



S.A.(MD) No.473 of 2005

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.(MD) No.473 of 2005

Rakkappan

... Appellant

-VS-

Sellammal

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 28.11.2003, passed in A.S.No.6 of 2002 on the file of Subordinate Court, Paramakudi, confirming the judgment and decree, dated 31.10.2001, passed in O.S.No.102 of 2000 on the file of District Munsif Court, Paramakudi.

For Appellant : Mr.S.Srinivasa Ragavan



S.A.(MD) No.473 of 2005

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For Respondent : Mr.S.Anand Chandrasekar
for M/s.Sarvabhauman Associates.

JUDGMENT

The defendant in the suit is the appellant. The respondent herein filed a suit for declaration of title, recovery of possession and also for permanent injunction, restraining the defendant from putting up any construction in the suit property. The suit was partly decreed by the trial Court by granting declaration and recovery of possession in respect of K,L,M,N,P,Q,D,K portion, as noted by the Advocate Commissioner in his report and plan. The trial Court also granted permanent injunction, restraining the defendant from putting up any construction in the said area. The suit was dismissed by the trial Court in respect of the rest of the suit property. Aggrieved by decree against him, the defendant preferred an appeal in A.S.No.6 of 2002 on the file of Sub-Court, Paramakudi. On his part, the plaintiff also questioned the negatived portion in Cross-Appeal No.6 of 2002. The first appellate



S.A.(MD) No.473 of 2005

WEB COPY

Court affirmed the findings of the trial Court and dismissed the appeal as well as the Cross-Appeal. Aggrieved by the same, the defendant alone filed this Second Appeal and the plaintiff has not questioned the dismissal of the Cross-Appeal either by filing an independent second appeal or by filing a cross-appeal in the Second Appeal preferred by the appellant.

2. According to the respondent/plaintiff, the suit property originally belonged to one Kuppachi under a sale deed, dated 16.04.1912, and after the death of Kuppachi, her only daughter – Muthayee succeeded to the suit property. The said Muthayee died 50 years prior to the filing of the suit and after her death, the respondent/plaintiff got the suit property as the sole heir and she had been enjoying the same. Patta for the suit property was also issued in the name of the plaintiff. It was asserted by the plaintiff that she and her predecessor-in-interest had been enjoying the suit property openly and continuously for more than statutory period and also got the prescriptive title. The defendant, without



S.A.(MD) No.473 of 2005

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having any manner of right, claimed the right over the portion of the suit property on the northern and western side and started constructions. When the plaintiff was out of village, the defendant encroached the portion of the suit property and put up a wall. After returning to the village, the plaintiff questioned the defendant and requested him to remove the encroachment, but in vain. Therefore, the plaintiff was constrained to file a suit for declaration of title and recovery of vacant possession. The plaintiff also sought for injunction, restraining the defendant from putting up any further construction in the suit property.

3. The defendant filed a written statement and resisted the suit, by denying the title and possession of the plaintiff over the suit property. Nali Chettiappa Konar settled the eastern half to his brother Krishna Konar and western half to other brother Kalaimuthu Konar under a gift deed. At the time of death of Krishna Konar, his heirs Nemmeli and others succeeded to the suit property. The defendant, under permission from them, had been in



S.A.(MD) No.473 of 2005

possession and enjoyment of the suit property. Patta for the portion of the suit property under the possession of the defendant was also issued in his name. The defendant also claimed that he had been in possession and enjoyment of the suit property for more than statutory period openly and continuously and hence got prescriptive title over the same. On these pleadings, the defendant sought for dismissal of the suit.

4. Before the trial Court, the plaintiff was examined as P.W.1 and 5 documents were marked on her side as Exs.A-1 to A-5. The defendant was examined as D.W.1 and 3 documents were marked on his side as Exs.B-1 to B-3. The Advocate Commissioner's Report and Plan were marked as Exs.C-1 and C-2.

