

Nachimuthu Vs. the State of Tamil Nadu, by the Collector of Salem and anr.

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Court : Chennai

Decided On : Apr-30-1983

Reported in : (1983)2MLJ258

Appellant : Nachimuthu

Respondent : The State of Tamil Nadu, by the Collector of Salem and anr.

Judgement :

V. Ratnam, J.

1. The plaintiff in O.S. No. 609 of 1973, District Munsifs Court, Namakkal, is the appellant in this second appeal. That suit was instituted by the appellant for a declaration that he is the owner of the suit properties, namely, the southern fence of Survey No. 233|17 with its site, the northern fence of Survey Nos. 237|1 and 237|13 with its site and the eastern fence of Survey Nos. 237|3 and 237|8 with its site and; for an injunction restraining the State of Tamil Nadu from interfering with his possession and enjoyment of the same. According to the case of the appellant, he was the owner of shares in lands locally known as Vadaman Punjai and 'Kuttaparai Punjai also known as Kuttaparai punjai and Kudaparai punjai in Vagurampatti village forming part of Kondichettipatti mitta abolished and taken over by the Government under the provisions of the Tamil Nadu Act XXVI of 1948. After the take over, there was a survey of the land(s) belonging to the appellant wherein his lands were surveyed as parts of Survey Nos. 233 and 237. The

holdings in Vadaman Punjai were correlated to Survey No. 233|7, while the holdings in Kuttaparai punjai had been measured as Survey Nos. 231|11, 237|3 and 237|8. To the south of Vadaman Punjai, there is a Kai Itteri or a foot-path, which is the northern boundary for the portions owned by the appellant in Kuttaiparai punjai and this Kai Itteri had been surveyed as Survey No. 233|9, while the Itteri on the east of Kuttaiparai punjai had been measured as Survey No. 237|1. In the rough plan filed by the appellant, his portion in Vadaman punjai was shown as X, while the holdings in Kuttaiparai punjai had been mentioned¹ as XI, X2 and X3. The east-west Kai Itteri was shown as AB and the Itteri running north south as AC. Between the portion(r) X and AB Kai Itteri and on the south of AB and also on the either side of AC, there are fences and the fences separating the X portion from the Kai Itteri AB on its south and the fences; separating XI and X2 portions from AB Kai Itteri on the north with the sites over which they stand belong to the appellant. Similarly, the north-south fences in Survey Nos. 237|3 (X2 portion) and Survey No. 237|8 (X3 portion) also with the sites belong to him and these fences had been shown in red colour. The appellant claimed that these fences as well as the sites over which they stood are part of the appellant's holdings. During the survey undertaken by the Government consequent to the application of the provisions of the Tamil Nadu Act XXVI of 1948, the lines along which the fences stood had been wrongly measured as forming part of Survey Nos. 233|9 and 236|1 and included therein, treating them as poramlbokes. The appellant put forth the plea that he and his predecessors-in-title had been in possession for more than 60 years openly, exclusively and continuously and had thus acquired prescriptive title to those, properties'. The further case of the appellant was that he was away in Singapore and became aware of the wrong demarcation some time in 1968 and thereafter he preferred a petition to the District Revenue Officer, Salem, for the grant of a ryotwari patta outside the purview of the Tamil Nadu Act XXVI of 1948. Meanwhile, proceedings were initiated under the provisions of the Land Encroachment Act for the eviction of the appellant and the appellant stated that those proceedings were initiated on; representations of persons who were motivated by jealousy. The appellant claimed that though, the AB itteri was formed for the exclusive use of the owners of Vadaman punjai and Kuttaiparai punjai, there was no objection for the use of

AD itteri by others for taking men and cattle. The appellant further claimed that the trees which are more than 70 years old had been maintained by him and his predecessors and the fences were put up' to protect the lands against straying cattle. The application! preferred by the appellant for the grant of a ryotwari patta outside the purview of the Tamil Nadu Act XXVI of 1948, was dismissed by the District Revenue Officer and a further revision to the Board of Revenue also stood dismissed on 7th October, 1972. Complaining that the inclusion of the fences and the sites over which they stood in porambokes is incorrect and stating that the classification of the properties as poromboke and the attempted disturbance and dispossession of the appellant treating his occupation as encroachment was erroneous, the appellant instituted the suit praying for the reliefs set out earlier.

