



WEB COPY



S.A.No.1041 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

CORAM

THE HONOURABLE Mr. JUSTICE **G.ARUL MURUGAN**

S.A.No.1041 of 2010
and MP.No.1 of 2010

1.V.Ekambaram (Died)

2.S.Vijaya

3.E.Srinivasan (Died)

4.E.Shankar

5.E.Vennila

6.S.Valarmathi

7.S.Kavitha

8.S.Tamilselvi

(Sole Appellant died, Appellants 2 to 5 bring
on record as LR's of sole appellant vide
order of Court dated 05.07.2023 made in
CMP.No.22373, 22374 & 23777 of 2022
in SA.No.1041 of 2010)

(A3 died. Appellants 6 to 8 are impleaded
as LR's of A3 vide court order dated
04.08.2023 made in CMP.No.15557/2023
in SA.No.1041 of 2010 by TVTSJ)

... Appellants

-Vs-

1.S.Sekar

2.S.Vasantha

...Respondents

Prayer:- Second Appeal filed under Section 100 of Civil Procedure Code,



S.A.No.1041 of 2010

to set aside the judgment and decree dated 15.06.2010 passed in A.S.No.38 of 2008 by Additional Subordinate Court, Chengalpattu confirming the judgment and decree dated 18.12.2007 passed in O.S.No.294 of 1999 by District Munsif Court, Chengalpattu.

For Appellants : Mr.C.Ravichandran
For Respondents 1 & 2 : Mr.S.Ramesh

J U D G M E N T

The unsuccessful plaintiff is before this Court in Second Appeal. Pending appeal, sole appellant died and the appellants 2 to 5 have been substituted as legal heirs. The defendants in the suit are the respondents herein.

2. This Second Appeal has been filed as against the judgment and decree dated 15.06.2010 in A.S.No.38 of 2008 on the file the Additional Subordinate Court, Chengalpattu confirming the judgment and decree dated 18.12.2007 passed in O.S.No.294 of 1999 by District Munsif Court, Chengalpattu.



S.A.No.1041 of 2010

WEB COPY

3. For the sake of convenience, the parties are referred to as per the ranking before the Trial Court.

The brief facts, as per the averments in the plaint, are as under:

4. According to the plaintiff, he is the absolute owner of the vacant land and building comprised in Old Survey No.93B/1B and New Survey No.178/2 to an extent of 1874 sq.ft situated at No.42/42A, Manimegalai Street, Guduvancherry, Kancheepuram District.

5. According to the plaintiff, the suit property originally belonged to plaintiff's brothers namely Gajendran and Mani respectively. His brother Gajendran sold the suit property in his favour by the registered sale deed dated 07.02.1972 bearing document No.376/72 in Ex.A.1. Further, his brother Mani also sold the suit property in his favour by the registered sale deed dated 13.12.1972 in Ex.A.2. From the date of purchase, the plaintiff is in peaceful possession and enjoyment of the suit property. All the revenue records like Chitta, Patta, Adangal and tax receipts are existing in the name of the plaintiff.

6. According to the plaintiff, the defendants are neighbours on the



S.A.No.1041 of 2010

western side of the suit property. On 25.10.1999 the defendants tried to trespass into the suit property from the eastern side and the plaintiff thwarted the attempt by lodging a police complaint. Since the complaint was not entertained, the plaintiff has come up with the suit for bare injunction.

7. The defendants resisted the suit by filing written statement denying the fact that the suit property originally belonged to plaintiff's brothers Gajendran and Mani. The defendants along with the written statement has filed the geneology tree, which is also admitted in the suit.

8. According to the defendants, Kanniappan, the junior paternal grand father of the plaintiff was originally owning and possessing an extent of 12' X 45' feet in north-south in Gramanatham in S.No.93/B/1B bounded on the north by Nyniappa Naicker's backyard, on the west by Sundara Naicker (v) site, on the east by Rangasami Naicker's site, and on the south by Nyniappa Naicker's house.

