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SA.Nos.1091 & 1092 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2024

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.Nos.1091 & 1092 of 2003

SA.No.1091/2003

1. V.Palanisamy (Died)
 2. P.Amirthalingam
 3. Natesan
- (Appellants 2 & 3 brought on record as LR's of
sole appellant vide order dated 03.04.2023 made in
CMP.No.5772 & 5731 of 2023)

... Appellants

- Vs -

1. Vadivelu
2. Subramaniam
3. Sanmugham
4. Ramasamy

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code praying to set aside the judgment and decree of the Additional Subordinate Judge, Salem made in A.S.No.57/97 dated 21.10.1998 confirming the judgment and decree of the Additional District Munsif Court, Salem, made in O.S.No.221/1988 dated 27.09.1994

For Appellants : Mr.P.Jagadeesan

For Respondents : Mr.T.T.Ravichandran



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1. V.Palanisamy (Died)
2. K.Palani Gounder (deceased)
3. Pachamuthu
4. Sivakumar
5. Elayaperumal
6. Vennila
7. Kamala
8. P.Amirthalingam
9. Natesan

(Appellants 2 to 7 brought on record as LR's of the deceased
2nd appellant vide order dated 12.10.2018 made in
CMP.Nos.1060 to 1062 of 2018)

(Appellants 8 & 9 brought on record as LR's of the deceased
First appellant vide order dated 03.04.2023 made in
CMP.No.5780 & 5782 of 2023)

... Appellants

- Vs -

1. Vadivelu
2. Subramaniam
3. Sanmugham

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code praying to set aside the judgment and decree of the Additional Subordinate Judge, Salem made in A.S.No.82/97 dated 21.10.1998 confirming the judgment and decree of the Additional District Munsif Court, Salem, made in O.S.No.1142/1987 dated 27.09.1994

For Appellants : Mr.P.Jagadeesan

For Respondents : Mr.T.T.Ravichandran

COMMON JUDGMENT



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SA.No.1091 of 2003 arising out of a suit in O.S.No.221 of 1988 and S.A.No.1092 of 2003 arising out of a suit in O.S.No.1142 of 1987. Both the suits have been tried together and a common order has been passed on 27.09.1994. In both the suits, the plaintiffs are one and the same. In respect of the defendants, in O.S.No.1142 of 1992, the 1st defendant is the brother of the plaintiff and the 2nd defendant is the subsequent purchaser of the suit property from the 1st defendant. In respect of O.S.No.221 of 1988, the defendants 1 and 2 are the brothers of the plaintiff.

2. The appellants are the defendants before the Trial Court. The respondents herein are the plaintiffs before the Trial Court.

3. For the sake of convenience, the parties will be referred to according to their litigative status in O.S.No.1142 of 1987 before the Trial Court.

4. The brief facts which give rise to the instant two second appeals are as follows:-

The suit property is absolutely and exclusively belongs to the plaintiffs



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by way of patta standing in their individual name. According to the plaintiffs, the suit property originally belongs to their father Vaiyapuri Nadar and even during his life time, the plaintiffs got divided and was allotted with the suit properties and have been in possession and enjoyment of the same. It is the submission of the plaintiffs that after the demise of their father, they have been jointly enjoying their father's share. It is the submission of the plaintiffs that, they have been in possession and enjoyment of the suit property for more than 30 years and have been paying Kists to the Government. It is also contended that all the Revenue records are stand in the name of the plaintiffs. They further submit that the plaintiff instituted a suit for declaration and for permanent injunction restraining the defendants not to alienate or encumber the property, when the first defendant proclaimed that he would sell the property. After filing of the above suit, in the year 1988, since the defendants attempted to interfere with the possession and enjoyment of the plaintiffs possession, another suit in O.S.No.221 of 1988 was filed seeking the relief of permanent injunction restraining the defendants not to interfere with the peaceful possession and enjoyment of the plaintiffs.

