in the settlement deed in respect of the possession would only project the legal and constructive possession. But, when the plaintiff come forward to seek for the relief of permanent injunction, on the ground that his agricultural activity was obstructed by the defendant, who is none other than his brother, this plaintiff expected to prove his physical possession over the suit property.

27. In order to prove the physical possession, the plaintiff did not file any document before the trial Court, except the settlement deed. The learned counsel for the plaintiff has contended that they submitted certain adangal, but was not marked by the Court below. But to substantiate such contention, the plaintiff relies the reference of marking of documents and subsequent striking off. But, such contention cannot be accepted as there is no reference of marking in the oral evidence. Even otherwise the alleged document was dated June 2011 and issued by the Village Administrative Officer and not by the Thasildhar. Therefore, this Court is of the firm view that the finding recorded by both the Courts below that the plaintiff has not



SA(MD)No.99 of 2017

proved his physical possession by producing the adangal and other revenue records from the date of settlement deed till the date of filing of the document, is a rational finding and liable to be confirmed.

28. Therefore, this Court is of the firm view that there is no substantial question of law arises in this Second Appeal and the instant Second Appeal stands **dismissed**. There shall be no order as to cost. Consequently, connected Miscellaneous Petitions are also dismissed.

29.09.2023

NCC : Yes/No

Index : Yes/No

Ls

To

- 1.The Principal Subordinate Judge,
Thanjavur.
2. The District Munsif,
Thiruvaiyaru.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



SA(MD)No.99 of 2017

C.KUMARAPPAN.,J.

Ls

Judgment made in
S.A.(MD)No.99 of 2017

29.09.2023