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S.A(MD)No.171 of 20



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

**S.A(MD)No.171 of 2005
and
C.M.P(MD)No.1506 of 2005**

- | | |
|---------------------------------------|---|
| 1.Chellaiah (died) | ... 1 st Appellant/1 st Defendant |
| 2.C.Mari | |
| 3.C.Akilandam | |
| 4.C.Sathappan alias Duraikannu (died) | |
| 5.C.Meenakshi (died) | |
| 6.C.Rajendran | |
| 7.C.Balamurugan | ... Appellants 2 to 7 |
| 8.Pandiammal | |
| 9.Karuppiah | |
| 10.Saraswathi | |
| 11.Chandrasekar | ... Appellants 8 to 11 |
| 12.Alagar | |
| 13.Jeyaraman | |
| 14.Indrani | |
| 15.Chandra | ... Appellants 12 to 15 |

(Appellants 2 to 7 are brought on record as Lrs of the deceased sole appellant vide order dated 04.04.2013 made in M.P(MD)Nos.3 to 5 of 2012)

(Appellants 8 to 11 are brought on record as Lrs of the deceased fourth appellant vide order dated 04.04.2013 made in M.P(MD)Nos.1 & 2 of 2013)

(Appellants 12 to 15 are brought on record as Lrs of the deceased fifth appellant vide order dated 24.07.2023 made in C.M.P(MD)Nos.5469 to 5471 of 2023)

Vs.



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- | | |
|----------------------|--|
| 1.Kalimuthu | |
| 2.K.Muniyandi (died) | ... Respondents 1 & 2/Plaintiffs |
| 3.Sagayarani | |
| 4.Justine Thiraviam | |
| 5.Gnanasekaran | |
| 6.Arulananthu | |
| 7.Joseph | ... Respondents 3 to 7/
Defendants 2 to 6 |
| 8.K.V.Chellasamy | ... 8 th Respondent |
| 9.Koperumdevi | |
| 10.Divya Prakash | |
| 11.Mohanapriya | ... Respondent 9 to 11 |

(8th respondent impleaded order dated 15.11.2016
made in M.P(MD)No.1 of 2014)

(Respondents 9 to 11 are brought on record as Lrs of the
deceased 2nd respondent vide order dated 06.01.2023
made in C.M.P(MD)Nos.1591 & 1592 of 2021 & 133 of 2023)

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 25.03.2003 made in O.S.No.9 of 2001 on the file of the Principal District Munsif Court, Sivaganga and set aside the judgment and decree, dated 15.12.2004 made in A.S.No.74 of 2003 on the file of the Sub Court, Sivaganga.

For Appellants	: Mr.H.Arumugam
For R – 1	: Mr.M.Saravanakumar
For RR 4 to 7	: Mr.S.Srinivasa Raghavan
For R – 8	: Mr.G.Aravindan



JUDGMENT

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This Second Appeal has been directed against the Judgment and decree, dated 15.12.2004 passed in A.S.No.74 of 2003 on the file of the Sub Court, Sivaganga, wherein, the Judgment and decree, dated 25.03.2003 passed in O.S.No.9 of 2001 on the file of the Principal District Munsif Court, Sivaganga, are reversed.

2.Originally, the respondents 1 & 2 herein as plaintiffs have instituted a suit in O.S.No.9 of 2001 on the file of the trial Court for the relief of declaration, injunction and mandatory injunction wherein the first appellant and the respondents 3 to 7 have been shown as the defendants.

3.Pending the suit, the first appellant died and the appellants 2 to 7 were brought on record as Legal representatives of the deceased first appellant; the fourth appellant died and the appellants 8 to 11 were brought on record as Legal representatives of the deceased fourth appellant; the fifth appellant died and the appellants 12 to 15 were brought on record as Legal representatives of



the deceased fifth appellant; further, the eighth respondent was impleaded by this Court and the second respondent died and the respondents 9 to 11 were brought on record as Legal representatives of the deceased 2nd respondent.

4.For the sake of convenience, the parties are referred to as, as described before the trial Court.

