



SA.No.810 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2024

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.810 of 2009

1. M.Kandasamy (Died)

2. M.Swaminathan

3. Murugesan

4. Ravikumar

(Appellants 3 & 4 brought on record as LR's of the deceased 1st appellant vide order dated 09.08.2021 made in CMP.Nos.9950, 9949 & 9945/2021)

... Appellants

- Vs -

1. Arumuga Gounder (Died)

2. S.Shanmuga Gounder

3. Sabapathi

S/o.Late Arumugam

(R3 brought on record as LR of the deceased R1 vide order dated 18.04.2024 made in CMP.No.8830/2024)

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 26.06.2008 passed in A.S.No.182 of 2003 on the file of the 1st Additional District Court, Coimbatore confirming the judgment and decree dated 30.06.2003 passed in O.S.No.503 of 1998 on the file of the Sub Court, Tiruppur.



SA.No.810 of 2009

For Appellants : Mr.A.K.Kumarasamy
Senior Counsel
for Mr.K.Govi Ganesan
For Respondents : Mr.P.R.Balasubramanian
for RR1 & 2
Mr.P.R.Shankar for R3

J U D G M E N T

As per the order of My Lord The Hon'ble Acting Chief Justice dated 12.06.2024, this Second Appeal has been listed before this Court.

2. The plaintiffs before the Trial Court are the appellants herein. After the demise of the first appellant, the appellants 3 and 4 were arrayed as the legal representatives of the first appellant. The defendants are arrayed as the respondents 1 and 2. After the demise of the first respondent, his legal heirs were added as the 3rd respondent.

3. For the sake of convenience, the parties will be referred to according to their litigative status before the Trial Court.

4. The brief facts which give rise to the instant Second Appeal is that the plaintiffs purchased the suit property by virtue of a Sale Deed dated 28.03.1990 from one Ganapathi Udayar, Son of Thangamuthu Udayar. Ever since the date of purchase, the plaintiffs have been in actual, physical possession and enjoyment of the suit property. It is the submission of the



SA.No.810 of 2009

WEB COPY

plaintiffs that except on the Northern side, all the three sides of the suit property are bounded by the property belongs to the defendants. Since the plaintiffs' property situates between the defendants' property, they requested the plaintiffs to sell the suit property. Since the plaintiffs refused to sell the property, the defendants started interfering with the possession of the plaintiffs and attempted to obliterate the ridges and also attempted to plough the land. However, with the intervention of the well-wishers, the illegal attempt of the defendants was thwarted. Since the defendants have been interfering with the possession and enjoyment of the plaintiffs and also disputing the title over the suit property, it necessitated the plaintiff to come forward with a suit for declaration and for permanent injunction.

5. The said suit was resisted by the 2nd defendant by contending that the suit property is comprised in S.F.Nos.234/1 and 234/2. It is the submission of the defendants that the entire suit property of S.F.Nos.234/1 and 234/2 were belongs to the children of one Arthanari Gounder. He has got 4 children by name 1. Marappa Gounder, 2. Chellappa Gounder, 3.Chinna Marappa Gounder and 4. Rangasamy Gounder. It is the further submission of this defendant that each one of them are entitled to have 1/4th common share. It is the submission of this defendant that one of the brother



SA.No.810 of 2009

WEB COPY

Chinna Marappa Gounder sold his common 1/4th share i.e., 1.44 acres to one Kaliappa Gounder and Krishna Gounder vide Sale Deed dated 19.06.1950.

The said Krishna Gounder is the alleged vendor of the plaintiffs under the sale deed dated 02.05.1988. According to this defendant, under Exs.B4, B9 and B8, Chinna Marappa Gounder and Rangasamy Gounder have sold the properties to Manthrachala Gounder under 3 sale deeds. Likewise, Chellappa Gounder sold the property to Kaliappa Gounder. In turn he sold the property to Karuppammal, who is the wife of Manthrachala Gounder. It is the further submission of the defendants that the entire extent of 5.76 acres comprised in S.F.Nos.234/1 and 234/2 have been purchased by the plaintiff under 2 sale deeds dated 31.08.1986 and 06.07.1998 from Manthrachala Gounder and Karuppammal. It is the submission of this defendant that the alleged vendor of the plaintiffs viz., Krishna Gounder did not have any right to execute the Sale Deed in favour of the plaintiffs. Therefore, the sale deed, which has been projected by the plaintiff, was executed by a person, who has no title over the suit property. Thus, this defendant states that the suit property is the absolute property of this defendant and the plaintiffs cannot have any remedy against this defendant. Hence, this defendant prayed to dismiss the suit.



