
(2007) 03 MAD CK 0007

In the Madras High Court

Case No : Second Appeal No. 1581 of 1996

Karuppan (deceased) (Anjalai and Others)

APPELLANT

Vs

Chellaiah and Manickam

RESPONDENT

Date of Decision : 20-03-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 34

Citation : (2007) 03 MAD CK 0007

Hon'ble Judges : A. Selvam, J

Bench : Single Bench

Advocate : V.K. Vijayaraghavan, for the Appellant; J. Ananda Kumar, for the Respondent

Final Decision : Allowed

Judgement

A. Selvam, J.—The legal heirs of the deceased/defendant as appellants have challenged the judgment and decree dated 31/7/1996 passed

in Appeal Suit No. 44 of 1995 by The Additional District Court-cum-Chief Judicial Magistrate Court, Pudukottai, wherein the judgment and

decree passed in Original Suit No. 114 of 1991 by The District Munsif Court, Aranthangi are set aside.

2. The respondents herein as plaintiffs have instituted the Original Suit No. 114 of 1991 on the file of the District Munsif Court, Aranthangi for the

reliefs of declaration and permanent injunction, wherein the deceased defendant has been shown as the sole defendant.

3. The nub of the averments made in the plaint can be stated like thus:

The suit property is ancestrally belonged to the plaintiffs. During settlement, a patta has been granted in the name of Subban, the paternal

grandfather of the plaintiffs. After his demise, his son viz., Avudai, the father of

the plaintiffs has inherited the suit property and the suit property has been transferred in his name. The father of the plaintiffs has passed away in the year 1960. After his demise, the plaintiffs have inherited the suit property. The plaintiffs have been enjoying the suit property and during updating register scheme, a patta has also been issued in favour of the plaintiffs. The defendant is not having any manner of right, title and interest over the suit property and now he is making hectic attempts to interfere with the peaceful possession and enjoyment of the plaintiffs by way of denying their title. Under the said circumstances, the plaintiffs have filed the present suit for the reliefs indicated supra.

4. The material averments made in the written statement filed by the defendant can be stated like thus:

It is false to say that the suit property is ancestrally belonged to the plaintiffs and during settlement, a patta has been granted in the name of Subban, the paternal grandfather of the plaintiffs. It is also equally false to say that after the demise of Subban, his son by name Avudai has inherited the suit property. The suit Survey number 212/5 is ad-measuring 1.90 cents and the same is originally belonged to two brothers namely Mani and Subban.

The father of the defendant viz., Palaniandi is the son of Mani. During the lifetime of the brothers namely Mani and Subban, an oral partition has

been effected and in the said oral partition, 0.65 cents have been allotted to the share of Mani. After the demise of Mani, his son by name

Palaniandi has enjoyed the same. The father of the defendant viz., Palaniandi has lived in Ceylon. The defendant and his agnates have enjoyed the

suit property. Since the father of the defendant has lived in Ceylon during settlement period, patta for the entire suit survey number has been given

in the name of Avudai. The defendant has been enjoying the suit property by way of paying kist etc., to the Government. In the year 1989, the

defendant has applied to the District Collector for getting separate patta for the suit property. One Mani has instituted the Original Suit No. 303 of

1989 for the relief of permanent injunction against the defendants and others on the strength of a mortgage deed and the said suit has been

dismissed subsequently. It is false to contend that during updating register scheme, a patta has been granted in the name of the plaintiffs. The Sub-

Collector, Aranthangi after conducting local inspection has directed to issue a

separate patta for suit property in the name of the defendant. The plaintiffs are not enjoying the suit property. The suit is devoid of merits and the same deserves dismissal.

5. The material averments made in the additional written statement filed by the defendant can be stated like thus:

The suit property and its adjoining property are the joint family properties of Mani and Subban. The plaintiffs have filed the present suit as if the defendant is not having any manner of right, title and interest over the suit property. There is no merit in the suit and the same deserves dismissal.

6. The material averments made in the reply statement filed by the plaintiffs can be narrated like thus:

It is false to say that the grandfather of the plaintiffs and one Mani are brothers. It is also equally false to say that during their life time, an oral partition has been effected and in the said oral partition, the suit property has been allotted in the name of Mani. If really the defendant and his family members are having right over the suit property, definitely, they would have got patta for the suit property in their names. The plaintiffs have not known about the Original Suit No. 303 of 1989. The Sub-Collector, Aranthangi and District Revenue Officer, Pudukottai have not understood the real dispute that existed betwixt the parties. Therefore, the suit may be decreed as prayed for.