5.According to the plaintiffs, the suit property belonged to the plaintiffs, which is 'Salaikarai Kaliyamman Kovil of Kalaiyarkovil, which was donated by M.Kalaiyappa Konar, V.Kalimuthu Konar, Poochi @ Kaliyappa Konar and Muthaiah Konar. The suit property is inam property belonging to the Temple. The representatives of the plaintiff are trustees and poojaries of the plaintiff Temple. The defendants are claiming right over the property as if they have purchased the same. The defendants have created so many documents in respect of the suit properties. The defendants attempted to sell the suit property dividing it into plots. Hence, the plaintiffs have issued a legal notice on 09.10.2000. The defendants issued a reply notice with false allegations on 20.10.2000. The first defendant has trespassed into the second



item of the suit property and constructed a tiled house and remains in possession as a trespasser. Hence, the plaintiffs have filed the suit for the abovestated relief.

6.The defendants filed a written statement and refuted the allegations made by the plaintiff. The alleged inam by the plaintiffs is not related to the suit property. Originally, the suit property belonged to Sivaganga Zamindhar. The Sivaganga Raja had granted patta in P.No.204 in favour of V.Kalimuthu Konar. After the demise of V.Kalimuthu Konar his son Muthukali Konar inherited the same. After the demise of Muthukali Konar, his sons Samayanan, Muniandi and Kalimuthu inherited the property in Survey Nos.188/1 and 188/5. The first defendant purchased the lands in above survey numbers from the abovesaid three persons in the year 1978. From the date of purchase, the first defendant has been in possession and enjoyment of the property. The defendants had made cultivation in a portion of the property and the portion which is not fit for cultivation is divided into plots. Thus, the defendants have been in possession and enjoyment of the property. Samayanan, Muniyan and Kalimuthu are necessary parties in the suit. Hence, the suit is bad for non-joinder of necessary parties. Already, the defendants filed a suit against Kalailingam Pillai



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and others in O.S.No.182 of 1996 on the file of the District Munsif's Court, Sivaganga which also ended in favour of the defendants. Thus, the plaintiff has no right of title in the suit property and prayed for the dismissal of the suit.

7.Before the trial Court, on the side of the plaintiff, P.W.1 & P.W.2 were examined and Exs.A1 to A11 were marked. On the side of the defendants, P.W.1 to P.W.5 were examined and Exs.B.1 to B.46 and on the side of the Court, Exs.X.1 and X.2 were marked.

8.On the basis of the rival pleadings raised on either side, the trial Court has framed necessary issues and after analysing both the oral and documentary evidence, has dismissed the suit.

9.Against the Judgment and decree passed by the trial Court, the plaintiffs as appellants have preferred an Appeal Suit in A.S.No.74 of 2003, on the file of the first appellate Court.



10.The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, has allowed the appeal and thereby set aside the Judgment and decree passed by the trial Court. Against the Judgment and decree passed by the first appellate Court, the present second appeal has been preferred at the instance of the first defendant as appellant.

11.At the time of admitting the present second appeal, this Court had framed the following substantial questions of law for consideration:

'1.Whether the lower Appellate Court is correct in decreeing the suit by merely placing reliefs upon the document marked by the plaintiff and without considering any other documents filed by the first defendant under which he has traced title of his vendor?

2.Whether the lower Appellate Court erred in law by misdirecting itself to find the title of the suit properties against the appellant/third defendant?'



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12.The learned counsel appearing for the appellant/first defendant contended whether the lower Appellate Court can decree the suit by placing reliance on the documents marked by the plaintiffs without considering the other documents filed by the first defendant from where he traces his title from his vendor and the Appellate Court has erred in law by misdirecting itself to find the title of the suit properties against the first defendant.

13.The learned counsel appearing for the appellant/first defendant would further submit that in the first Appeal, the defendants had raised 22 points and the same has not been dealt with elaborately by the first Appellate Court and passed a cryptic order.

14.The learned counsel appearing for the appellants relied on the judgment of the Hon'ble Supreme Court in ***Malluru Mallappa Vs. Kuruvathappa and others*** reported in ***(2020) 4 SCC 313***, wherein it has been held as follows:



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'10. Section 96 of the CPC provides for filing of an appeal from the decree passed by any court exercising original jurisdiction to the court authorized to hear the appeals from the decisions of such courts. In the instant case, the appeal from the decree passed by the trial court lies to the High Court. The expression 'appeal' has not been defined in the CPC. Black's Law Dictionary (7th Edn.) defines an appeal as "a proceeding undertaken to have a decision reconsidered by bringing it to a higher authority." It is a judicial examination of the decision by a higher court of the decision of a subordinate court to rectify any possible error in the order under appeal. The law provides the remedy of an appeal because of the recognition that those manning the judicial tiers too commit errors.