2. The first respondent in its written statement contended that after the notification and take over of Vagurampatti village under the provisions of the Tamil Nadu Act XXVI of 1948, ryotwari settlement was introduced and Survey No, 233|9 measuring 70 cents: and Survey No. 236|1 measuring 51 cents were classified as cart track porombokes. The portion shown as AB, according to the first respondent, was only a cart tracks poromiboke and not a Kai Itteri. There were fences on either side of Survey No. 233|9, and the northern fence was put up only recently after the take over of the village by the Government. The first respondent also charged the appellant with having- encroached upon the can track poromboke in Survey No, 233|9. The north-south fences in Survey Nos. 237|3 and 237|8 were put up by the appellant, according to the first respondent, after the village was taken over and the appellant has also encroached upon Survey No. 236|1, and put up fences and thereafter claimed patta. The lands were surveyed as per the enjoyment and the cart track portions were measured separately and treated and classified correctly as cart track poromboke according to the first respondent. The knowledge of the demarcation on the part of the appellant was stated to be very much anterior to 1968 and after the proceedings were initiated for eviction of the appellant, a stay application was filed by the appellant and others before the Revenue Divisional Officer, Namakkal, and only thereafter an application for the issue of a patta outside the scope of the provisions of the Tamil Nadu Act XXVI of 1948, was filed which was also rejected by the District Revenue Officer, Salem, as well as the Board of Revenue. The formation of the AB pathway

for the exclusive use of the owners of the Kujttaiparai punjai was disputed by the first respondent. The age of the trees was disputed and the rearing of those trees by the appellant and his predecessors in title was also questioned. The trees were stated to be of recent origin and the possession of the appellant was characterised as unauthorised and, therefore, the appellant was not entitled to the relief of injunction. The encroachment by the appellant was only after the take over of the estate and the cart track poromboke had been handed over to the Panchayat for maintenance. As objection that in the absents of the other sharers of the lands as parties, the suit is not maintainable was also raised. The claim of prescriptive title made by the appellant was also refuted. The suit was stated to be not maintainable either in law or on facts.

3. The second respondent in its written statement raised the contentions similar to those raised by the first respondent. In addition, the second respondent put forth an objection that the appellant is not entitled to maintain the suit in view of the provisions of the Tamil Nadu Act XXVI of 1948.

4. On the aforesaid pleadings of the parties after framing the necessary issues and considering the oral as well as the documentary evidence and taking into account the report as well as the plan of the Commissioner, the learned District Munsif, Namakkal, found that the appellant has not established his title for any portion in S.F. Nos. 233|9 and 236|1, on which the disputed fences stood, that Survey Nos. 233|9 and 236|1 are communal poromboke lands, that no error in classifying Survey Nas, 233|9 and 23611 as poromboke lands had been made out and that, therefore, the claim of the appellant regarding the suit properties was not maintainable. On these conclusions, the suit was dismissed. Aggrieved by this, the appellant preferred an appeal! in A.S. No. 427 of 1975 to the District Court, Salem, and during the pendency of the appeal, in I.A. No. 289 of 1976, the appellant obtained an amendment of the plaint to the effect that he and his predecessors-in-title had been in possession of the suit properties for more than sixty years openly, exclusively, continuously and adverse to the interest of the; respondents and had thus acquired prescriptive title. Respondents 1 and 2 disputed this claim of the appellant whereupon, on 10th December, 1976, an additional issue on this aspect was framed by the District Judge, and a finding was called for from the District

Munsif, Namakkal. After the examination of P. Ws. 4 to 7 and on a consideration of the documents marked as Exhibits B-1 to B-4, the learned District Munsif, Namakkal, returned a finding that the appellant had not acquired title to the property by adverse possession. Thereafter, the learned District Judge proceeded to consider the claim of the appellant in relation to the disputed property and found that the classification of the disputed property as poromboke is not erroneous, that the appellant had not established his title to any of the portions in S.F. Nos. 233|9 and 236|1, on which the fences stood, that the appellant had not also established acquisition of prescriptive title, as his possession is only permissive and that the fences had been put up by the appellant only after the village was taken over in 1955 by encroaching upon the poromboke land in Survey Nos. 233|9 and 236|1. On these conclusions, the judgment and decree of the learned District Munsif, Namakkal, were affirmed and the appeal was dismissed. It is the correctness of this that is challenged in this second appeal,

5. The first contention of the learned Counsel for the appellant is that while disposing of the appeal, the learned District Judge had omitted to frame the points for determination as envisaged under Order 41, Rule 31, Civil Procedure Code, and that this would vitiate the judgment. Reliance in this connection was placed by the learned Counsel upon the decisions in *Scdlajananda Pandey v. Lakhichand Sao* : AIR1951 Pat502 and *Vishwas v. Ghasiram* : AIR1975 Bom278 . On the other hand, the learned Counsel for the respondent would submit that though no points for determination were framed by the learned District Judge, yet, a perusal of the judgment discloses that the learned District Judge had properly considered the facts of the case and the evidence let in by both parties and had also recorded his conclusions on the question in controversy between the parties and, therefore, the mere omission to frame the points for determination by the lower appellate Court cannot be considered to be such a serious flaw in its judgment as to make it non est as a judgment.

6. The relevant provision of the Civil Procedure Code, as amended in Madras is Order 41, Rule 31, which runs as under

The judgment of the 'Appellate Court shall be in writing and shall state

(a) the points for determination; (6) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;

and shall bear the date on which it is pronounced and shall be signed by the Judges concurring therein: Provided that, where the presiding Judge is specially empowered by the High Court to pronounce his judgment by dictation to a shorthand writer in open Court the transcript of the judgment so pronounced shall, after such revision as may be deemed necessary be signed by the Judge.

