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S.A.No.917 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2024

CORAM:

THE HON'BLE MRS.JUSTICE N.MALA

S.A.No.917 of 2021
and C.M.P.No.15532 of 2024

R.Ganesan

...Appellant

vs.

R.Dharani

...Defendant

Prayer: Second Appeal filed under Section 100 C.P.C., against the Judgment and Decree dated 25.07.2019 made in A.S.No.7 of 2019 on the file of the Principal Subordinate Court, Chengalpattu in confirming the Judgment and Decree dated 10.01.2014 made in O.S.No.682 of 2011 on the file of Principal District Munsiff Court at Alandur.

For Appellant : Mr.V.Raghavachari, Senior Counsel
for Mr.S.Conscious Ilango

For Respondent : Mr.K.Thilageswaran

JUDGMENT

The plaintiff in the Suit is the appellant in the Second Appeal. The appeal is filed against the current judgments of the Court below dismissing the plaintiff's suit for declaration that the Settlement Deed



dated 12.07.2002 was null and void and for permanent injunction restraining the defendant, his men, agents, servants or their representatives, or anyone else acting on this behalf from trespassing or encroaching into the 'B' Schedule property or disturbing the peaceful possession and enjoyment of the suit property by the plaintiff.

2.The brief facts leading to filing of this Second Appeal are that the plaintiff is the elder brother of the defendant. The suit property along with some other properties belonged to the parents of the plaintiff viz., Ranganathan and Saraswathy Ammal. The plaintiff has three sisters and two brothers. The plaintiff's sisters were married and well settled. Hence, the plaintiff's parents did not want to give any property to the daughter's. It is stated that the plaintiff's parents for a brief period stayed with the defendant and during that time, the defendant taking advantage of the old age of the parents managed to have a Settlement Deed executed in her favour by undue influence and coercion. The plaintiff was not aware of the Settlement Deed and he came to know of the same only when he received the summons from the Trial Court in O.S.No.121 of 2010 which was renumbered as O.S.No.432 of 2010 on the file of the Additional District Munsif at Alandur.



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3.The plaintiff stated that the Settlement Deed was not voluntarily executed by his father as he never intended to give the property exclusively to the defendant. The plaintiff therefore filed the suit for declaration that the Settlement Deed was null and void and for injunction.

4.The defendant's case was that her father executed a Will as early as on 17.04.1995 and bequeathed certain properties to his three sons in equal share. The defendant was taking care of the parents and therefore out of the love and affection, her father executed a Settlement Deed dated 12.07.2002 in her favour by settling the suit properties. The defendant objected to the maintainability of the suit stating that the suit was barred by limitation as it was filed beyond three years from the date of the above Settlement Deed.

5.As far as the possession and enjoyment of the defendant was concerned, the defendant stated that as the plaintiff was residing adjacent to the defendant's house he was very well aware of the same. The defendant stated that the plaintiff attended the house warming ceremony of the defendant held on 15.09.2000 and hence he was feigning



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ignorance of the Settlement Deed. The defendant therefore denied as false the plaintiff's contention that he came to know about the Settlement Deed only on receipt of the summons. According to the defendant, the Settlement Deed was acted upon and therefore the plaintiff's suit was devoid of merits and liable to be rejected.

6.Before the Trial Court, the plaintiff was examined as PW1 and marked the documents as Exs.A1 to A5. The defendant examined herself as DW1 and the attester of the Settlement Deed. The defendant marked documents viz. Exs.B1 to B9 in support of her case. The Trial Court framed necessary issues and on consideration of the evidence on record found that the suit was barred by limitation as the plaintiff approached the Court in the year 2011 i.e. 9 years after the execution of the Settlement Deed in 2002.

7.The Trial Court rejected the plaintiff's plea of undue influence and coercion and found that the Settlement Deed was proved and valid. The Trial Court also found that the plaintiff failed to prove by evidence that he was in possession of 'A' schedule property and therefore non-suited the plaintiff. Aggrieved by the Judgment and Decree of the Trial Court, the plaintiff preferred the appeal in A.S.No.7 of 2019 before the



Principal Subordinate Judge, Chengalpattu. The Lower Appellate Court found that the Settlement Deed was valid as the plaintiff failed to prove that the Settlement Deed executed by his father was vitiated by undue influence and coercion. The Lower Appellate Court therefore confirmed the judgment decree of the Trial Court.

