C. Chinnasamy Vs M.C. Murugan

Court: Madras High Court

Date of Decision: April 25, 2013

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 7 Rule 11(a), Order 8 Rule 3, Order 8 Rule 4, Order 8 Rule 5, 100
Evidence Act, 1872 â€" Section 92

Citation: (2013) 8 MLJ 530

Hon'ble Judges: G. Rajasuria, J

Bench: Single Bench

Advocate: K. Premkumar, for the Appellant;

Final Decision: Dismissed

Judgement

G. Rajasuria, J.
This second appeal is filed by the defendant animadverting upon the judgment and decree dated 17.12.2012 passed by

the Principal District Judge, Krishnagiri, confirming the judgment and decree dated 16.12.2011 passed by the District Munsic Court, Pochampalli,

in O.S. No. 49 of 2009, which is one for declaration and permanent injunction. The parties, for the sake of convenience, are referred to hereunder

according to their litigative status and ranking before the trial Court.

2. A summation and summarisation of the relevant facts, which are absolutely necessary and germane for the disposal of this appeal, in a few broad

strokes can be encapsulated thus:

(i) The respondent herein, as plaintiff, filed the suit for declaration of title over the suit property and for permanent injunction so as to restrain the

defendant from interfering with his peaceful possession and enjoyment of the same.

(ii) The defendant resisted the suit by filing the written statement.

(iii) Whereupon issues were framed. Up went the trial, during which, the plaintiff examined himself as P.W. 1 along with P.W. 2 and marked Exs.

A1 to A5. The defendant examined himself as D.W. 1. and marked Exs. B1 to B7.

(iv) Ultimately the trial Court decreed the suit, as against which, the appeal was filed for nothing but to be dismissed by the first appellate Court,

confirming the judgment and decree of the trial Court.

3. Challenging and impugning the judgments and decrees of both the Courts below, this second appeal has been filed by the defendant on various

grounds also suggesting the following substantial questions of law:

1. Whether the Courts below are right in decreeing the suit without any pleadings with regard to the item No. 1 and 2 of the suit properties?

2. Whether the Courts below are right in decreeing the suit when the plaintiff admittedly failed to produce records to show his possession over the

suit properties ever since the date of his alleged purchase under Ex. P1-Sale deed dt. 5.6.2008?

3. Whether the Courts below are right in entertaining the suit without any cause of action in violation of or VII Rule 11(a) of CPC?

(extracted as such)

4. At the outset itself, I would like to narrate the brief indubitable and indisputable or at least the uncontradicted facts as under:

(a) The plaintiff and the defendant being the sons of Chinnamolagu Naidu sold jointly the suit property vide two sale deeds-Ex. A1 and Ex. A2

dated 14.11.1994. The purchaser was doing Quary work there in the suit property.

(b) Subsequently, as per Ex. A3-the sale deed dated 5.6.2008, the plaintiff alone purchased the suit property. According to the plaintiff, it was he

who paid tax to the suit property vide tax receipts-Exs. A4 dated 25.2.1010 and Ex. A5 dated 8.6.2009 and he has been in possession and

enjoyment of the suit property.

(c) While so, the defendant being the brother, attempted to barge into it and disturb the possession and enjoyment of the suit property by the

plaintiff.

(d) Whereas the precise case of the defendant was to the effect that the sale deeds Ex. A1 and A2 cannot be construed as sale deeds, but only as

lease deeds and in fact, as on the date of filing of the suit, the plaintiff and defendant have been in possession and enjoyment of the same.

(e) Over and above that one other person filed a separate suit O.S. No. 264 of 1992 seeking partition and it is pending and in such a case, the suit

of the plaintiff should be dismissed.

5. The learned counsel for the appellant/defendant, by placing reliance on the grounds of appeal and also inviting the attention of this Court to the

evidence concerning this case, would pyramid his argument to the effect that the exhibits marked on the defendant"s side, so to say, Exs. B5-the

patta dated 30.12.1993 and Ex. B6-the Chitta dated 15.9.2009 were not taken into account by the Courts below and as such, both the fora

below have committed concurrent mistake in decreeing the suit.

6. My mind is redolent and reminiscent of one other precedent of the Hon''ble Apex reported in M/s. Gian Chand and Brothers and Another Vs.

Rattan Lal @ Rattan Singh, certain excerpts from it would run thus:

23. The said aspect can be looked from another angle. Rules 3, 4 and 5 of Order 8 form an integral code dealing with the manner in which

allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. It is obligatory on the part of the

defendant to specifically deal with each allegation in the plaint and when the defendant denies any such fact, he must not do so evasively but answer

the point of substance. It is clearly postulated therein that it shall not be sufficient for a defendant to deny generally the grounds alleged by the

plaintiffs but he must be specific with each allegation of fact (see Badat and Co. Vs. East India Trading Co.,

24. Rule 4 stipulates that a defendant must not evasively answer the point of substance. It is alleged that if he receives a certain sum of money, it

shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out

how much he received, and that if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those

circumstances. Rule 5 deals with specific denial and clearly lays down that every allegation of fact in the plaint, if not denied specifically or by

necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted against him.

25. We have referred to the aforesaid Rules of pleading only to highlight that in the written statement, there was absolutely evasive denial. We are

not proceeding to state whether there was admission or not, but where there is total evasive denial and an attempt has been made to make out a

case in adducing the evidence that he was not aware whether the signatures were taken or not, it is not permissible. In this context, we may

profitably refer to a two-Judge Bench decision in Sushil Kumar v. Rakesh Kumar wherein, while dealing with the pleadings of election case, this

Court has held thus: (SCC p.693, para 73)

73. In our opinion, the approach of the High Court was not correct. It failed to apply the legal principles as contained in Order 8 Rules 3 and 5 of

the Code of Civil Procedure. The High Court had also not analysed the evidence adduced on behalf of the appellant in this behalf in detail but

merely rejected the same summarily stating that vague statements had been made by some witnesses.

