



S.A.No.1343 of 2000

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.1343 of 2000

V.Gandhi

... Appellant

-VS-

Periannan (died)

2.N.Menaka

3.R.Kesavan

... Respondents

(R-2 is brought on record as LR of the deceased sole respondent vide Court Order dated 19.04.2022 in CMP(MD) Nos.870 to 872/2019)

(R-3 is impleaded vide Court Order dated 01.02.2023 in CMP(MD) No.342 of 2023)

PRAYER: Appeal against the judgment and decree, dated 11.11.1999, passed in A.S.No.62 of 1997 on the file of Second Additional Subordinate Judge, Madurai, confirming the judgment and decree, dated 12.11.1996, passed in O.S.No.32 of 1989 on the file of District Munsif, Melur.



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For Appellant : Mrs.P.Jessi Jeeva Priya

For Respondent 1 : Died

For Respondent 2 : No appearance

For Respondent 3 : M.L.Shaji Chellan

JUDGMENT

The defendant in the suit is the appellant. The deceased first respondent filed a suit for declaration and injunction in respect of the northern 16 cents and for bare injunction in respect of the remaining southern 16 cents of the suit property. The suit was decreed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the defendant has come by way of this Second Appeal.

2. Pending the Second Appeal, the first respondent/plaintiff passed away and his legal representative was brought on record as the second respondent. The third respondent is a pendente lite purchaser of the suit property from the respondents 1 and 2 and hence he was impleaded as the third respondent in this Second Appeal.



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3. According to the plaintiff, the suit property originally belonged to one Valavandan Servai and after his death, his brother's sons namely, Ramachandran and Shanmugam filed a suit for partition in respect of the suit property against Valavandan Servai's daughters in O.S.No.55 of 1954. The said suit was compromised. In the compromise decree, the northern 16 cents of the property was allotted to the share of the plaintiffs therein, namely, Ramachandran and Shanmugam and the southern 16 cents of the suit property was allotted to the share of the defendants 1 and 2 therein, namely, Karuppayee Ammal and Vala Ramiah, the grandchildren of Valavandan Servai. The plaintiff purchased the suit property from the above said Ramachandran's daughter and Shanmugam on 09.06.1988 under Ex.A-11. It was the specific case of the plaintiff that he was a cultivating tenant of the entire suit property during the lifetime of Valavandan Servai. The plaintiff has been paying rent to Karuppayee Ammal, Ramchandran and Shanmugam after the compromise decree. The plaintiff also recorded his name as the cultivating tenant under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act. The defendant, claiming himself as a purchaser of the suit property from the husband of Karuppayee Ammal and Vala Ramiah, attempted to interfere with the possession of the plaintiff and hence he was constrained to file the suit for the above said relief.



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4. The defendant filed a written statement, denying the right as well as the possession of the plaintiff over the suit property. The defendant claimed that he purchased the entire 32 cents of the suit property under a registered sale deed, 30.11.1987, and he has been in possession and enjoyment of the suit property. The various averments made by the plaintiff with regard to his cultivating tenancy rights and his possession over the suit property were denied in the written statement.

5. Before the trial Court, the plaintiff was examined as P.W.1 and yet another witness was examined as P.W.2. On behalf of the plaintiff, 36 documents were marked as Exs.A-1 to A-36. The defendant was examined as D.W.1 and an independent witness was examined as D.W.2. 7 documents were marked on the side of the defendant as Exs.B-1 to B-7.

6. The trial Court, on appreciation of the evidence on record, came to a conclusion that the plaintiff proved his cultivating tenancy right as well as the possession over the suit property and granted a decree as prayed for. The trial Court also held that the plaintiff proved his title over the northern 16 cents and his position as cultivating tenant in respect of the southern 16



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cents and granted a decree as prayed for. Aggrieved by the same, the defendant preferred an appeal. The first appellate Court affirmed the findings of the trial Court and dismissed the first appeal. Challenging the concurrent findings of the Courts below, the defendant is before this Court.

7. At the time of admission, this Court formulated the following substantial questions of law, by an order, dated 14.09.2000 :

(1) Whether the judgment of lower Appellate Court is vitiated by reason of its failure to render its own findings independently of the findings rendered by the Trial Court ?

(2) Whether the reasonings given by the lower Appellate Court that simply because it was found that the Trial Court had taken a correct decision after clearly discussing the matter after the examination of witness on both sides, and after marking the documents, can be a ground to dismiss the appeal preferred by the aggrieved party consequent to the judgment of the Trial Court ?

