



S.A.No.301 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 19.06.2025

PRONOUNCED ON : 25.07.2025

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

S.A.No.301 of 2009

1. C.K.Ganesan
S/o. K.Krishnasamy Mudaliar

2.C.K.Kandasamy (died)
Rep. By Legal Representatives
Seshammal

3.K.Srinivasan

Appellant(s)

Vs

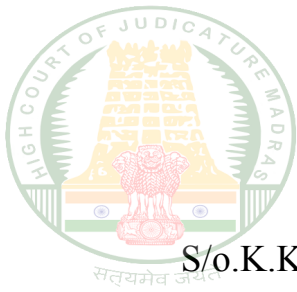
1. Thandavamoorthy
S/o.Chinnappa Mudaliar

2.Lakshmi Ammal
W/o. Thandavamoorthy

3.I.Savithri
W/o. C.K.Gopal Mudali

4.Padmavathi
W/o. K.Sampath

5.C.K.Rajaram @ Rajadurai



S.A.No.301 of 2009

S/o.K.Krishnasamy Mudaliar

6.Sarojammal
W/o. Venugopal

Respondent(s)

Prayer: Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree made in A.S.No.28 of 2007 dated 12.03.2008 on the file of Subordinate Judge, Ranipet, reversing the judgment and decree made in O.S.No.32 of 1989 dated 28.02.2006 on the file of the District Munsif, Sholinghur.

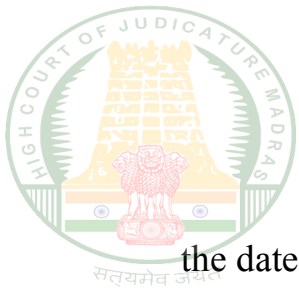
For Appellants : Mr.T.R.Rajaraman

For Respondents : Mr.K.Venkata Subban for
M/s.Sarvabhauman Associates

JUDGMENT

The third defendant in O.S. No.32 of 1989 and the legal representatives of the sixth defendant in the said suit are appellants herein.

2. O.S. No. 32 of 1989 had been filed by the plaintiff, K. Krishnasamy Mudaliyar, seeking a declaration regarding his title to the suit schedule property and to direct the defendant to deliver vacant possession of the property and also to account for future damages from the date of the suit till



S.A.No.301 of 2009

the date of delivery of possession and for costs of the suit.

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3. The property was a terraced shop at Sholingur town in Walajah Taluk in the present Ranipet district. Even before stating about the pleadings, it must be pointed out that pending the suit, K. Krishnasamy Mudaliyar died, and his legal representatives had been brought on record as the second plaintiff and as third to sixth defendants. The second plaintiff C.K.Gopal Mudhali also died during the pendency of the suit, and his legal representatives had been brought on record as plaintiffs 3 and 4.

4. In the plaint, it has been stated that the suit property belonged to the plaintiff and that he had also constructed a shop but did not fix the doors. It had been contended that the first and second defendants obstructed his enjoyment of the plaintiff of the shop premises and also encroached into the same on 07.02.1989 and put up doors by themselves. It was under those circumstances that the suit was filed seeking declaration of title over the said shop and for recovery of possession.

5. In the written statement, the first and second defendants questioned



S.A.No.301 of 2009

the right and title of the plaintiffs and stated that the first defendant had constructed the shop in poromboke land in the year 1986. It was stated that the shop was situated in Kulam poromboke land, which belonged to the Government. It had been also stated that the plaintiff has no right to seek recovery of possession and that the defendants are in possession in their own right. An additional written statement was filed on behalf of the first defendant, questioning the plaintiff's right to seek damages for use and occupation. On the basis of the pleadings, the District Munsif Court at Sholingur framed the following issues:

- 1. Whether the plaintiff is entitled for declaration of title over the suit-schedule property?*
- 2. Whether the suit-schedule property was constructed on Government poramboke land, as contended by the defendants?*
- 3. Whether the suit-schedule property is in the possession of the plaintiff?*
- 4. Whether the suit-schedule property is in the possession of the defendant?*
- 5. Whether the suit is barred for non-joinder of necessary parties?*
- 6. Whether the plaintiff is entitled for the relief of*



permanent injunction?

7. To what other reliefs does the plaintiffs are entitled to?

6. The learned District Munsif had thereafter framed further additional issues.

- 1. Whether the plaintiff is entitled for the relief of declaration as sought in the plaint?*
- 2. Whether the plaintiff is entitled for the recovery of possession?*
- 3. Whether the suit property is situated in Kulam poromboke land?*
- 4. Whether the claim of the plaintiff that he had constructed the shop is true and correct?*
- 5. Whether the defendant is liable to render accounts and for damages for use and occupation?*

7. During the course of trial, on the side of the plaintiff, R.Sampath was examined as PW1. On the side of the defendants, C. Thandavamurthy /1st defendant, K. Ganesan/3rd defendant and Kandasamy/6th defendant were examined as DW1 to DW3. The plaintiff marked Exhibits A1 to A4. The defendants marked Exhibits B1 to B9. During the trial, Exhibits C1 to C4 were also marked as Court documents.

