



S.A.No.648 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.No.648 of 2010
and
C.M.P.Nos.19073 of 2022 & 2088 of 2023

Ambalavanar Trust, Walajabad
represented by its Secretary,
Walajabad, Masilamani Nagar,
Kancheepuram Taluk.

... Appellant

VS.

1.Mr.Radhakrishnan

[Mr.Radhakrishnan is substituted in the place
of Late V.C.Krishnaswamy vide order of court
dated 23.02.2023 made in CMP.No.19071/2022]

2.State of Tamil Nadu,
rep. by its District Collector,
Kancheepuram.

3.District Educational Officer,
Kancheepuram.

...Respondents

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree in A.S.No.72 of 2008 dated 29.07.2009, on the file of the Subordinate Court, Kancheepuram, reversing the judgment and decree in O.S.No.290 of 1996, on the file of



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the Additional District Munsif Court, Kancheepuram, dated 29.02.2008.

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For appellant : Mr.T.V.Ramanujam,
senior counsel for Mrs.R.Ramya
For respondent 1 : Mrs. A.Sumathy
For respondents 2 & 3 : Mr.M.Muthusamy,
Government Advocate.

JUDGMENT

The appellant was the plaintiff before the Trial Court and the respondents are the defendants before the Trial Court.

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

3. The brief facts which give rise to the instant Second Appeal is that the suit property belongs to the plaintiff's Trust. According to the plaintiff, the plaintiff's Trust was founded by late W.T.Masilamani Mudaliar of Walajabad by virtue of a Trust Deed dated 04.09.1963. It is the further contention of the plaintiff that the suit property was dedicated



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to the Trust. According to the plaint averment, the said W.T.Masilamani Mudaliar had a son by name Kumarasamy Mudaliar, who was managing the school during his father's lifetime and even after his death. On the request of the Kumarasamy Mudaliar, the management was transferred to Ambalatharasu. It is the submission of the plaintiff that subsequently the management was transferred to the 3rd defendant. According to the plaintiff, the 3rd defendant has acted detrimental to the Trust and that the plaintiff has got the right to manage the school, therefore they have come up with the instant suit for declaration and for recovery of possession.

4. The said suit was stoutly resisted by the 3rd defendant by contenting that he became the owner of the suit property and that the Trust is not the owner of the suit property. Hence, he prayed to dismiss the suit.

5. Before the Trial Court, the plaintiff was examined as P.W.1 and 4 documents were marked as Exs.A1 to A4. On behalf of the defendants, V.C.Krishnaswamy was examined as D.W.1 and 11 documents were marked as Exs.B1 to B11.



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6. The Trial Court, after having considered oral and documentary evidence has decreed the suit as prayed for. However, the First Appellate Court on the Appeal filed by the 3rd defendant has reversed the finding and ultimately dismissed the suit. Not satisfied with the order of the First Appellate Court, the Trust, who was the plaintiff before the Trial Court has filed the instant Second Appeal.

7. At the time of admitting the Second Appeal, on the following Substantial Questions of Law have been framed:

"(i) Whether the lower appellate Court is right in giving a finding as if the suit property does not belong to the trust and did not even belong to the founder when there is clear recital in A4 which is a registered document and which is more than thirty years old?

(ii) Whether the lower appellate court has properly appreciated the scope and provisions of the Tamilnadu Private Schools Regulation Act, 1973, particularly section 53 A?

(iii) Whether the lower appellate Court has properly appreciated the law relating to trust particularly public



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trusts as per the principles of law laid down under the Indian Private Trust Act, 1886 which principles of law are applicable to the public trust also?

(iv) Whether the lower appellate Court had complied with the provisions of Order 41 Rule 31 CPC while reversing the finding of the trial Court?"

8. The learned Senior Counsel appearing on behalf of the plaintiff/appellants apart from arguing various other aspects has categorically contented that the very order of the First Appellate Court is not in consonance with Order 41 Rule 31 of the Civil Procedure Code. It was also the contention of the learned Senior Counsel for the plaintiff that the entire reading of the Judgement of the First Appellate Court is nothing, but a reproduction of the written arguments submitted by the appellant without any discussion upon the issues involved. Therefore, the learned Senior Counsel would submit that the order of the First Appellate Court is perverse and liable to be set aside.

9. Apart from that, the learned Senior Counsel would also invite



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the attention of this Court in respect of filing an application under Order 41 Rule 27 of CPC, wherein the ground urged is that though no pleadings in the written statement in respect of the ownership of the Trust over the suit property, during the arguments stage without there being any pleading of the respondent questioned the title of the plaintiff, which resulted in reverse of the finding. Therefore, such findings necessitated them to file the petition mentioned documents as additional documents. It is also the submission of the learned senior counsel that the receipt of the additional documents would advance the substantial justice.