The provision referred to above sets out what a judgment of the appellate Court should contain. The framing of the points for determination by the appellate Court is only to enable it to concentrate and rivet its attention on the controversy between the parties and to facilitate the weighing and balancing of the evidence, facts and considerations appearing on both sides and to arrive at a conclusion on the merits of the controversy. The enumeration of the requirements under Clauses (a) to (J) in Order 41, Rule 31, Civil Procedure Code, is intended only with a view to secure certainty in the ascertainment of what the judgment is. Those requirements enable the appellate Court to appreciate the case, apply its mind, consider the evidence and arrive at a decision on the controversy. These requirements ensure a proper appraisal of the case and an adjudication thereon setting out the reasons therefor. The need for the consideration of the requirements (a) to (d) enumerated in Order 41, Rule 31, Civil Procedure Code, is not far to seek. First and foremost the judgment should provide the reasons for the decision against a party so as to enable that party to decide by perusing the reasons whether any further appeal or revision or other step should be taken or not. In addition, the contents of a judgment given in the manner contemplated under Order 41, Rule 31, Civil Procedure Code, would throw considerable light and assist a higher forum as to why the Court came to the conclusion it did. At the same time, it has to be remembered that if the appellate Court had properly addressed itself to the controversy between the parties and had weighed the evidence and the other circumstances appearing on both sides and arrived at a

conclusion, the mere omission on its part to conform rigidly to the requirements of Order 41, Rule 31, Civil Procedure Code, would not in any manner vitiate the validity of the judgment, as in such a case there would be substantial compliance with! the spirit of Order 41, Rule 31, Civil Procedure Code, though not the letter of it. Though Order 41, Rule 31, Civil Procedure Code, requires the judgment of the appellate Court to state the points for determination, the decision thereon, the reason for the decision and where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, etc., it does not declare that any omission in this regard would in any manner invalidate the judgment or render it non est.

7. In this case, as seen earlier, the lower appellate Court had omitted to frame the points for determination, but it had addressed itself correctly on the question in controversy between the parties, namely, whether the appellant was entitled to any portion in S. F. Nos. 233|9 and 236|1, whether the appellant had prescribed title and whether the fences in dispute and the sites over which¹ the stand belong to the appellant as claimed for him. The conclusions on the aforesaid questions had been arrived at by the lower Court on a consideration of the entire oral as well as documentary evidence touching upon that. An honest endeavour on the part of the lower appellate Court towards the consideration of the controversy between the parties and a proper appraisal of their respective cases and the weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifested¹ by the perusal of the judgment of the lowen appellate Court. In! that sense, it would nevertheless be a valid judgment, though it does; not contain the points for determination. To hold in this case, that the judgment of the lower appellate Court is non est in law, merely because it does not set 'out the points for determination would be to put too technical a construction on Order 41, Rule 31, Civil¹ Procedure Code. It is necessary to remember in this connection the observations of the Supreme Court in Sangram Singh v. Election Tribunal, Kotah : [1955]2SCR¹ :

Now a Code of procedure must be regarded as such. It is 'procedure; something designed to facilitate justice and further its ends'. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should

therefore be guarded against (provided always that justice is done to 'both' sides) lest the very means designed for the furtherance of justice be used to' frustrate it.

It is not the case of the appellant that any serious prejudice had been caused to him in the consideration of his case by the lower appellate Court by its omission to frame the points for determination. As pointed out earlier, the; attention of the lower appellate

Court has been bestowed upon and riveted on the controversy between the parties and the evidence in relation to that controversy and after considering them, conclusions had been arrived at. This is not a case where it is possible to infer that the lower appellate Court was unmindful of the controversy between the parties and the evidence in relation thereto because of its omission to frame the points for determination. Thus, in the circumstances of the present case, the omission by the lower appellate Court to frame the points for determination would only be in the nature of a technical non-compliance with Order 41, Rule 31, Civil Procedure Code, and that it had not in any manner affected the adjudicative process. In view of this, the decisions relied¹ upon by the learned Counsel for the appellant do not in any manner advance the case of the appellant and it is, therefore, not necessary to refer to theme. Thus, the first contention of the learned Counsel for the appellant cannot be accepted.

8. The learned Counsel for the appellant next contended that the lower appellate Court had not considered the effect of the documents Exhibits A-2 to A-4 relied upon by the appellant in support of his claim of title to S.F. Nos. 233|9 and 236|1.

* * * *

9. The Courts below have carefully considered the oral as well as the documentary evidence and had addressed themselves to all the relevant materials focusing their attention on the controversy between the parties and had concurrently found that the appellant had not established his rights to the properties in dispute. That conclusion of fact recorded by the Courts below is fully and amply supported by the evidence on record and does not merit any interference in a second appeal. Consequently, the second appeal fails and is dismissed, but there will be no order

as to costs.

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