SA.No.810 of 2009

WEB COPY

6. Before the Trial Court, the plaintiffs have examined 3 witnesses as PW1 to PW3 and marked 9 documents as Exs.A1 to A9. On behalf of the defendants, one witness was examined as DW1 and 29 documents have been marked as Exs.B1 to B29.

7. After having considered the oral and documentary evidence, the Trial Court has arrived at a conclusion that the plaintiffs' vendor did not have any title over the suit property and ultimately, found that through the sale deed, which relied by the plaintiffs, they cannot have any right over the suit property.

8. Aggrieved with the said judgment, when the plaintiffs have approached the First Appellate Court, the First Appellate Court has also found that the defendants are the absolute owners of the suit property and ultimately, confirmed the findings of the Trial Court and thereby, dismissed the First Appeal.

9. Not satisfying with the judgment of the First Appellate Court, the plaintiffs have preferred the instant Second Appeal.

10. At the time of admitting the Second Appeal, this Court has formulated the following substantial question of law:-

“(i) Whether the Courts below are correct and proper



SA.No.810 of 2009

WEB COPY

in dismissing the suit without considering Ex.A-8, Extract of Settlement 'A' Register, a public document and a very old document which contains the entry of the year 1912, which proves that the predecessor in title of the Vendor was one of the owner of the suit property?

(ii) Whether the Courts below have not committed a manifest illegality in negating the relief of Injunction after coming to the conclusion that the appellants are in possession of the suit properties and more particularly the appellate court not going into that question at all?"

11. The learned Senior Counsel Mr.A.K.Kumarasamy appearing on behalf of the appellants would vehemently contend that the First Appellate Court did not comply with the mandatory requirement as contemplated under Order 41 Rule 31 of CPC and by a cryptic judgment, the First Appellate Court has confirmed the decree of the Trial Court. It is the submission of the learned Senior Counsel that the right of first Appeal is the valuable right and the First Appellate Court, being the last Court of fact, has duty to re-appreciate the oral and documentary evidence after framing necessary point for determination as contemplated under Order 41 Rule 31 of CPC. It is the contention of the learned Senior Counsel that the bare perusal of the above judgment would manifest that there are no material to show about the



SA.No.810 of 2009

WEB COPY

formulation of point for determination as contemplated under Order 41 Rule 31 of CPC. Therefore, contended that the very judgment of the First Appellate Court confirming the decree of the Trial Court is erroneous, therefore, without going into the merits of the matter, on the face of it, the same is liable to be set aside and should remit back to the First Appellate Court to comply with the mandatory requirement under Order 41 Rule 31 of CPC. In this regard, the learned Senior Counsel has relied upon the following judgments:-

(a) *K.M.M.Kadar Hussain Vs. O.M.R.Selvaraj and two others* reported in 1997 (1) CTC 559;

(b) *Parimal Vs. Venna @ Bharti* reported in 2011 (2) CTC 329;

(c) *Pappannan and others Vs. Kolandasamy* reported in 2012 (3) MWN (Civil) 536.

Hence, the learned Senior Counsel prayed to set aside the judgment of the First Appellate Court and also prayed to remit back the matter for fresh disposal in accordance with law on complying the mandatory requirement under Order 41 Rule 31 of CPC.