10. Per contra, the learned counsel appearing on behalf of the respondents would contend that the order of the First Appellate Court is well considered one and has discussed all the material documents, and then only upon the re-appreciation of the evidence the First Appellate Court reversed the finding. Therefore, there are no grounds to interfere such finding. It was also contended by the learned counsel for the respondents that the application filed to receive the additional document is not to advance the substantial justice, but only to fill up the lacuna. The learned counsel also submitted that some of the documents are



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subsequent to the filing of suit and therefore, strongly objected in allowing this application and prayed to dismiss this appeal.

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

12. Though four substantial questions of law have been framed by this Court, this Court deems it appropriate to firstly answer the 4th substantial question of law i.e., 'Whether the lower Appellate Court had complied with the provisions of Order 41 Rule 31 of CPC while reversing the finding of the Trial Court ?'.

13. Order 41 Rule 31 of CPC specifically mandates the First Appellate Court to determine the point for determination. Only upon determining the point for determination, the First Appellate Court must proceed with the merits of the matter. But, while perusing the judgment of the First Appellate Court, there was only an omnibus point for determination, qua whether the appeal can be allowed.

14. It is also pertinent to mention here that even if there is any omnibus point for determination, if the First Appellate Court has



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discussed all the points without formulating any specific point for determination and that if there are any material to show that there was substantial compliance of Order 41 Rule 31 of CPC., since because there was only an omnibus point for determination, such an order cannot be interfered with.

15. But while going through the impugned judgment of the First Appellate Court, as rightly contented by the learned senior counsel for the plaintiff the entire order is nothing, but a reproduction of the written argument of respondents, and ultimately the First Appellate Court has arrived at its conclusion only with following four lines,

'such as considering the facts and circumstance of the case this Court is of the view that the decree and judgment of the Trial Court is not acceptable and it has to be set aside'.

Therefore, apparently there is no application of mind, reappreciation of evidence and also no discussion in respect of the points which has been specifically dealt by the Trial Court. Furthermore as



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rightly contented by the learned senior counsel for the plaintiff, the plaintiff arguments have not at all been referred to in the judgment. Therefore, this Court is of the firm view that the very order of the First Appellate Court manifestly has not followed the mandatory requirement under Order 41 Rule 31 of CPC. Therefore, the same entitles to setting aside the such order.

16. Before closing the curtains of this order, this Court also deems it appropriate to discuss whether the C.M.P.No.19073/2022 filed under Section Order 41 Rule 27 of CPC is to be allowed or not. In this regard, it is the submission of the learned Senior Counsel that though in the written statement, the defendant did not dispute the title of the Trust over the suit property, at the time of argument before the First Appellate Court they have disputed the title over the property. Therefore, the learned Senior Counsel would submit that the title deed of the suit property and the proceedings of the Trust are necessary documents to be received as additional evidence to render substantial justice in this matter.

17. However, as rightly submitted by the learned counsel for the



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respondents that some of the documents are subsequent to the filing of the suit. But in this regard, the learned Senior Counsel would submit that those documents only to vindicate the subsequent development in respect of the suit property. Therefore, as rightly contented by the learned counsel for the respondents that the relevancy or admissibility of the document must be only gone by the First Appellate Court. At the same time, this Court is of the firm view that to advance the substantial justice, these documents are essential. Therefore, the Civil Miscellaneous Petition in C.M.P.No.19073/2002 is liable to be **allowed** and the document is ordered to be received as additional documents subject to its proof and relevancy.

18. In view of the answer to the 4th substantial question of law, the order of the First Appellate Court is ordered to be set aside, and the matter is remitted back to the Trial Court for a fresh disposal according to law. Further the document in C.M.P.No.19073/2002 is also ordered to be received as additional evidence subject to its proof and relevancy.

19. In the result, this Second Appeal is allowed. Since the suit is of the year 1993, this Court deems it appropriate to give a direction to the



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First Appellate Court to dispose of the matter as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this judgment. There shall be no order as to costs. Consequently, connected miscellaneous petition in CMP.No. 2088 of 2023 is closed.

17.04.2024

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
Nutral: Yes/No

jrs

To

1. The Subordinate Court,
Kancheepuram.
2. The Additional District Munsif Court,
Kancheepuram.
3. The Section Officer,
V.R.Section, High Court,
Madras.

C.KUMARAPPAN,J.

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