9. According to the defendants, this site fell to the share of Kanniappan in the family arrangement among him and his brothers



S.A.No.1041 of 2010

measuring an extent of 540 sq ft and he was in possession and enjoyment of the suit property. Further, by the registered sale deed dated 13.03.1914, the said Kanniappa Naicker sold the above-said 12' X 45 to Rangasami Naicker. The said Rangasami Naicker was in possession and enjoyment of the suit property till his demise in 1928. His widow Valliammal and Chinnammal widow of late Raju, eldest brother of Rangasami Naicker jointly executed a registered release deed dated 17.05.1929 in favour of the defendant's grand father Ponnusamy.

10. Thereafter, Ponnusamy Naicker became the owner of the said site measuring 12' X 45' by a registered deed dated 27.05.1929. Ponnusami Naicker gave Chinnammal a life time interest in the property, for which, she put up a residential house thereon. Pursuant to the death of Ponnusami Naicker in 1945, his son Subramania Naicker and Kandasami Naicker were in possession and enjoyment of the property. Kandasami Naicker died in 1986 and thereafter by a registered partition deed dated 12.09.1979, partition was executed and the widow Valliammal and her son Karunanidhi possessed the property. Thereafter, under the registered sale deed dated 06.02.1998, the property measuring



S.A.No.1041 of 2010

WEB COPY

12' X 45' was conveyed in favour of the defendant and later since mistake
has crept in the sale deed dated 06.02.1998, by a rectification



S.A.No.1041 of 2010

WEB COPY

deed dated 01.12.1999 the error was corrected and the defendants are in possession and enjoyment of the property.

11. Further, the defendants in the written statement have categorically stated that the plaintiff and his family members are fully aware of the title and continuous possession of the portion of the suit property measuring 12' x 45' by the defendants. Knowing well that they had no manner of right or title, the plaintiff with the conveyance and collusion with his brothers had executed the sale deed in Exs.A1 and A2. Further, based on the executed sale deeds, they obtained patta, by including the portion of the land measuring 12' X 45' and for which, the defendants filed application before the Revenue Divisional Officer for cancellation of the patta. After due enquiry, the Revenue Divisional Officer passed an order dated 19.11.1999 in proceedings No.1708/99 T, to delete the site measuring 12' x 45' from Survey No.178/2 and directed to incorporate the land in the defendant's patta No.332.

12. Further, according to the defendants when the title of the plaintiff is disputed, and the title of the defendants are traced from 1914, having filed all documents from Ex.A.1 to A.5, the suit filed by the



S.A.No.1041 of 2010

plaintiff for bare injunction without a prayer for declaration is not maintainable and sought for dismissal of the suit.

Evidence and Documents:

13. During trial, on the side of the plaintiff, the first plaintiff examined himself as PW.1 and another witness Lakshmanan as PW.2 and marked Exs.A1 to A5. On the side of the defendants, the first defendant examined himself as DW.1 and another witness Karunanidhi as DW.2 and marked Exs.B.1 to B.7.

Findings of the Courts below:

14. After considering the evidences and documents, the Trial Court by judgment and decree dated 18.12.2007, dismissed the suit. The Trial Court found that the sale deeds filed by the plaintiff in Exs.A1 & A2 are not genuine as they had been executed for a consideration of the meager amount. Further, the Trial Court found that the house tax receipts filed in Ex.A3 and Ex.A4 does not correlate with the property under dispute.



S.A.No.1041 of 2010

WEB COPY

15. The Trial Court found that from the evidence of PW.1 and PW.2, it is clear that the disputed portion lies in the middle of the suit property purchased by the plaintiff. However, according to the evidence of plaintiff, the disputed property is situated to the north of the property purchased by him. Further, the Trial Court took note of the fact that admittedly the suit property is gramma nattham land and the patta issued in favour of the plaintiff was cancelled by the order of the Revenue Divisional Officer in Ex.B.7 dated 24.11.1999 and the portion of the land was ordered to be included in the patta of the defendant. Therefore, the Trial Court found that the plaintiff has not proved his possession over the disputed area, but whereas the defendants have filed documents and established that they have better title to the disputed portion and are in possession of the property.

16. Aggrieved by the same, the plaintiff filed appeal in AS.No.38 of 2008 before the Additional Sub ordinate Judge, Chengalpattu. The Lower Appellate Court, after reappraising the evidences and documents, by judgment and decree dated 15.06.2010 dismissed the appeal confirming the decree of the Trial Court. Aggrieved by the same, the



S.A.No.1041 of 2010

plaintiff is before this Court in this Second Appeal.