12. Per contra, the learned counsel appearing on behalf of the respondents would vehemently contend that as rightly contended by the



SA.No.810 of 2009

WEB COPY

learned Senior Counsel for the appellants, though there is only an *omnibus* point for determination that, whether the appeal is to be allowed or not, still there is a substantial compliance of the requirement under Order 41 Rule 31 of CPC and that the First Appellate Court has gone into the material aspects and has also determined all the issues as determined by the Trial Court and while doing so, there are abundant evidence available to show that the First Appellate Court has re-appreciated the oral and documentary evidence. Therefore, it is the contention of the learned counsel for the respondents that though there are no distinct point for determination, still there is a substantial compliance of the mandatory requirement under Order 41 Rule 31 of CPC. Therefore, simply because there are no specific point for determination, that by itself cannot be a ground to set aside the judgment of the First Appellate Court. In support of his contention, the learned counsel relied upon the following judgments:-

- (i) *G.Amalorpavam and Others Vs. R.C.Diocese of Madurai and others* reported in (2006) 3 SCC 224;**
- (ii) *Santosh Hazari Vs. Purushottam Tiwari (deceased) by LRs.* reported in (2001) 3 SCC 179;**
- (iii) *Dalla Vs. Nanhu* reported in 2018 SCC OnLine All 5845;**



SA.No.810 of 2009

WEB COPY

- (iv) *S.Madasamy Thevar Vs. A.M.Arjuna Raja* reported in **2000-3-L.W.793**;
- (v) *Ajit Ojha Vs. Lallan Ojha and Or.* reported in **AIR 2006 PATNA 143**;
- (vi) *LagadapatiDhanalakshmi and Ors Vs. Lagadapati Anjaneyulu* reported in **AIR 2010 ANDHRA PRADESH 14**;
- (vii) *T.Muniappa and Ors Vs. Perumiah and Ors.* reported in **(2002) 1 MLJ 54**.

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

14. According to the plaintiffs, the suit property is their absolute property by virtue of the Sale Deed dated 28.03.1990 under Ex.A1. It is their further submission that their predecessor-in-title has purchased the property under Ex.A2 on 02.05.1988. To put it differently, originally the property belongs to one Krishna Gounder, son of Sennimalai Gounder and his wife Subbathal and Valliammal, who is the daughter of Krishna Gounder. From them, the plaintiffs' predecessor-in-title Ganapathi Udayar has purchased the property on 02.05.1988. In the above Sale Deed, their predecessor-in-title have purchased an extent of 1.76 acres in S.F.No.234/1 and an extent of 16 cents in S.F.No.234/2. From Ganapathi Udayar, the plaintiffs purchased the



SA.No.810 of 2009

above extent under Ex.A1-Sale Deed dated 28.03.1990.

WEB COPY

15. Whereas, the above contention was disputed by the defendants by contending that the suit property was originally belongs to Arthanari Gounder and that Arthanari Gounder has got 4 sons by name (1) Marappa Gounder, (2) Chellappa Gounder, (3) Chinna Marappa Gounder and (4) Rangasamy Gounder and through them, the plaintiffs' predecessor in title Manthrachala Gounder and Karuppammal have purchased the property and from them under Ex.B10, an extent of 4.37 acres, and through Ex.B11, an extent of 1.39 acres, totally, an extent of 5.76 acres in S.F.Nos.234/1 and 234/2 have been purchased by the defendants. The Trial Court after considering the fact and law affirmed by the plaintiffs and disputed by the defendants has framed the following issues:-

1. Whether the plaintiffs are in possession and enjoyment of the suit property?
2. Whether the plaintiffs are entitled for a declaration?
3. Whether the plaintiffs are entitled for a permanent injunction? and
4. To What other reliefs?

16. As already stated, the Trial Court has found that all those issues against the plaintiffs and dismissed the suit. Very specific contention of the



SA.No.810 of 2009

WEB COPY

learned Senior Counsel for the appellant that, the First Appellate Court did not gone into the issues as dealt by the Trial Court and the First Appellate Court did not deal the evidence and documents. It was also the contention of the learned Senior Counsel that there are no semblance of evidence to show the re-appreciation of evidence.

17. But, while harmoniously reading the judgment of the First Appellate Court, the First Appellate Court has elaborately considered all those issues. It is the finding of the First Appellate Court that under Exs.B3, B9 and B8, and also through the Sale Deed stands in the name of Karupppammal, an extent of 5.76 acres in S.F.Nos.234/1 and 234/2 belongs to them, in which the suit property is the portion of the above larger extent. It is also the finding of the First Appellate Court that the plaintiffs' derived title from one Krishna Gounder. Whereas the said Krishna Gounder has got title over an extent of only 0.72 acres and that even the said 0.72 acres have been sold to Manthrachala Gounder, through whom the defendants have purchased the property under Exs.B10 and B11.