11. In *Hari Shankar v. Rao Girdhari Lal Chowdhury* AIR 1963 SC 608 it was held that a right of appeal carries with it a right of re-hearing on law as well as on fact, unless the statute conferring a right of appeal limits the re-hearing in some way as has been done in second appeal arising under the CPC.

12. In *Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat* (1969) 2 SCC 74 it was held thus: '5. In the well known work of Story on Constitution (of United States), Vol. 2, Article 1761, it is stated that the essential criterion of appellate jurisdiction is that it revises and corrects the proceedings in a cause already instituted and does not create that cause. The appellate jurisdiction may be exercised in a variety of forms and, indeed, in any form in which the Legislature may AIR 1963 SC 698 1969 (2) SCC 74 choose to prescribe. According to Article 1762 the most usual modes of exercising appellate jurisdiction, at least those which are most known in the United States, are by a writ of error, or by an appeal, or by some process of removal of a suit



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from an inferior tribunal. An appeal is a process of civil law origin and removes a cause, entirely subjecting the fact as well as the law, to a review and a retrial.....'

13.It is a settled position of law that an appeal is a continuation of the proceedings of the original court. Ordinarily, the appellate jurisdiction involves a re-hearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the trial court are open for re-consideration. Therefore, the first appellate court is required to address itself to all the issues and decide the case by giving reasons. The court of first appeal must record its findings only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious application of mind and record findings supported by reasons on all issues and contentions.....

14.A first appeal under Section 96 of the CPC is entirely different from a second appeal under Section 100. Section 100 expressly bars second appeal unless a question of law is involved in a case and the question of law so involved is substantial in nature.

15. Order XLI Rule 31 of the CPC provides the guidelines for the appellate court to decide the matter. For ready reference Order XLI Rule 31 of the CPC is as under:-

"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 it is pronounced be signed and dated by the Judge or by the Judges concurring therein."

16. In Vinod Kumar v. Gangadhar (2015) 1 SCC 391, this Court has reiterated the principles to be borne in mind while disposing of a first appeal, as under:-

"15. Again in B.V. Nagesh v. H.V. Sreenivasa Murthy [(2010) 13 SCC 530 : (2010) 4 SCC (Civ) 808] , this Court taking note of all the earlier judgments of this Court reiterated the aforementioned principle with these words: (SCC pp. 530-31, paras 3-5)

"3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41 CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:

- (a) the points for determination;
 - (b) the decision thereon;
- (2015) 1 SCC 391
- (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.

4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and



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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 its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide Santosh Hazari v. Purushottam Tiwari [(2001) 3 SCC 179 : (2001) 1 SCR 948] , SCC p. 188, para 15 and Madhukar v. Sangram [(2001) 4 SCC 756] SCC p. 758, para 5.)”

17. In Shasidhar and Ors. v. Ashwani Uma Mathad and Anr. (2015) 11 SCC 269, it was held as under:-

“21. Being the first appellate court, it was, therefore, the duty of the High Court to decide the first appeal keeping in view the scope and powers conferred on it under Section 96 read with Order 41 Rule 31 of the Code mentioned above. It was unfortunately not done, thereby, causing prejudice to the appellants whose valuable right to prosecute the first appeal on facts and law was adversely affected which, in turn, deprived them of a hearing in the appeal in accordance with law.”

18. It is clear from the above provisions and the decisions of this Court that the judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons. Even when the first appellate court affirms the judgment of the trial court, it is required to comply (2015) 11 SCC 269 with the requirement of Order XLI Rule 31 and non-observance of this requirement



leads to infirmity in the judgment of the first appellate court. No doubt, when the appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by trial court. Expression of a general agreement with the reasons given by the trial court would ordinarily suffice.