WEB COPY



S.A.No.1041 of 2010

Substantial questions of law:

17. This Court by order dated 06.12.2023, framed the following substantial questions of law:

“a. Whether the Lower Appellate Court has committed an error in not following the provisions of Section 96 r/w Order 41 Rule 31 CPC while dismissing the appeal confirming the judgment and decree of the Trial Court based upon cryptic findings and non-speaking orders and also by not dealing with the questions of law and also on facts by assessing the evidence on record?

b. Whether the Lower Appellate Court has committed an error in not considering the admission made by DW.1 as per section 58 of Indian Evidence Act and also the report of the Advocate Commissioner?

c. Whether the Courts below committed an error apparent on the face of the record in not giving specific and reasoned findings with regard to the possession of disputed portion of suit property in the suit for injunction?”

Submissions on both sides:

18. The learned counsel for the appellant argued that the plaintiff



S.A.No.1041 of 2010

has purchased the suit property through Ex.A1 and A2 and the patta has been issued in favour of the plaintiff. He filed the suit for bare injunction based on the registered documents and the patta. The defendant has not raised any specific denial in respect of the patta and revenue documents issued in favour of the plaintiff.

19. The learned counsel for the appellant further contended that the defendants have not challenged the sale deed executed in favour of the plaintiff by filing a counter claim. When the plaintiff claimed right through the sale deed in Ex.A.1 and A.2, which is of the year 1972, the reliance placed by the defendant by claiming right through B-4, which is of the year 1999 is at later point of time.

20. Further, the learned counsel for the appellant contended that it is the case of the defendants that the disputed area was used by them to store cow dung manure. When the Advocate Commissioner visited the property and filed the report, the Advocate Commissioner noted down that three stones having 6 feet height, two trees and an electric wire is running over the disputed area and also the presence of cow dung



S.A.No.1041 of 2010

WEB COPY

manure. The learned counsel for the appellant further contended that even though the defendant has filed the document in Ex.B.7, the order of the Revenue Divisional Officer was not served to him. He further contended that the order passed is without jurisdiction and therefore they need not challenge the document and that it will not give any right to the defendants.

21. Further, the learned counsel for the appellant contended that the sale deed in Ex.B5 dated 06.02.1998 has been executed in favour of the defendants, based on the earlier partnership dated 12.09.1979 in EX.B4 and the perusal of the document, does not show the mentioning of the sale deeds of the year 1914 as projected by the defendants. When all these aspects were raised in the appeal, the Lower Appellate Court without considering any of those aspects and without following the procedures as contemplated under Order XLI Rule 31 CPC, simply dismissed the appeal confirming the decree of the Trial Court without independently deciding the issue on merits.

22. The learned counsel for the appellant relied on the decision of the Hon'ble Supreme Court in **Somakka (Dead) by Legal**



S.A.No.1041 of 2010

Representatives vs. K.P. Basavaraj (Dead) by Legal Representatives

WEB COPY

reported in (2022) 8 SCC 261, for the proposition that the first appeal is a valuable right available to the party and the Lower Appellate Court while deciding the appeal has to follow the procedure contemplated under Order XLI and Rule 31 and to independently analyze the documents and evidences and arrive at a finding of fact. The learned counsel for the appellant further contended that the judgment of the lower appellate court is not based on the material available on record following the procedure as contemplated under law and therefore it is perverse and sought for allowing of this second appeal.

23. Per contra, the learned counsel for the respondents submitted that even though the defendants have purchased the disputed area in Ex.B.5 through the sale deed dated 06.02.1998, they have filed the documents in Ex.B.1 to B.4 and traced the title of the vendors of the defendant right from 13.03.1914 onwards. The learned counsel for the respondent further contended that in fact the defendant's vendor has purchased the disputed area measuring 540 cents only from the grandfather of the plaintiff and all the subsequent transfer of property had



S.A.No.1041 of 2010

WEB COPY

been done through Ex.B.1 to B.5, which is clearly narrated in the written statement. In fact the genealogy has also been filed along with the written statement and the plaintiff has admitted the genealogy in evidence. The vendor of the defendant has purchased the disputed area from the grandfather of the plaintiff and filed all subsequent documents till the sale deed executed in his favour in Ex.B.5, disputing the title of the plaintiff. Further, they have clearly stated in the written statement that even though the plaintiff's brothers did not have any right over the disputed area, they collusively created a sale deed in favour of the plaintiff by conveying this disputed area of 540 sq.ft along with other two properties in Ex.A.1 and A.2.