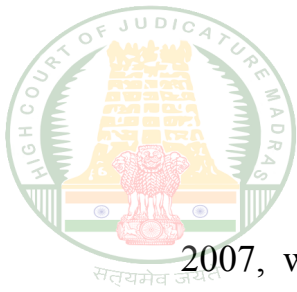


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8. Based on the pleadings and oral and documentary evidence, the learned District Munsif, by judgment dated 28.02.2006, granted a decree directing the first and second defendants to hand over vacant possession of the suit property within a period of one month and also granted the relief of permanent injunction and directed separate proceedings to be initiated for the relief of mesne profits and damages and also granted costs.

9. It must be pertinent to point out that possession was directed to be handed over to the legal representatives of the second plaintiff, who had been subsequently impleaded, namely the legal representatives of C.K.Gopal Mudhali, who had been impleaded as the third and fourth plaintiffs. The other legal representatives of the first defendant, K. Kandasamy Mudaliyar, had been impleaded as the third to sixth defendants. It was not directed that the first and second defendants should hand over vacant possession to the legal representatives of the first plaintiff, who had been impleaded as the third to sixth defendants.

10. Thereafter, the first and second defendants filed A.S. No. 28 of



S.A.No.301 of 2009

2007, which came up for consideration before the Sub-Court at Ranipet.

Again, the other legal representatives of the first plaintiff, who had been impleaded as the third to sixth defendants in the suit and to whom recovery of possession was not granted, did not file any appeal or file any cross-objection. The learned Sub-Judge, by judgment dated 12.03.2008, framed points for consideration, re-examined the evidence adduced, and finally concluded that there were no merits in the Appeal Suit and dismissed the appeal.

11. The first and second defendants, who had suffered a decree before the trial court and also suffered a dismissal of their first appeal, have not filed the present Second Appeal. On the other hand, the legal representatives of the first plaintiff, who had been impleaded as the third to sixth defendants, have filed the present Second Appeal. The Second Appeal has not been admitted; notice alone has been directed. During the course of hearing, this Court raised the issue of maintainability of the Second Appeal and the locus of the appellants to file the Second Appeal. They have not suffered a decree. They have not filed the First Appeal. They were defendants in the suit and they were respondents in the First Appeal.



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12. The Learned counsels were requested to answer the issue of maintainability. Reference was made to the judgment of the Honorable Supreme Court in the case of ***Banarasi and Others Vs. Ram Phal*** reported in (2003) 9 SCC 606, with specific reference to paragraphs 8, 9, 10, 11, and 12.

*“8. Sections 96 and 100 of the CPC make provision for an appeal being preferred from every original decree or from every decree passed in appeal respectively; none of the provisions enumerates the person who can file an appeal. However, it is settled by a long catena of decisions that to be entitled to file an appeal the person must be one aggrieved by the decree. Unless a person is prejudicially or adversely affected by the decree he is not entitled to file an appeal (See ***Phoolchand and Anr. v. Gopal Lal***, [1967] 3 SCR 153; ***Smt. Jatan Kanwar Golcha v. M/s Golcha Properties (P) Ltd.***, [1970] 3 SCC 573; ***Smt. Ganga Bai v. Vijay Kumar and Ors.***, [1974] 2 SCC 393. No appeal lies against a mere finding. It is significant to note that both Sections 96 and 100 of the CPC provide for an appeal against decree*



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S.A.No.301 of 2009

and not against judgment.

9. Any respondent though he may not have filed an appeal from any part of the decree may still support the decree to the extent to which it is already in his favour by laying challenge to a finding recorded in the impugned judgment against him. Where a plaintiff seeks a decree against the defendant on grounds (A) and (B), any one of the two grounds being enough to entitle the plaintiff to a decree and the Court has passed a decree on ground (A) deciding it for the plaintiff while ground (B) has been decided against the plaintiff, in an appeal preferred by the defendant, in spite of the finding on ground (A) being reversed the plaintiff as a respondent can still seek to support the decree by challenging finding on ground (B) and persuade the appellate court to form an opinion that in spite of the finding on ground (A) being reversed to the benefit of defendant-appellant the decree could still be sustained by reversing the finding on ground (B) though the plaintiff-respondent has neither preferred an appeal of his own nor taken any cross objection. A right to file cross objection is the exercise of right to appeal though in a different form. It was