Once it is held that the statements made in Para 18 of the election petition have not been specifically denied or disputed in the written statement,

the allegations made therein would be deemed to have been admitted, and, thus, no evidence contrary thereto or inconsistent therewith could have

been permitted to be laid.

We may state with profit that in the said case, reliance was placed on Badat and Co. v. East India Trading Co.

7. Keeping the said dictum in mind I have analysed the judgments and decrees of both the Courts below and also the typed set of papers.

8. The suit was presented on 7.9.2009; whereas, Ex. B6 and Ex. B7 the Chitta are dated 15.9.2009 and 29.9.2009, so to say, they are pendente

lite documents.

9. It is therefore crystal clear that the Court should not look into the pendente lite documents, as evidence, sufficient to buttress and fortify the

contention of either of the parties.

10. No doubt, at times, for the purpose of construing the developments that occurred during the pendency of the suit, the Court can rightly take

note of such facts and even the relief could be moulded, but here the factual scenario is different.

11. Ex. B6 and B7- the chittas were relied on for the purpose of buttressing and fortifying the stand of the defendant as though he was in joint

possession of the suit property, but those documents emerged only pendente lite.

12. On the contrary, the plaintiff would place reliance on Exs. A1 and A2 the registered sale deeds executed by both the plaintiff and the defendant

transferring the suit property as early as on 14.11.1994 and it is too late in the date on the part of the defendant to put forth the plea as though

those sale deeds were not in stricto senso sale deeds. Section 92 of the Indian Evidence Act would be an embargo for the defendant to put forth

such a plea and it is obvious and axiomatic.

13. Ex. A3-the sale deed would reveal that on 5.6.2008 the plaintiff purchased the suit property from the same person, who earlier purchased

from the plaintiff and the defendant the suit property, vide sale deeds Exs. A1 and A2 dated 14.12.1994. As such, both the Courts below were

justified in giving a finding that the plaintiff has got clear title over the suit property.

14. The learned counsel for the defendant would try to canvas the case of his client to the effect that injunction could be granted only if it is found

proved by the plaintiff that as on the date of filing of the suit, he was in possession and enjoyment of the suit property, but he has not chosen to

produce any evidence; but on the other hand the defendant did choose to produce Exs. A6 and A7-the chittas.

15. To the risk of repetition and pleonasm, but without being tautalogous, I would like to point out that Exs. B6 and B7-the Chitta are pendente lite

documents and no importance could be attached to them.

16. No doubt, Exs. A4 and A5 are pendente lite receipts and similarly no importance could be attached to them also. But one fact is clear that this

is a suit relating to agricultural land, including the Quary land. Possession follows title is an accepted proposition of law as per the following

decision of the Honourable Apex Court:

Murugaiyan and 2 others Vs. Subbaiyan , certain excerpts from it would run thus:

12. The only question surviving for consideration is as regards possession. No doubt, the Commissioner has found that the defendant had raised

paddy in the area covered by AJDEI. The suit was filed in the year 1985. The Commissioner filed his report in 1988. This would not show that on

the date of the suit, the defendant was in possession of the area AJDEI or in any event in enjoyment of the palmyrah trees along the line/ridge AID.

In one of this documents it is stated that the property excluding the palmyrah trees has been sold, though the other document shows including

palmyrah trees. Those are documents among the family members of the defendant. His uncle or cousin had sold the middle and the southern

portions of the property claimed by the defendant, to his wife. As rightly pointed out by the trial Court, the document which says that palmyrah

trees were also subject matter of sale, is a self serving document and that will not prove the title of the defendant to the palmyrah trees or his

possession and enjoyment of the same. The defendant set up two Panchayats with regard to palmyrah trees. None of the panchayatdars was

examined before the courts below. The panchayats set up by the defendant have not been established. Exs. A.2 to A.12 show plaintiffs''

possession for the period 1962 to 1976 and 1985. Even otherwise the established legal position when there is no adequate evidence with regard

to possession by either party, is possession should follow title. In the instant case, the title of the plaintiffs having been clearly found, the lower

appellate court was in error in finding that the defendant was in enjoyment of the palmyrah trees. There is some vague averment in the written

statement with regard to adverse possession by the defendant. However, there is no proof of the same. The claim of the defendant on the basis of

adverse possession cannot therefore be countenanced.

13. The plaintiffs have title. Possession follows title. The Substantial question of law is answered in favour of the appellants. The second appeal is

allowed. The judgment and the decree of the lower appellate Court are set aside and those of the trial Court restored. In as much as the lower

appellate court has committed a serious blunder with regard to the point arising for consideration, this Court is perforce obliged to interfere u/s 100

C.P.C.

17. Accordingly, if viewed, the findings of both the Courts below based on title cannot be disturbed. Ex. B5-the patta dated 30.12.1993 was

standing in the name of both the plaintiff and the defendant, but that was anterior to the emergence of Exs. A1 and A2-the sale deeds, over which

there is no quarrel. As such, weighing the evidence on both sides, the Courts below gave a reasoned finding that the plaintiff was having better case

then the defendant and accordingly decreed the suit, warranting no interference in second appeal. On balance I could see no question of law much

less substantial question of law to interfere with the judgments and decrees of both the Courts below. Accordingly, the second appeal is dismissed.

No costs. Consequently, connected miscellaneous petition is dismissed.