7. On the basis of the divergent pleadings, the trial Court has framed necessary issues and after ex-cogitating both the oral and documentary evidence adduced on either side has dismissed the suit with costs. The judgment and decree passed by the trial Court have been challenged in Appeal Suit No. 44 of 1995. The First Appellate Court after reappraising the evidence available on record has allowed the appeal whereby and whereunder the judgment and decree passed by the trial Court are reversed. The judgment and decree passed by the First Appellate Court are now being challenged in the present second appeal at the instance of the legal heirs of the deceased/defendant.

8. At the time of admission of the present Second Appeal, the following substantial questions of law have been formulated for consideration:

1. Whether the reliance placed by the lower Appellate Court on Exs.A.1 and A.2 pattas issued in the name of deceased Avudai is tenable in law,

particularly when the predecessor of the appellants subsequently got patta under Exs.B.18 and B.20?

2. Whether the judgment and decree of the lower Appellate Court are liable to be reversed for non-consideration of the evidence of the witnesses

examined by the appellants, who are as many as seven as against the only evidence of P.W.1 on the side of the plaintiffs?

9. Before perpending the divergent arguments advanced on either side with regard to merits and demerits of the appeal, it has become infeasible

to find out as to

Whether this Court is having power to reappraise the evidence adduced on either side?

10. The learned Counsel appearing for the appellants has strenuously contended that in the trial Court voluminous evidence have been adduced on

the side of the defendant so as to prove the exclusive possession of the defendant in the suit property and the trial Court after analysing all the

evidence available on record has clearly non-suited the plaintiffs. But the First Appellate Court without appreciating the evidence adduced on the

side of the defendant has erroneously decreed the suit and under the said circumstances, this Court can reappraise the evidence available on

record.

11. In support of his contention, he has meticulously drawn the attention of the Court to the decision reported in 1995 2 LW 705 (Fathuma and

Anr. v. K.S. Kadherkani), wherein this Court has held that

Both the Courts have not at all considered the relevant evidence in coming to the conclusion as to whether there was landlord-tenant relationship

between the plaintiff and defendants.

12. This Court has followed the decision reported in Dilbagrai Punjabi Vs. Sharad Chandra, , wherein the Apex Court has held as follows:

The High Court was right in pointing out that the Courts below had seriously erred in not considering the entire evidence on the record including the

aforesaid documents. It is true that the High Court while hearing the appeal u/s 100 of the CPC has not jurisdiction to reappraise the evidence and

reverse the conclusion reached by the first appellate Court, but at the same time its power to interfere with the finding cannot be denied if when the

lower Appellate Court decides an issue of fact a substantial question of law

arises. The Court is under a duty to examine the entire relevant evidence on record and if it refused to consider important evidence having direct

bearing on the disputed issue and the error which arises is of a magnitude that it gives birth to a substantial question of law, the High Court is fully

authorised to set aside the finding.

13. In order to controvert the argument advanced on the side of the appellants, the learned Counsel appearing for the respondents has contended

that the First Appellate Court in the instant case has rightly reappraised the evidence available on record and ultimately come to the conclusion that

the plaintiffs are entitled to get the reliefs sought for in the plaint and therefore, this Court cannot reappraise the evidence u/s 100 of the CPC and

therefore, the judgment and decree passed by the First Appellate Court are perfectly correct and the same need no interference.

14. The learned Counsel appearing for the respondents has drawn the attention of the Court to the following decisions.

15. The first and foremost decision is reported in Commissioner Hindu Religious and Charitable Endowment Vs. P. Shanmugama and Others, ,

wherein the Honourable Apex Court has held that

The High Court has not jurisdiction to interfere with the finding of facts recorded by the first appellate court after careful consideration of the

evidence.

16. The second decision is reported in (2004) 11 SCC 394 (Basavantaraya Patel v. Laxmibai and Ors.), wherein the Honourable Apex Court has

held that

The findings recorded by the First Appellate Court were based on appreciation of evidence which could not

be interfered with by the High Court in the Second Appeal

17. The third decision is reported in Thiagarajan and Others Vs. Sri Venugopalaswamy B. Koil and Others, , wherein also the Apex Court has

held that

High Court is not permitted to reassess, reappraise or make roving enquiry by entering into factual arena as it is not contemplated under limited

scope of jurisdiction of Second Appeal. Even if another view is possible on re-appreciation of same evidence, High Court should not disturb view

taken by first appellate Court when it is based on materials on record.

18. The last decision is reported in Manickam Vs. Sakunthala @ Rajeswari and Others, , wherein this Court has held that

High Court cannot reappreciate evidence and come to different conclusion when the First Appellate Court has not misread any material evidence,

overlooked material evidence, or its findings are perverse.