8.This Court while admitting the Second Appeal, framed the following Substantial Questions of Law:

1.Whether the First Appellate Court in terms of Order 41 Rule 31 and Section 96 CPC is not required to formulate necessary point for determination and record its independent findings duly supported by reasons on all issues arising before it and the contentions put forth and pressed by the parties?

2.Whether the lower appellate Court failed in its duty as a first appellate court in so far as the evidence was neither re-appreciated nor reevaluated?

3.Whether the judgments of the Court below are not vitiated when it has not followed the principles laid down in KRISHNA MOHAN KUL @ NANICHARAN KUL VS. PRATIMA



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MAITY [2004 (9) SCC 468] wherein it has been held in the fiduciary relationship the burden of proof is on the dominant beneficiary to prove that the settlement deed is without undue influence, misrepresentation and coercion and that, he has to prove that there is fair play in the transaction and that the apparent is the real, in other words that the transaction is genuine and bonafide.

4.Whether the judgments of the Court below are not vitiated when it has not followed the principles laid down in K.LAXMANAN VS. THELLAYIL PADMINI [2009 (1) SCC 354] where it has been held when there are suspicious circumstances regarding the execution of the settlement deed the onus is on the propounder to explain about it to the satisfaction of the courts.

5.Whether the trial court not erred in law in dismissing the suit as barred by limitation when the factum of knowledge of execution of settlement deed from the summons in O.S.No.121/2010 pleaded and proved by the appellant / plaintiff by oral evidence was not denied or disputed by the respondent / defendant.

6.Whether in law the burden is not on the



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respondent / defendant to establish that the knowledge existed on the plaintiff about the settlement deed prior to three years from the suit?

7. Whether the lower appellate court grossly erred in law in referring to the alleged construction put up by the respondent in the year 2000 in deciding the point of limitation to challenge the settlement deed executed in the year 2002?

8. Whether the judgments of the Courts below are not perverse in law on failing to consider the factum of knowledge of execution of settlement deed pleaded and proved by the appellant / plaintiff by oral evidence and deciding the point of limitation by referring to the construction put up by the respondent in the year 2000 to challenge the settlement deed executed in the year 2002?

9. Whether the courts below erred in law in not drawing adverse inference about the genuineness of the settlement deed as the original of which was not produced by the defendant before the Courts?



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9. Though the appeal was admitted on several Substantial Questions of Law, at the time of hearing, the learned counsel for the appellant restricted his submissions to the Substantial Question relating to limitation and violation of the provisions of Order 41 Rule 31 r/w Section 96 C.P.C.

10. Heard both the learned counsel and perused the materials available on record.

11. The substantial question of law with regard to Order 41 Rule 31 is taken up for consideration.

12. It is undisputed fact that the plaintiff is the brother of the defendant and their parents viz., Ranganathan and Saraswathy Ammal had six children i.e. three daughters and three sons. The plaintiff is the elder son. The plaintiff's case was that his parents were aged and that they were residing with the defendant for a brief period and during that time, the defendant managed to have a Settlement executed in her favour by her father. The plaintiff claimed that he came to know about the Settlement Deed only on receipt of the summons in the suit in



O.S.No.121 of 2010 which was renumbered as O.S.No.432 of 2010 on the file of the Additional District Munsif Court, Alandur. Immediately, thereafter, the plaintiff filed the suit for declaration that the Settlement Deed was null and void and for permanent injunction.

13.The defendant's case on the other hand was that she was taking care of her parents in their old age and out of love and affection, her father executed a Settlement Deed on 12.07.2002 in her favour. The defendant further stated that the plaintiff was well aware of the Settlement Deed even prior to its execution and the same was evident from the affidavit of the plaintiff regarding his non-objection to the construction put up by the defendant in the suit property in 2000 and also his participation in the House Warming Ceremony conducted by her on 15.09.2000. Therefore, the defendant claimed that the suit was barred by limitation and the same deserved to be dismissed.