18. Therefore, there is an independent application of mind by the First Appellate Court and has found that the defendants had purchased from the actual owner of the suit property under Exs.B10 and B11, and there is also a



SA.No.810 of 2009

specific finding that the plaintiffs' predecessor in title Ganapathi Udayar did not have any title over the suit property as his predecessor in title Krishna Gounder has already sold the property to the defendants' predecessor in title Manthrachala Gounder.

19. Though as rightly contended by the learned Senior Counsel, there is only an *omnibus* point for determination, and that there are no specific point for determination before proceeding with the findings given by the First Appellate Court. In this regard, the learned Senior Counsel relied upon the judgments in ***K.M.M.Kadar Hussain's*** case [cited supra] and ***Parimal's*** case [cited supra]. The relevant portion in ***Parimal's*** case are paragraphs 21 & 22 and the same read as follows:-

“21. Order 41 Rule 31 CPC provides for a procedure for deciding the appeal. The law requires substantial compliance with the said provisions. The first appellate court being the final court of facts has to formulate the points for its consideration and independently weigh the evidence on the issues which arise for adjudication and record reasons for its decision on the said points. The first appeal is a valuable right and the parties have a right to be heard both on question of law and on facts. (Vide Moran Mar Basselios Catholicos v. Mar Poulose Athanasius [AIR 1954 SC 526] ,



SA.No.810 of 2009

WEB COPY

Sukhpal Singh v. Kalyan Singh [AIR 1963 SC 146] , Santosh Hazari v. Purushottam Tiwari [(2001) 3 SCC 179 : AIR 2001 SC 965] , Madhukar v. Sangram [(2001) 4 SCC 756 : AIR 2001 SC 2171] , G. Amalorpavam v. R.C. Diocese of Madurai [(2006) 3 SCC 224] , Shiv Kumar Sharma v. Santosh Kumari [(2007) 8 SCC 600] and Gannmani Anasuya v. Parvatini Amarendra Chowdhary [(2007) 10 SCC 296 : AIR 2007 SC 2380] .)

22.The first appellate court should not disturb and interfere with the valuable rights of the parties which stood crystallised by the trial court's judgment without opening the whole case for rehearing both on question of facts and law. More so, the appellate court should not modify the decree of the trial court by a cryptic order without taking note of all relevant aspects, otherwise the order of the appellate court would fall short of considerations expected from the first appellate court in view of the provisions of Order 41 Rule 31 CPC and such judgment and order would be liable to be set aside. (Vide B.V. Nagesh v. H.V. Sreenivasa Murthy [(2010) 13 SCC 530 : (2010) 4 SCC (Civ) 808 : JT (2010) 10 SC 551] .)”

20. By following the judgment in ***Parimal's*** case, the learned Single Judge of this Court in ***Pappannan's*** case [cited supra] held as follows:-



SA.No.810 of 2009

WEB COPY

“28. Be that as it may; so far as this case is concerned, there are lot of complications; had the First Appellate Court, adhered to Order 41, Rule 31 of the Code of Civil Procedure, certainly it would have dealt with all aspects of the matter. The principle, which got embodied in Order 41, Rule 31 of the Code of Civil Procedure is not an empty formality. It is only for the purpose of enabling the Court to ensure proper approach to the entire Appeal. Had the First Appellate Court formulated various points for consideration under various sub-heads, then this mistake would not have been crept in. Wherefore, so far this case is concerned, the First Appellate Court's approach in not framing proper points for consideration resulted in failure of justice and it failed to discuss point by point in reversing the judgment of the Trial Court.”

21. Therefore, it is the contention of the learned Senior Counsel that since the very mandatory requirement under Order 41 Rule 31 of CPC has not been complied by the First Appellate Court, such non-compliance by itself would rise the ground for a substantial question of law. Therefore, the learned Senior Counsel would contend that the judgment of the First Appellate Court is perverse and liable to be set aside and the matter has to be remitted back to the First Appellate Court for fresh disposal.