5. Both the suits were resisted by the defendants by contending that the



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suit property was originally belongs to one Kumarasami Moopan and that he had executed a settlement deed dated 24.12.1934 in favour of Seerayee Ammal and Kandayee Ammal. Seerayee Ammal and Kandayee Ammal were given only life estate and after their demise, the properties devolved upon the defendants 1 and 2 as they were the descendants of Vaiyapuri through his first wife Kandayee Ammal. The plaintiffs are the step brothers to the defendants. It is the contention of the defendants that the suit properties belong to the first defendant Palanisami and his brother Ramasami, who is the 2nd defendant in O.S.No.221 of 1988. The first defendant Palanisami filed a suit for partition and in pursuance of the preliminary decree, he also obtained possession of the property, through a final decree proceedings. Therefore, it is the contention of the defendants that the plaintiffs have no right over the schedule mentioned property.

6. Before the Trial Court, the plaintiffs marked 30 documents as Exs.A1 to A30. On behalf of the defendants, 16 documents have been marked as Exs.B1 to B16. The plaintiffs have examined 5 witnesses as PW.1 to PW5, whereas the first defendant himself has examined as DW1.

7. The Trial Court, after having considered the oral and documentary



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evidence, has arrived at a conclusion that the suit property was originally a joint family property and that the same was allotted to the plaintiffs. It was also found that, since the plaintiffs have been in possession and enjoyment over the suit property for more than a statutory period they have also perfected title by way of adverse possession and ultimately decreed both the suits. Aggrieved with the same, the defendants in both the suits preferred two separate Appeals in A.S.Nos.57 and 82 of 1997 and in both the Appeals, the First Appellate Court though has differed in respect of the finding regarding adverse possession, however concurred with the decree of the Trial Court and dismissed the appeal. Aggrieved with the same, the defendants in both the suits are before this Court by way of these two Second Appeals.

8. At the time of admission on 08.08.2003, this Court has formulated the following substantial questions of law:-

“1. Whether the lower court is right in holding that the settlement deeds Exs.B2 and B3 were not acted upon?

2. Whether the lower court is right in holding that the suit property is the ancestral property of the joint family of the plaintiffs without any evidence to prove the same?

3. Whether the plaintiffs entitled to claim title to the property when they have taken a conflicting plea that they have



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prescribed title to the property by way of adverse possession?

4. In view of the specific admission by P.W.2 that the said Seerayee and Kandayee had taken possession of the suit property pursuant to the settlement deeds Exs.B2 and B3 whether the lower court is right in holding that the said settlement deeds were not acted upon?"

9. The learned counsel for the appellants would vehemently submit that the very finding of the Trial Court that the settlement deed dated 24.12.1934 has not been acted upon as the condition stipulated in the settlement deed was breached, and that the suit property became the joint family property and that the suit property was allotted to the plaintiffs are all perverse findings, since those findings are contrary to evidence. It was also the contention of the learned counsel for the appellants that when there is a settlement deed in favour of the defendants' grandmother and mother namely Seerayee Ammal and Kandayee Ammal respectively through Exs.B2 and B3, if at all the settlement deed was not acted upon, then the property would revert back to the settlor Kumarasami Moopan and not to the plaintiffs family. Therefore, contended that the question of conferring title with the plaintiffs does not arise. It was also contended by the learned counsel for the appellant that since



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because the plaintiffs were joined in the Mortgage Deed, the same will not confer any benefit upon these plaintiffs to claim right over the suit property. It was also contended by the learned counsel for the appellants that the very decree obtained in O.S.No.592 of 1983 is binding upon these plaintiffs, however, both the Court below have not considered such a vital point and erroneously decreed the suit. Hence, prayed to interfere with the finding of both the Courts below.

10. Per contra, the learned counsel for the respondents would vehemently submit that under Section 100 of CPC, the appellants can only urge before this Court in respect of a substantial question of law. However, the entire case revolves around the factum of existence of a joint family and allotment of the property to the plaintiffs. Such concurrent finding of fact cannot be interfered at the Second Appeal stage. It was also contended by the learned counsel for the appellant that by virtue of Mortgage Deed [Ex.B1], the joint family nature of the suit property could be inferred and the allotment of the property to the plaintiffs can be inferred through the Revenue records. Therefore, it is the contention of the learned counsel for the respondents that the well merited findings of both the Courts below cannot be interfered with in the Second



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11. I have given my anxious consideration to either side submissions.