14.The Hon'ble Supreme Court in the case of *G.Amalorpavam and others Versus R.C.Diocese of Madurai and Others* reported in (2006) 3 SCC 224, while considering the question, if the provisions of Order 41 Rule 31 CP were mandatory held as follows:

“9.The question whether in a particular case



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there has been substantial compliance with the provisions of Order 41 Rule 31 CPC has to be determined on the nature of the judgment delivered in each case. Non-compliance with the provisions may not vitiate the judgment and make it wholly void, and may be ignored if there has been substantial compliance with it and the second appellate court is in a position to ascertain the findings of the lower appellate court. It is no doubt desirable that the appellate court should comply with all the requirements of Order 41 Rule 31 CPC. But if it is possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not thereby suffered, that would be sufficient. Where the appellate court has considered the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate court there is substantial compliance with the provisions of Order 41 Rule 31 CPC and the judgment is not in any manner vitiated by the absence of a point of determination. Where there is an honest endeavour on the part of the lower appellate court to consider the controversy between the parties and there is proper appraisal of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifest by the perusal of the judgment of the lower



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appellate court, it would be a valid judgment even though it does not contain the points for determination. The object of the rule in making it incumbent upon the appellate court to frame points for determination and to cite reasons for the decision is to focus attention of the court on the rival contentions which arise for determination and also to provide litigant parties opportunity in understanding the ground upon which the decision is founded with a view to enable them to know the basis of the decision and if so considered appropriate and so advised to avail the remedy of second appeal conferred by Section 100 CPC”

15.From a reading of the aforesaid judgment of the Hon'ble Supreme Court, it is clear that mere non framing of points for determination by the lower appellate court while disposing the appeal is not conclusive of violation of the provisions of Order 41 Rule 31 CPC. If a reading of the judgment of the Lower Appellate Court reflects application of mind to the issues in controversy between the parties mere non framing of points for determination would not vitiate the judgment. The judgment of the Lower Appellate Court should manifest proper appreciation of the evidence on record and consideration of the same with cogent reasons.



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16.It is true that if there is substantial compliance with the provisions of Order 41, Rule 31 CPC, in that the course of justice has not suffered, then mere failure to frame points for determination will not vitiate the appellate court judgment. If the appellate court even without framing points for determination considers the entire evidence on record and returns its findings with convincing reasons, then the lower appellate court judgment can be sustained even, if no points for determination are framed.

17.In the present case, a bare reading of the lower appellate court judgment shows that the lower appellate court has not independently assessed the evidence on record both oral and documentary. It is no doubt true that when the lower appellate court concurs with the findings of the trial court, general agreement with the reasons given by the trial court would suffice. At the same time, general agreement with the findings of the trial court should not serve as a camouflage for shirking the duty cast on the lower appellate court for scrutinising the findings of the Trial Court. The reading of the judgment of the lower appellate court in the present case reveals that the lower appellate court has not made an honest endeavour to consider the issues raised before it by weighing and



appreciating the evidence for confirming the findings of the Trial Court.

It is to be noted that the first appellate court is the final court of fact and therefore as the entire case is open for rehearing before it, the lower appellate court should apply its mind and render its findings on proper consideration of the evidence on record and give coherent reasons for the same. In the present case, the lower appellate court has referred to a number of judgments and even without discussing the evidence on record both oral and documentary, has confirmed the findings of the trial court by replicating the evidence of the plaintiff extracted by the trial court. The lower appellate court without considering the evidence has merely stated that it was in general agreement with the findings of the trial court, which in my view, is a facade adopted by the lower appellate court for shirking its duty.

18.It is well known practise that unless additional evidence is filed before the Lower Appellate Court, the list of witnesses and documents of the parties does not find place in Appellate Court judgment. In the present case, the extent of replication by the Lower Appellate Court is revealed by the extraction of the list of witnesses and documents of the plaintiff and defendant in the last page of Appellate Court judgment as is done in the judgment of the Trial Court.



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19.I find that the lower appellate court has shunned its duty of considering the appeal on merits and therefore I find that there is total violation of Order 41 Rule 31 CPC. Hence the substantial question of law is answered in favour of the appellant.

20.The 1st substantial question of law is answered in favour of the appellant. The judgment and decree of the Lower Appellate Court is set aside. The case is remanded to the Lower Appellate Court for fresh consideration.

21.I am of the view that the other substantial question of law relating to limitation need not be considered, as any finding given by this court, on the said issue may influence the lower appellate court. The first appeal is remanded to the lower appellate court for fresh consideration with liberty to both parties to file additional evidence.

22.In the result, Second Appeal is allowed and the matter is remanded back to the lower appellate court for fresh consideration on all issues including the issue of limitation. The lower appellate court is



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directed to dispose of the appeal within a period of six (6) months from the date of receipt of copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

25.07.2024

Index: yes/no
Speaking order:yes/no
Neutral Citation:yes/no
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To

- 1.The Principal Subordinate Court,
Chengalpattu.
- 2.The Principal District Munsiff Court,
Alandur.



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N.MALA, J.

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