19. From the cumulative reading of the decisions referred to above, it is easily discernible that in a Second Appeal, the High Court cannot

reappreciate the evidence available on record when the First Appellate Court has not misread any material evidence, over looked material

evidence or its findings are perverse. In nutshell, as per Section 100 of the CPC Code, in a Second Appeal, the High Court need not reappreciate

the evidence available on record. But at the same time, the High Court is having unfettered right to look into the evidence if the First Appellate

Court has glaringly over looked the material evidence or its findings are perverse in nature.

20. With these legal backdrops, the Court has to analyse the factual aspects of the present Second Appeal. The specific case of the plaintiff is that

the suit property is originally belonged to one Subban, the paternal grandfather of the plaintiffs and after his demise, his son by name Avudai has

succeeded the same and after his demise, his sons viz., the plaintiffs have succeeded the suit property and they are enjoying the same as absolute

owners.

21. Per contra, it has been elaborately contended that on the side of the defendants that the suit property and its adjoining property are originally

belonged to two brothers namely Subban and Mani and during their life time, an oral partition has been effected betwixt them and in the said oral

partition, the suit property has been allotted to the share of Mani and after his demise, his son by name Palaniandi has succeeded the same and the

said Palaniandi has lived in Ceylon till his demise and therefore, the defendant has been enjoying the suit property and during settlement

proceedings, the father of the defendant viz., Palaniandi has lived in Ceylon and therefore, patta for the suit property has not been obtained in his

name and during updating registry scheme, the plaintiffs have obtained patta for the entire suit survey number and taking advantage that patta for

the entire suit survey number stands in the names of the plaintiffs, they are disturbing the peaceful possession and enjoyment of the defendant and ultimately filed the present suit purely on vexatious grounds.

22. From the averments made in the plaint, the Court can easily discern that the genealogy put forth by the defendant has been denied by the plaintiffs. Therefore, it behoves upon the defendant to prove the genealogy mentioned in the written statement. The specific contention of the defendant is that the suit property and its adjoining property are originally belonged to two brothers namely Subban and Mani and the present plaintiffs are the grandsons of the said Subban and the defendant is the grandson of Mani.

23. On the side of the defendant as many as seven witnesses have been examined. One Aiyavoo aged about 62 has been examined as D.W.5. He

has stated in his evidence that he belongs to Mukudi Village and knows both the plaintiffs and defendant and their grandfathers are brothers. One

Karupaiya aged about 60 has been examined as D.W.6. He has stated in his evidence that both the plaintiffs and defendant are agnates. One

Subbaiya aged about 71 has been examined as D.W.7. He has stated in his evidence that he belongs to Mukudi Village and the father of the

defendant viz., Palaniandi and the father of the plaintiffs viz., Avudai are brothers. Therefore, from the conjoint reading of the evidence given by

D.Ws.5 to 7, the Court can easily come to a conclusion that genealogy mentioned in the written statement has been proved by the defendant.

24. In the reply statement filed on the side of the plaintiffs, the genealogy mentioned in the written statement has been specifically denied. At this

juncture, it would be more useful to look into the evidence adduced by P.W.1. The first plaintiff viz., Chellaiya has been examined as P.W.1. He

has stated in his evidence that he knows his grand father Subban. But he doesn't know that both Subban and Mani are brothers. It is not an

adulation to say that with regard to genealogy mentioned in the written statement, plethora of evidence has been let in on the side of the defendant.

But in order to controvert the same, no evidence is available on the side of the plaintiffs except the evidence of P.W.1. Further, D.Ws.5 to 7 are

the residents of the suit Village viz., Mukudi. Therefore, D.Ws.5 to 7 are competent witness to speak about the genealogy mentioned in the written

statement. As animadverted to earlier, no contra evidence is available on the side of the plaintiffs. Therefore, it is needless to say that the defendant has clearly established the geneology mentioned in the written statement.

25. The learned Counsel appearing for the appellants has contended with great vehemence that the suit property and its adjoining property are

originally belonged to two brothers namely Subban and Mani and during their life time, an oral partition has been effected and in the said oral

partition, the suit property has been allotted to the share of Mani and after his demise, his son by name Palaniandi has succeeded the suit property

and since he lived in Ceylon, his son viz., the present defendant has enjoyed the same and therefore, the plaintiffs are not having title to the suit

property. But the First Appellate Court without appreciating the evidence available on record has erroneously decreed the suit and under the said

circumstances, the judgment and decree passed by the First Appellate Court are liable to be reversed.