24. In such circumstances, the suit filed by the plaintiff for bare injunction without the prayer for declaration is not maintainable. The learned counsel for the respondent further contended that even as per the evidence of PW.1, admittedly the disputed area lies on the north of the property purchased by him in Ex.A.1 and A2, whereas the Advocate Commissioners report finds that the disputed area lies between two lands purchased by the plaintiff in Door no.40 and Door no.41. Therefore, the



S.A.No.1041 of 2010

WEB COPY

suit filed by the plaintiff without proper description of the suit property
also cannot be sustained.



S.A.No.1041 of 2010

WEB COPY

25. The learned counsel for the respondents further contended that the disputed area is mentioned as boundary even in the sale deed dated 13.03.1914, executed in Ex.B.1 in favour of Rangasamy Naicker, who is the vendor's vendor of the defendants. He further contended that since by suppressing the facts, the plaintiff obtained patta by including the disputed area, has filed an application before the Revenue Divisional Officer and in fact, notices were issued and the plaintiff also participated before the Revenue Divisional Officer, which is also admitted by the plaintiff in his evidence. After enquiry, the Revenue Divisional Officer has passed an order in Ex.B.7 holding that the disputed area was wrongly included in the patta issued in favour of the plaintiff and the orders for deletion and directed to include the disputed area in the patta issued in favour of the defendants. When the defendants have established the title through documents in Ex.B.1 to B.6 and the possession is also substantiated by the document filed in Ex.B.7, the Trial Court has rightly taken note of all these aspects and dismissed the suit. The lower appellate court since all the aspects have been considered by the Trial Court, dismissed the appeal by recording the documents filed in Ex.B.1 to B.7. The defendants were able to establish the title and possession of the



S.A.No.1041 of 2010

disputed area when the plaintiff failed to prove his possession.

26. The learned counsel for the respondents further contended that even though the issues have not been discussed in detail, still the parties have been litigating in court for the past 25 years. The learned counsel by relying on Section 103 of CPC, stated that even if the Trial Court or the Lower Appellate Court has failed to determine any issue, still, the High Court, under Second Appeal, can decide the issues which have been left without determination by the Trial Court or the Appellate Court.

27. The learned counsel for the respondents also relied on the decision of the Hon'ble Supreme Court in **Narayan Sitaramji Badwaik vs. Bisaram and Others** reported in **(2021) 15 SCC 234** for the proposition that as per Section 103 of CPC, it clearly provides for the High Court to decide an issue of fact, provided there is sufficient evidence on record before it on the circumstances stated therein.

28. Heard the learned counsel on either side and perused the material available on record.



S.A.No.1041 of 2010

Analysis of the submission:

29. Before advertng to the merits of the case, if the first substantial question of law framed by this Court is answered, it will suffice for the disposal of appeal. The first question of law pertains to whether the Lower Appellate Court followed the procedure as contemplated under Order XVI Rule 31 CPC.

30. For easy reference, Order XLI Rule 31 of C.P.C. are extracted hereunder:

“31. Contents, date and signature of Judgment:-

The judgment of the Appellate Court shall be in writing and shall state-

- (a) The points for determination;*
 - (b) The decision thereon;*
 - (c) The reasons for the decision; and*
 - (d) Where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;*
- and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein”.*



S.A.No.1041 of 2010

WEB COPY

31. A perusal of the Lower Appellate Court judgment shows that Lower Appellate Court has framed the following points for consideration.

The points for consideration are:

1. Whether the Appeal can be allowed are not?
2. To what other relief the Appellant is entitled to?

32. After arriving at the points for consideration, the Lower Appellate Court has recorded the contentions raised by the appellant and the respondents. After recording the contentions raised by the appellant and the respondents, the Lower Appellate Court without analysing and appreciating the documents and evidences by independently applying its mind by a cryptic order simply has stated that after considering the entire material on record, exhibits and evidences, the court comes to the conclusion that the appellant has not proved his case, instead the respondent, by voluminous documentary evidence from Ex.B.1 to B.7 has strengthened his side. Hence, the point is decided in favour of the respondent.