5. The trial Court, on consideration of the evidence available on record, came to the conclusion that the plaintiff was entitled to declaration, recovery of possession and also injunction



S.A.(MD) No.473 of 2005

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as prayed for in respect of K,L,M,N,P,Q,D,K portion, as noted by the Advocate Commissioner in his Plan, Ex.C-2. Aggrieved by the said decree, the defendant preferred an appeal in A.S.No.6 of 2002 on the file of Sub-Court, Paramakudi. Aggrieved by the negatived portion, the plaintiff also filed Cross-Appeal No.6 of 2002 on the file of the said Court. The first appellate Court, considering the evidence available on record, dismissed both the first appeal filed by the appellant herein and the cross-appeal filed by the respondent. Aggrieved by the same, the defendant has come by way of this Second Appeal.

6. At the time of admission, this Court formulated the following substantial questions of law, by an order, dated 16.06.2005 :

1. Whether the Courts below have not properly appreciated the evidence on record to reach just conclusion as mandated under law ?



S.A.(MD) No.473 of 2005

WEB COPY

2. Whether the findings of the lower Courts are perverse in nature, warranting interference by this Court ?

7. The learned counsel appearing for the appellant, by taking this Court to the judgment of the first appellate Court, submitted that the first appellate Court had not framed any point for determination and considered the real issue or controversy between the parties by appreciating the evidence available on record. The learned counsel also submitted that the first appellate Court simply confirmed the findings of the trial Court without independently discussing the evidence available on record and, therefore, the judgment and the decree passed by the first appellate Court cannot be treated as a judgment and a decree in the eye of law.

8. The learned counsel appearing for the respondent submitted that the first appellate Court, on consideration of



S.A.(MD) No.473 of 2005

WEB COPY

evidence available on record, agreed with the conclusions reached by the trial Court and, therefore, no detailed reasons are given in the judgment. The learned counsel further submitted that only in cases where the findings of the trial court are reversed, the first appellate Court is under an obligation to give separate reasons and when it agrees with the findings of the trial Court, the first appellate Court is not expected to give detailed reasonings.

9. A perusal of the judgment of the first appellate Court would suggest that it simply affirmed the findings of the trial Court without independently considering the oral and documentary evidence available on record. The first appellate Court is the final Court of fact and it is expected to consider the controversies arising for consideration based on the evidence available on record, by applying its mind independently. Only after analysing the evidence on record independently, the first appellate Court can either affirm or reverse the findings of the trial Court. Even if it confirms the judgment of the trial Court, the first appellate Court



S.A.(MD) No.473 of 2005

WEB COPY

is not expected to express its general agreement with the trial Court findings and dispose of the appeal without discussing the evidence independently. The finding of first appellate court with regard to it's agreement with trial Court's finding shall be supported by reasoning based on independent analysis of evidence. Therefore, the mandate under Order 41 Rule 31 of the Code of Civil Procedure had not been followed by the first appellate Court. In fact, the mandate under Order 41 Rule 31 of the Code of Civil Procedure was totally ignored by the first appellate Court by its failure to consider the evidence available on record, independently. Hence, the judgment passed by the first appellate Court cannot be treated as a judgment in the eye of law and the same is liable to be set aside. The substantial questions of law, framed at the time of admission, are answered in favour of the appellant and the Second Appeal stands allowed, by setting aside the judgment and the decree passed by the first appellate Court. No costs.



S.A.(MD) No.473 of 2005

WEB COPY

10. Since this Court has come to the conclusion that the judgment passed by the first appellate Court cannot be treated as a judgment in the eye of law, the entire judgment is set aside even though there is no cross-appeal by the respondent in respect of the portion of the judgment passed by the first appellate Court, which is against her, by invoking its power under Order 41 Rule 33 of CPC. Therefore, the judgment and the decree passed by the first appellate Court are set aside and the matter is remanded to the file of first appellate Court for fresh consideration. Both the appellant and the respondent are entitled to advance arguments in the appeal as well as cross-appeal. The first appellate Court is directed to dispose of the matter as expeditiously as possible.

26.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

dixit



S.A.(MD) No.473 of 2005

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To:

- 1.Subordinate Judge,
Paramakudi.
- 2.District Munsif,
Paramakudi.
- 3.Section Officer,
V.R. Section,
Madurai Bench of Madras High Court.



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S.A.(MD) No.473 of 2005

S.SOUNTHAR, J.

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S.A.(MD) No.473 of 2005

26.07.2024