26. The learned Counsel appearing for the respondents has also equally contended that the suit property is the absolute property of the grand

father of the plaintiffs viz., Subban and after his death, his son by name Avudai has succeeded the same and after his demise, the plaintiffs have

been enjoying the same.

27. From the divergent contentions raised on either side, the Court has to find out as to

whether the plaintiffs are having title to the suit property or the defendant is having title to the same?

28. For analysing the above factual aspects, the Court has to necessarily look into the documents filed on either side. Ex.A.1 is a patta pass book

which stands in the name of the deceased father of the plaintiffs viz., Avudai. Ex.A.2 is a patta granted under updating registry scheme which

stands in the name of the father of the plaintiffs viz., Avudai. Exs.A.3, A.4 and A.15 to A.20 are all adangal extracts which stand in the name of the

father of the plaintiffs viz., Avudai.

29. At this juncture, the Court must look into paragraph 4 of the plaint, wherein it has been specifically stated that the father of the plaintiff viz.,

Avudai has passed away in the year 1960. All the exhibits referred to supra, have come into the existence only after the demise of Avudai and

since all the adangal extracts which stand in the name of the deceased Avudai, the Court cannot give much adherence to it. Further, it is made clear

that necessary entries in adangal extracts have been made by the concerned Village Administrative Officer without actually verifying the person

who is in actual possession of the suit property. Therefore, the documents referred to supra have not established the title of the plaintiffs to the suit property.

30. Now, we have to perpend the documents filed on the side of the defendant. Ex.B.18 is the order dated 14/5/1990 passed by the Sub-

Collector, Aranthangi. The defendant has given an appeal petition to the Sub-Collector, Aranthangi so as to give a separate patta for the suit

property in his name. The Sub-Collector, Aranthangi has taken a strenuous efforts to find out the genealogy mentioned by the defendant. In fact, he

has examined the Village President of Mukudi, Village Administrative Officer of the said Village and further, examined some persons in the Village

and ultimately found that the genealogy mentioned by the defendant is correct and also found that the defendant is in possession of the suit property

and finally, directed to register the name of the defendant jointly in suit survey number 212/5. Against the order passed by the Sub-Collector,

Aranthangi, an appeal has been filed before the District Revenue Officer, Pudukottai. The District Revenue Officer, Pudukottai after analysing the

entire rival contentions raised by either party has ultimately confirmed the order passed by the Sub-Collector, Aranthangi. Exs.B.6 to B.14 are the

kist receipts which stand in the name of the defendant for patta number 477. Exs.B.21 and B.22 are the certificates given by the concerned Village

Administrative Officer, wherein also it has been clearly stated that the suit property is in possession and enjoyment of the defendant.

31. At this juncture, the Court can also look into the oral evidence adduced on the side of the defendant. One Veeraiya Servai has been examined

as D.W.2. He has clearly stated in his evidence that for the past 50 years, the defendant has been enjoying the suit property. The author of

Exs.B.21 and B.22 has been examined as D.W.3. He has also clearly stated that after making due enquiry, he has given Exs.B.21 and B.22. One

Aiyavoo has been examined as D.W.4. He has also clearly stated in his evidence that the suit property is in possession and enjoyment of the

defendant. D.W.5 another Aiyavoo has also stated in his evidence that the suit property is in possession and enjoyment of the defendant. D.W.7

Subbaiya has also stated in his evidence that the suit property is in possession and enjoyment of the defendant. Therefore, from the conjoint

reading of the evidence adduced by the witnesses referred to supra, it is also made clear to the Court that the plaintiff has established his exclusive

possession and enjoyment of the suit property.

32. As adverted to earlier, except the first plaintiff, no one has been examined on the side of the plaintiffs. If really the plaintiffs are in exclusive

possession and enjoyment of the suit property, definitely, some witnesses would have come forward to give evidence in their favour. But no one

has been examined except P.W.1. Therefore, from the close reading of the documents filed on the side of the defendant as well as oral evidence

adduced on his side, the Court can safely come to a conclusion that the defendant is having title to the suit property and also having possession of

the same.

33. As adverted to earlier, the High Court can reappraise the evidence if the First Appellate Court has failed to consider the evidence properly or

over looked the same or its findings are perverse. In fact, this Court has closely perused the entire judgment passed by the First Appellate Court.

The First Appellate Court has simply relied upon the documents filed on the side of the plaintiffs. It has already been pointed out that all the

documents filed on the side of the plaintiffs stand in the name of the deceased father of the plaintiffs viz., Avudai and no document has been filed so

as to prove their exclusive title and possession of the suit property. It is not an exaggeration to say that the First Appellate Court has completely

fluted the evidence adduced on the side of the defendant. In fact, the Sub-Collector, Aranthangi has taken strenuous efforts to find out the

genealogy mentioned on the side of the defendant as well as possession of the suit property. The Sub-Collector, Aranthangi has examined all the

connected witnesses in the suit Village and ultimately found that the defendant is having title to the suit property and also possession of the same.