WEB COPY



S.A.No.1041 of 2010



S.A.No.1041 of 2010

WEB COPY

33. A perusal of the reasoning given by the Lower Appellate Court that the appellant has failed to prove his case and the respondents have strengthened his case by Ex.B.1 to B.7 without independently analysing any of the materials available on record is not based on the procedures as set out in Order XLI Rule 31 CPC.

34. The first appeal is a valuable right available to the parties and it is the final court for appraising and deciding the factual issues. The Lower Appellate Court is bound to independently consider the documents and evidences available on record and arrive at a decision by following the requirements as contemplated under Order XLI Rule 31 CPC.

35. At this juncture, it would be useful to refer on the decision of the Hon'ble Supreme Court in **Somakka (Dead) by Legal Representatives vs. K.P. Basavaraj (Dead) by Legal Representatives**, cited *supra*, is extracted hereunder:

“28. Section 96CPC provides for filing an appeal from original decree. Further Order 41 Rule 31CPC provides for the contents of the judgment of the first appellate court. According to it, the judgment of the appellate court shall be in writing and would



S.A.No.1041 of 2010

include the points for determination, the decision thereon, the reasons for the decision and where the decree is reversed or varied, the relief to which the appellant is entitled.

29. Section 96 and Order 41 Rule 31CPC are reproduced below:

“96. Appeal from original decree.—(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any court exercising original jurisdiction to the court authorised to hear appeals from the decisions of such court.

(2) An appeal may lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed [Subs. for “three” by Act 46 of 1999, S. 9 (w.e.f. 1-7-2002).] [ten thousand rupees.]”

Order 41 Rule 31

“31. Contents, date and signature of judgment.

—The judgment of the appellate court shall be in writing and shall state—

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled,

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring



WEB COPY



S.A.No.1041 of 2010

therein.”

30. *It has been a matter of debate in a catena of decisions as to what would be the scope, power and duty of the first appellate court in deciding an appeal under Section 96CPC read with Order 41 Rule 31CPC. We briefly deal with the law on the point.*

31. *The learned Judge V.R. Krishna Iyer, J., (as he then was a Judge of the Kerala High Court) in 1969, while deciding the case between Kurian Chacko v. Varkey Ouseph [Kurian Chacko v. Varkey Ouseph, 1968 SCC OnLine Ker 101 : AIR 1969 Ker 316] , dealing with a similar judgment of the first appellate court which had been disposed of by a brief order, observed as follows :*

“2. An appellate court is the final court of fact ordinarily and therefore a litigant is entitled to a full and fair and independent consideration of the evidence at the appellate stage. Anything less than this is unjust to him and I have no doubt that in the present case the learned Subordinate Judge has fallen far short of what is expected of him as an appellate court.”

32. *Further following the above, there have been a series of judgments by this Court:*

32.1. *In Santosh Hazari v. Purushottam Tiwari [Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179, para 15] (relevant portion of para 15) is reproduced below : (SCC pp. 188-89)*

“15. ... 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 therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect if conscious application of mind and record findings supported by



WEB COPY



S.A.No.1041 of 2010

reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. ... while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it.”

32.2.*In K.N.Swami v. Irshad Basith [H.K.N. Swami v. Irshad Basith, (2005) 10 SCC 243] , this Court again reiterated the same principle in para 3 of the judgment :*

“3. The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title.”

32.3.*In 2015, this Court again in Vinod Kumar v. Gangadhar [Vinod Kumar v. Gangadhar, (2015) 1 SCC 391 : (2015) 1 SCC (Civ) 521] considering the previous judgment recorded its view in paras 18 and 19 which are reproduced hereunder :*

“18. In our considered opinion, the High Court did not deal with any of the submissions urged by the appellant and/or the respondent nor it took note of the grounds taken by the appellant in grounds of appeal



WEB COPY



S.A.No.1041 of 2010

nor made any attempt to appreciate the evidence adduced by the parties in the light of the settled legal principles and decided case law applicable to the issues arising in the case with a view to find out as to whether the judgment of the trial court can be sustained or not and if so, how, and if not, why.