19. Keeping in mind the above principles, let us examine the present case. As stated above, the issue relating to readiness and willingness of the plaintiff to perform his part of the contract and issue relating to limitation were held against the plaintiff and the suit was accordingly dismissed. The appeal before the High Court involved both disputed questions of law and fact. The High Court without examination of any of these aspects has dismissed the appeal by a cryptic order. The court below has neither reappreciated the evidence of the parties, nor it has passed a reasoned order. The High Court has failed to follow the provisions of Order XLI Rule 31 of the CPC while deciding the appeal. Mr. Bhat has argued that the suit was well within time under Article 54 of the Schedule to the Limitation Act. Even this question has not been examined in its proper perspective.'

15.The learned counsel appearing for the first respondent/plaintiff reiterated the averments made in the plaint and the appeal and submitted that the Appellate Court has rightly allowed the appeal.



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16. Heard the learned counsel appearing for the appellants and the learned counsels appearing for the respondents and perused the materials available on record.

17. On perusal of the materials available on record, it is seen that even though the Appellate Court has pointed out that the trial Court has not considered the following points which were recited by the first defendant as 22 in number and in the Judgment it has been incorporated, but framed only two questions of law '1. Whether the Judgment and Decree of the trial Court is liable to be set aside and 2. to what other relief'. Further, it is seen that the Appellate Judge has not considered any other points which were raised by the parties in the first Appeal, but proceeded to state that based on the Advocate Commissioner's report and analysing Exs.C.1 and C.2 along with Ex.A.1, four boundaries are correct and there is no deviation at all. Thus, the plaintiffs have properly identified the properties in Ex.A.1. Even though there is no survey number or pymash number in Ex.A.1 since it is an ancient document. The four boundaries in Ex.A.1 is correlated in Ex.C.1 and Ex.C.2 and stated that the suit property



belongs to the Temple. Further, stated that since the property vests with the Temple, it cannot be reverted back to any other person as they are statutorily barred. Regarding non-joinder of the parties, as they are only representatives of the people who donated the suit property to the Temple. Further stated that no individual can be conferred title through possession. Even though the first defendant's possession is admitted and sale deeds are executed, the first defendant cannot confer any title since the suit property is a Temple property. Admittedly, the first defendant has been in possession and enjoyment of the second item of the suit property in Survey No.188/5 and the first item of the suit property is with the plaintiff's Temple and they are entitled for injunction. It is further stated that as far as the other documents are concerned, which need not be discussed and considered since the suit land belonged to the Temple and set aside the judgment and decree passed by the trial Court.

18.The first Appellate Court has to set out points for determination, record the decision and give its own reasons. Even when the first Appellate Court affirms the Judgment of the trial Court, it is required to comply with the requirement of Order 41 Rule 31 and non-observance of this requirement leads to infirmity in the Judgment



of the first Appellate Court and having the above principles, when there is an issue relating to be considered and the disputed facts of law has also to be considered by the first Appellate Court. The first Appellate Court without examination of any of these aspects has allowed the appeal by a cryptic order and the court below has to consider the points and then examine the same and pass appropriate orders. Hence, this Court is of the view that as it is found that the judgment of the first Appellate Court is a cryptic order and the issues were not considered and properly answered, this Court is inclined to remand the matter back to the first Appellate Court to decide the issue elaborately.

19.In the result, this Second Appeal is allowed and the judgment and decree dated 15.12.2004 passed in A.S.No.74 of 2003 on the file of the Sub Court, Sivaganga is set aside and the matter is remanded back to the first Appellate Court. The first Appellate Court shall decide the issue elaborately and consider the issues raised by the parties, after giving appropriate opportunity to the parties to putforth their arguments and defence and dispose of the same within a period of six months from the date of receipt of a copy of this judgment. Whoever impleaded in the Second Appeal are also become parties before the first Appellate Court and they can also contest the same, by



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proceeding further in the manner known to law. Further, the learned counsel appearing for the appellant/first defendant would submit that only three boundaries are tallied and not four boundaries, as pointed out by the Appellate Court. All the contentions raised by the parties are left open before the first Appellate Court for consideration. No costs. Consequently, connected Miscellaneous Petition is closed.

24.10.2024

Index : Yes/No
Internet : Yes/No
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To

- 1.The Principal District Munsif Court,
Sivaganga.
- 2.The Sub Court,
Sivaganga.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN, J.

ps

Judgment made in
S.A(MD)No.171 of 2005

24.10.2024