(3) Can the First Court of appeal give a judgment concurring with the judgment of Trial Court, without any discussion on the merits of the case, and also without analysing the pleadings, the evidence and other materials available on record and without coming to a conclusion on its own independently of findings rendered by the Trial Court ?



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(4) Has not the failure to frame the points for determination as provided under Order XLI Rule 31 of Code of Civil Procedure vitiated the entire judgment ?

8. The learned counsel for the appellant, by taking this Court to the judgment of the first appellate Court, submitted that the first appellate Court failed to appreciate the evidence on record independently but simply affirmed the findings of the trial Court without any discussion and hence the judgment passed by the first appellate Court is vitiated for non-compliance of the mandate under Order 41 Rule 31 of the Civil Procedure Code.

9. The learned counsel for the respondent submitted that the trial Court discussed the oral and documentary evidence available on record in detail and gave a finding that the plaintiff proved his title over the northern 16 cents and his possession as cultivating tenant on the southern 16 cents and that the first appellate Court, taking into consideration the entire evidence available on record, affirmed the findings of the trial Court; therefore, the mandate under Order 41 Rule 31 of the Civil Procedure Code has been substantially complied with and hence the findings reached by the first appellate Court need not be interfered with.



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10. A perusal of the judgment of the first appellate Court would reveal that after extracting the issues framed by the trial Court, it framed a point for consideration in the appeal, which reads as follows :

(a) Whether the appeal is liable to be allowed ?

11. The point for determination framed by the first appellate Court is very vague and the issues arising for consideration in the lis have not been taken into consideration by the first appellate Court. Even if the points for consideration are not properly framed, if the issues arising for consideration are considered by the first appellate Court satisfactorily by referring to the evidence available on record, it would amount to substantial compliance of Order 41 Rule 31 of the Civil Procedure Code.

12. In the case on hand, the plaintiff claims declaration and injunction in respect of the northern 16 cents and the relief of bare injunction in respect of the southern 16 cents. The plaintiff claimed himself as a cultivating tenant of the entire suit property and subsequently he appeared to have purchased the northern 16 cents under Ex.A-11. The title of the plaintiff in respect of the northern 16 cents and his alleged possession in respect of the



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southern 16 cents as a cultivating tenant are very much under dispute. The first appellate Court, as a final Court of facts, is expected to apply its mind independently on the oral and documentary evidence available on record and come to a conclusion with regard to all the issues arising for consideration. It would be appropriate to refer to the decision of Apex Court in **H.Siddiqui vs. A.Ramalingam, reported in AIR 2011 SC 1492**, in this regard. The relevant observation of Apex Court reads as follows :

"Order XLI, Rule 31 CPC:

18. The said provisions provide guidelines for the appellate court as to how the court has to proceed and decide the case. The provisions should be read in such a way as to require that the various particulars mentioned therein should be taken into consideration. Thus, it must be evident from the judgment of the appellate court that the court has properly appreciated the facts/evidence, applied its mind and decided the case considering the material on record. It would amount to substantial compliance of the said provisions if the appellate court's judgment is based on the independent assessment of the relevant evidence on all important aspect of the matter and the findings of the appellate court are well founded and quite convincing. It is mandatory for the appellate court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final court of fact, the first appellate court must not record mere general



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13. In the light of the law laid down by the Apex Court in the above mentioned case law, if we look at the case on hand, in this case, the first appellate Court simply observed that the trial Court discussed the evidence available on record properly and came to a correct conclusion and hence the findings of the trial Court need not be interfered with. The conclusion reached by the first appellate Court, while affirming the findings of the trial Court, is not a result of re-appreciation of oral and documentary evidence available on record. The first appellate Court, without discussing and re-appreciating the evidence available on record, simply, by way of a non-speaking order, affirmed the findings of the trial Court. As such, the mandate under Order 41 Rule 31 of the Civil Procedure Code is not at all complied with in this case. Therefore, the judgment of the first appellate Court is liable to be set aside for its failure to comply with the mandate under Order 41 Rule 31 of C.P.C.



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14. Accordingly, all the substantial questions of law, framed at the time of admission are answered in favour of the appellant and the Second Appeal is allowed, by setting aside the judgment and decree passed by the first appellate Court. The matter is remanded back to the file of the first appellate Court with a direction to dispose of the first appeal on merits independently, by considering the oral and documentary evidence available on record and pass a reasoned judgment as per the mandate under Order 41 Rule 31 of the Civil Procedure Code. No costs.

15. Taking into consideration, this is a three decade old litigation, the first appellate Court is directed to dispose of the first appeal within a period of six months from the date of receipt of this order.

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NCC : Yes
Index : Yes
Internet : Yes

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To:

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



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S.SOUNTHAR, J.

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