SA.No.810 of 2009

WEB COPY

22. However, the learned counsel for the respondents relied upon the judgment of ***G.Amalorpavam's*** case (cited supra), wherein the Hon'ble Supreme Court has held that, even though there is no specific point for determination, when there is abundant material in the judgment about the substantial compliance of Order 41 Rule 31 of CPC, then the mere non-framing of distinct point for determination will not be a ground to set aside the judgment of the First Appellate Court.

23. The learned counsel for the respondents has also relied upon the full Bench judgement of the Hon'ble Supreme Court, in ***Santosh Hazari's*** case [cited supra], wherein the Hon'ble Supreme Court has held that when the First Appellate Court judgment reflects the conscious application of mind, the mere non framing of point for determination cannot be a ground to set aside the judgment of the First Appellate Court. It has been further laid down that the finding of fact rendered by both the Courts below remained immune from challenging before the High Court under Section 100 of CPC. The learned counsel for the respondents has also relied upon the judgment of ***S.Madasamy Thevar's*** case (cited supra), wherein the learned Single Judge of this Court has held that it is the duty of the plaintiff to prove his case and he cannot place reliance on weakness of the defendant's case.



SA.No.810 of 2009

WEB COPY

24. Therefore, what emerges from the submissions made by the learned counsel for the respondents is that, though the judgment of the First Appellate Court did not contain specific point for determination, while reading the judgment of the First Appellate Court harmoniously, such judgment reflects the conscious application of mind and also the substantial compliance of Order 41 Rule 31 of CPC by answering all the issues, which have been dealt by the Trial Court. Therefore, the mere non framing of individual point for determination and framing of only *omnibus* point for determination cannot be a ground to set aside the judgment of the First Appellate Court.

25. As already stated, the First Appellate Court has independently applied its mind and has reflected its conscious application of mind by way of a detailed discussion. Wherein, the First Appellate Court has found that under Exs.B10 and B11, the defendants have established their right over the property and also through Exs.B4, B8 and B9 and also through the Sale Deed stands in the name of Karupppammal has proved the title of the defendants' predecessor in title. Only with that factual matrix, the First Appellate Court found that the defendants are the absolute owner of the suit property.

26. Apart from that, the First Appellate Court, on re-appreciation of



SA.No.810 of 2009

WEB COPY

evidence has found that Krishna Gounder, Son of Sennimalai Gounder had only 72 cents in S.F.No.234, and even the said 72 cents has already been sold to the defendant's predecessor in title. Therefore, the First Appellate Court has also reiterated the finding of the Trial Court that the plaintiffs' predecessor in title did not have any right to execute the sale deed in favour of the plaintiff and ultimately found that the plaintiffs have not established their right and title over the suit property.

27. Apart from the above ground, the Trial Court has relied upon the Revenue records such as Sub Collector's order under Exs.B12 and B13 and also Patta extract [Exs.B14 & B15] and Chitta extract [Ex.B16], Kist receipts [Exs.B18 to B23]. Through these, also found that the defendants have been in possession and enjoyment of the property. Therefore, only in that background, the First Appellate Court concurred with the finding of the Trial Court. Therefore, though there are no specific point for determination, the First Appellate Court has dealt all the issues as considered by the Trial Court and has independently arrived at a conclusion that the plaintiffs have not established their right over the suit property and ultimately, concurred with the finding of the Trial Court.



WEB COPY



SA.No.810 of 2009



SA.No.810 of 2009

WEB COPY

28. Therefore, this Court is of the firm view that, when both the Courts below have given a concurrent finding of fact that the defendants are the absolute owner of the suit property, as held by the Hon'ble Supreme Court, such concurrent findings of both the Courts below is immune from interference by this Court under Section 100 of CPC. Therefore, this Court is of the firm view that there are no grounds to interfere with the judgment of the First Appellate Court.

29. In view of the above detailed discussions, all the substantial questions of law are answered in favour of the respondents.

30. In the result, this Second Appeal is dismissed. There shall be no order as to costs.

09.07.2024

kmi

Index : Yes

Speaking Order : Yes

NCC : Yes

To

1. The Subordinate Court,
Tiruppur.
2. The I Additional District Court,
Coimbatore.



WEB COPY



SA.No.810 of 2009

C.KUMARAPPAN, J

kmi

S.A.No.810 of 2009

09.07.2024