12. On perusal of the judgment of both the Courts below, there is a concurrent finding that the suit property has been treated as a joint family property and the subsequent partition in the family, thereby allotting the suit property to the plaintiffs. According to the defendants, the property was originally belonged to one Kumarasami Moopan. Further, by virtue of two settlement deeds executed in favour of the grandmother of the plaintiffs and defendants, and mother of the defendants through Exs.B2 and B3, the vested remainder was settled in defendant's favour. Therefore, contended that the plaintiffs cannot have any right.

13. Before we delve into the factual position, this Court deems it appropriate to understand the powers of the Court under Section 100 of CPC. In this regard, it is useful to refer the judgment of Hon'ble Supreme Court in ***Hero Vinoth (Minor) Vs. Seshammal*** reported in ***(2006) 5 SCC 545***. The relevant paragraphs are paragraphs 13 & 19 and the same read as follows:-



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“13. Though as rightly contended by learned counsel for the appellant the scope for interference with concurrent findings of fact while exercising jurisdiction under Section 100 CPC is very limited, and reappreciation of evidence is not permissible (sic except) where the trial court and/or the first appellate court misdirected themselves in appreciating the question of law or placed the onus on the wrong party certainly there is a scope for interference under Section 100 CPC after formulating a substantial question of law.

*19. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. **In a case where from a given set of circumstances two inferences of fact are possible, the one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible.** The High Court will, however, interfere where it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at by ignoring material evidence.”*

(Emphasis supplied by this Court)



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14. As per the above ratio, when there is a finding of fact rendered by the Trial Court, which was confirmed by the last Court of finding qua the First Appellate Court on reappraisal of evidences, at the Second Appeal stage, while exercising jurisdiction under Section 100 of CPC, unless such finding is perverse and not supported by evidence, this Court cannot interfere with the same. It is equally pertinent to mention here that, since because there is a possibility of another different view cannot be a ground to upset the finding of the Trial Court, when it supported by evidence. With that background, let us consider the factual position.

15. Both the Courts below though have relied upon the settlement deed [Exs.B2 and B3] has considered the Mortgage Deed [Ex.B1] executed by the plaintiffs and the defendants. The said Mortgage Deed is dated 16.06.1961. In the said Mortgage, the settlement deed dated 24.12.1934 executed by Kumarasami Moopan in favour of Kandayee Ammal and Seerayee Ammal was given as a security. While executing Ex.B1-Mortgage Deed, both the plaintiff and the defendants were made as a party and signed the document. This was the prime consideration of both the Courts below to arrive at a conclusion that the suit property has been dealt as a joint family property.



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Further, found that, by virtue of the Revenue records, the alleged partition and allotment of the suit property in favour of the plaintiff was established. This Court does not find any perversity over the said finding as it supports through the documentary evidence-Ex.B1 and the Revenue records, which has been filed before this Court.

16. It is pertinent to mention here that, if really the defendant had any grievance over the mutation, and if really the defendants had any semblance of right over the suit property, would have taken some legal proceeding to cancel the mutation. Here, the meaningful silence of the defendants had also impelled the Court below to arrive at a conclusion that suit property was the joint family property and was allotted to the plaintiffs. As stated supra, such finding of the Court below is based on evidence. Though the learned counsel for the appellant would contend that, even if the settlement deed [Exs.B2 and B3] was not acted upon as contended by the plaintiffs, the non compliance of condition mentioned in the settlement deed, the property would only revert back to the settlor and not upon the joint family, may sound well. But even then, the same would only be an another view, which cannot be a reason to upset the possible and reasonable findings given by the Trial Court given based upon the



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preponderance of probabilities, that too supported by the documentary evidences. Such possible and reasonable finding of the Court below cannot be interfered under Section 100 of CPC. Therefore, in view of the above discussion, this Court is of the view that the substantial question of law are liable to be answered in favour of the respondents.

17. In the result, these Second Appeals are dismissed. There shall be no order as to costs.

15.04.2024

kmi

Index : yes

Speaking Order

Neutral Citation Case: Yes

To

1. The Additional Subordinate Judge,
Salem.
2. The Additional District Munsif Court,
Salem.



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C.KUMARAPPAN, J

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