Simply because Ex.B.18 has been passed by the Sub-Collector, Aranthangi, the Court cannot belittle the same. The Sub-Collector, Aranthangi is

also a competent person to conduct local enquiry, inspection etc., and in fact, he

has done it. But the First Appellate Court has simply rejected Ex.B.18 by way of assigning reason that Ex.B.18 has been passed by Revenue Department. Therefore, it is quite clear that the First Appellate Court has over looked the entire evidence adduced on the side of the defendant and its findings are quite perverse and under the said circumstances, this Court is having ample and unfettered right to reappraise the evidence available on record and this Court has also done it and ultimately found that the defendant is having title to the suit property and also possession of the same. In view of the foregoing narration of factual premise, this Court has found a considerable force in the argument advanced by the learned Counsel appearing for the appellants and no such force is in existence in the argument advanced by the learned Counsel appearing for the respondents.

34. The learned Counsel appearing for the appellants has also advanced another limb of argument by stating that the defendant has adduced voluminous evidence to show that he is in possession and enjoyment of the suit property and the present suit has been laid only for the reliefs of declaration and permanent injunction and since the plaintiffs have failed to seek recovery of possession, the present suit is not legally maintainable.

35. In support of his contention, he has drawn the attention of the Court to the decision reported in 2000 2 LW 246 (D. Ravi and 2 Ors. v. S.

Vellathan and Anr.), wherein this Court has held that

Where defendant is in possession of some of the suit properties and plaintiff does not seek possession of those properties, but seeks mere declaration that the plaintiff is owner, the suit is not maintainable.

36. In the instant case, the defendant has adduced enormous evidence to show that he is in possession and enjoyment of the suit property. But as rightly pointed out by the learned Counsel appearing for the appellants, the present suit has been laid only for the reliefs of declaration and permanent injunction. But no recovery of possession has been sought for. On that ground also, the suit is liable to be dismissed.

37. The learned Counsel appearing for the respondents has drawn the attention of the Court to the following decisions.

38. The first and foremost decision is reported in Ganpat Singh Vs. Sher Bahadur Singh and Others, , wherein it has been held that

The plaintiffs had asserted and proved their title. The necessary consequence was that if the defendants were in possession without title, the plaintiffs could claim for delivery of possession provided that relief was not barred by limitation or any other law. The plaintiffs by the amendment sought the relief of possession in the alternative. There is no bar in claiming a relief in the alternative. In these circumstances, the amendment ought to have been allowed.

39. The next decision is reported in Raman Ittiyathi and Others Vs. Pappy Bhaskaran and Others, , wherein it has been held that

When in the previous suit, the declaration was granted even without a prayer for recovery of possession in spite of the refusal of the prayer for

injunction on the ground that the plaintiffs were out of possession, the bar u/s 34, it at all, could have applied only to the suit in which further relief

was not claimed and not to a future suit filed by same plaintiff for recovery of possession in which it was claimed on the ground that further relief

was not claimed in a previous suit.

40. In the instant case, as pointed out in many places, the plaintiffs have failed to prove their title to the suit property whereas the defendant has

clearly proved his title and possession. Since the defendant has clearly proved his title and possession, the decisions accited by the learned Counsel

appearing for the respondents are not suitable to the facts and circumstances of the present case.

41. Before parting with this appeal, the Court would like to sum up the following aspects.

(i). The defendant has clearly established the genealogy mentioned in the plaint.

(ii). The defendant has clearly established his right, title, interest and possession of the suit property.

(iii). The plaintiffs have failed to establish title to the suit property and their possession.

(iv). The First Appellate Court has completely over looked the evidence adduced on the side of the defendant and further, its findings are totally perverse.

42. Since the defendant has established his title and possession of the suit property and since the First Appellate Court has completely over looked

the evidence adduced on the side of the defendant and its findings are perverse,

it is needless to say that the A. Selvam, J. mvs. judgment and decree passed by the First Appellate Court are totally erroneous and the same are liable to be reversed.

43. In fine, this Second Appeal is allowed with costs. The judgment and decree dated 31/7/1996 passed in Appeal Suit No. 44 of 1995 by The

Additional District Court-cum-Chief Judicial Magistrate Court, Pudukottai are set aside and the judgment and decree passed in Original Suit No.

114 of 1991 by The District Munsif Court, Aranthangi are restored.