19. Being the first appellate court, it was the duty of the High Court to have decided the first appeal keeping in view the scope and powers conferred on it under Section 96 read with Order 41 Rule 31CPC mentioned above. It was unfortunately not done, thereby, resulting in causing prejudice to the appellant whose valuable right to prosecute in the first appeal on facts and law was adversely affected which, in turn, deprived him of a hearing in the appeal in accordance with law. It is for this reason, we were unable to uphold the impugned judgment [Vinod Kumar v. Gangadhar First Appeal No. 173 of 1999, order dated 21-3-2013 (MP)] of the High Court.”

32.4. Very recently, this Court in 2022 (to which one of us, Brother Abdul Nazeer, J. was a member) in Manjula v. Shyamsundar [Manjula v. Shyamsundar, (2022) 3 SCC 90 : (2022) 2 SCC (Civ) 33] , reiterated the same view in para 8 thereof, which is reproduced hereunder :

“8. Section 96 of the Civil Procedure Code, 1908 (for short “CPC”) provides for filing of an appeal from the decree passed by a court of original jurisdiction. Order 41 Rule 31CPC provides the guidelines to the appellate court for deciding the appeal. This rule mandates that the judgment of the appellate court shall state:

(a) points for determination;



WEB COPY



S.A.No.1041 of 2010

- (b) the decision thereon;*
- (c) the reasons for the decision; and*
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.*

Thus, the appellate court has the jurisdiction to reverse or affirm the findings of the trial court. It is settled law that an appeal is a continuation of the original proceedings. The appellate court's jurisdiction involves a rehearing of appeal on questions of law as well as fact. The first appeal is a valuable right, and, at that stage, all questions of fact and law decided by the trial court are open for reconsideration. The judgment of the appellate court must, therefore, reflect conscious application of mind and must record the court's findings, supported by reasons for its decision in respect of all the issues, along with the contentions put forth and pressed by the parties. Needless to say, the first appellate court is required to comply with the requirements of Order 41 Rule 31CPC and non-observance of these requirements lead to infirmity in the judgment."

33. From the above settled legal principles on the duty, scope and powers of the first appellate court, we are of the firm view and fully convinced that the High Court committed a serious error in neither forming the points for determination nor considering the evidence on record, in particular which had been relied upon by the trial court. The impugned judgment of the High Court is thus unsustainable in law and liable to be set aside".

36. From the above decision of the Hon'ble Supreme Court, it is clear that when the requirements as contemplated under Order XLI Rule



S.A.No.1041 of 2010

31 CPC is not followed and the Lower Appellate Court has passed the judgment in contravention to the procedures, the judgment and decree cannot be sustained. As admittedly, the judgment and decree passed by the Lower Appellate Court are not in consonance with procedure set out under Order XLI Rule CPC, the judgment and decree of the Lower Appellate Court is perverse and it is liable to be interfered.

37. The decision relied on by the learned counsel for the respondent by placing reliance on Section 103 of CPC is not relevant for the facts of the present case.

38. As the first substantial question of law is answered in favour of the appellant, the other two substantial questions of law need not be gone into.

39. In view of the above, the judgment and decree of the Lower Appellate Court are set aside and the matter is remanded back to the Lower Appellate Court to decide the first appeal afresh by following the procedure as set out under Order XLI Rule 31 CPC. Since the suit is of



S.A.No.1041 of 2010

the year 1999 and almost the parties have been litigating in court for the past 25 years and since the appeal is remanded to the Lower Appellate Court, in the interest of justice, the Lower Appellate Court is directed to dispose of the appeal on merit on or before 31.07.2024.

40. Accordingly, this Second Appeal stands allowed. However, there is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

41. Registry is directed to send back the records to the Additional Subordinate Judge, Chengalpattu.

13.02.2024

Internet : Yes
Speaking order/Non-speaking order
drl

Note: Issue Order Copy on 22.02.2024

To

1. The Additional Subordinate Court, Chengalpattu.



S.A.No.1041 of 2010

WEB COPY

2. The District Munsif Court, Chengalpattu.

3. The Section Officer, V.R. Section, High Court, Madras.

G.ARUL MURUGAN, J.

drl

S.A.No.1041 of 2010
and MP.No.1 of 2010



WEB COPY



S.A.No.1041 of 2010

13.02.2024