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S.A.No.301 of 2009

*observed in **Sahadu Gangaram Bhagade v. Special Deputy Collector. Ahmednagar and Anr., [1971] 1 SCR 146** that the right given to a respondent in an appeal to file cross objection is a right given to the same extent as is a right of appeal to lay challenge to the impugned decree if he can be said to be aggrieved thereby. Taking any cross objection is the exercise of right of appeal and takes the place of cross-appeal though the form differs. Thus it is clear that just as an appeal is preferred by a person aggrieved by the decree so also a cross objection is preferred by one who can be said to be aggrieved by the decree. A party who has fully succeeded in the suit can and needs to neither prefer an appeal nor take any cross objection though certain finding may be against him. Appeal and cross-objection - both are filed against decree and not against judgment and certainly not against any finding recorded in a judgment. This was well-settled position of law under the unamended CPC.*

*10. CPC Amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended **Order 41 Rule 22 sub-rule (1)** a party in whose*



WEB COPY



S.A.No.301 of 2009

*favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross objection. However, **the insertion made in the text of sub-rule (1) makes it permissible to file a cross objection against a finding.** The difference which has resulted we will shortly state. A respondent may defend himself without filing any cross objection to the extent to which decree is in his favour; **however, if he proposes to attack any part of the decree he must take cross objection.** The amendment inserted by 1976 amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:-*

- (i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent;*
- (ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent;*
- (iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes*



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S.A.No.301 of 2009

against the respondent.

11. In the type of case (i) it was necessary for the respondent to file an appeal or take cross objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross objection. The law remains so post amendment too. In the type of cases (ii) and (iii) pre-amendment CPC did not entitle nor permit the respondent to take any cross objection as he was not the person aggrieved by the decree. Under the amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross objection laying challenge to any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross objection; the amendment made in the text of sub-rule (1), read with the explanation newly inserted, gives him a right to take cross objection to & finding recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross objection is spelled out by sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for



WEB COPY



S.A.No.301 of 2009

default the cross objection taken to any finding by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC. In pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any finding recorded against the respondent.

12. The fact remains that to the extent to which the decree is against the respondent and he wishes to get rid of it he should have either filed an appeal of his own or taken cross objection failing which the decree to that extent cannot be insisted on by the respondent for being interfered, set aside or modified to his advantage.”

(Emphasis supplied)

13. It is thus seen that in the absence of a cross-objection or cross-appeal, grant of any relief to the appellants would be without jurisdiction. The Appellate Court cannot grant any relief, even in exercise of power under Order 41 Rule 33 CPC. It has been very specifically held that there are limitations on the exercise of appellate power. An appeal can lie only against a decree and not against a judgment or any findings, and only a person who

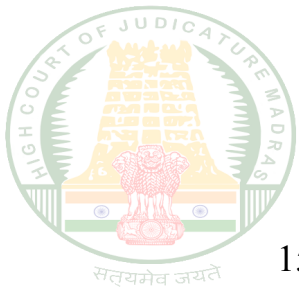


S.A.No.301 of 2009

is aggrieved by a decree is entitled to file an appeal.

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14. In the instant case, the suit had been filed by one plaintiff. He died pending the suit. One of his legal representative had been impleaded as the second plaintiff, and other legal representatives had been impleaded as third to sixth defendants. The second plaintiff also died, and his legal representatives were impleaded as third and fourth plaintiffs. The suit had been filed seeking recovery of possession and declaration of title. The suit was decreed. The first and second defendants were directed to hand over vacant possession to the plaintiffs, namely third and fourth plaintiffs, who alone survived the suit. The third to sixth defendants, who are also legal representatives of the original plaintiff, did not protest against the decree. In fact, they were examined on behalf of the defendants during the trial. They did not file a First Appeal or even cross objection seeking possession to be handed over to them of the suit-scheduled property. The first and second defendants alone filed the first appeal, which was also dismissed. It is clear that the appellants herein have no locus to question that particular decree, having not participated effectively either before the trial court or before the first appellate court.



S.A.No.301 of 2009

15. Reference could also be made to the judgment of a learned Single Judge of this Court in *Tata Steel Limited Vs. V.V.Minerals and Others* reported in **2010 (1) MWN (Civil) 195**, wherein the learned Single Judge placed reliance on the judgment of the Hon'ble Supreme Court reported in **(2003) 9 SCC 606** referred supra.

16. It is thus clear that the appellants have no locus to file the Second Appeal. The Second Appeal has not been admitted. Notice alone has been directed. No question of law arises. Both the Courts below had concurrently held that the plaintiff, who had instituted the suit, had title to the property and had put up a shop which was the subject matter of the suit, and that the first and second defendants had encroached upon the suit property. Since no substantial question of law arises, the Second Appeal stands dismissed. Additionally it is also held that the appellants have no locus to maintain the appeal, and even under Order 41 Rule 33 CPC, no relief can be granted to them. There shall be no order as to costs.

25.07.2025

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No



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S.A.No.301 of 2009

C.V.KARTHIKEYAN, J.
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Pre-Delivery Judgment in
S.A.No.301 of 2009

25.07.2025