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Court : Chennai

Decided On : Feb-14-2012

Judge : M.Venugopal, J.

Acts : Tamil Nadu Cultivating Tenants Protection Act, 1955 - Section 3(2), 2(aa)(ii)(a); [Indian Evidence Act, 1872](#) - Section 43; [Code of Civil Procedure,\(CPC\) 1908](#) - Section 100, Order 41, Rule 31

Appeal No. : Second Appeal No.2033 of 1999

Appellant : thennavan

Respondent : Marikannu

Advocate for Def. : Mrs.S.Srividhya, Adv.

Advocate for Pet/Ap. : Mr.S.Sounthar, Adv

Judgement :

Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 07.07.1999 in A.S.No.76 of 1998 on the file of the Principal Sub Court, Nagapattinam reversing the Judgment and Decree dated 28.08.1997 in O.S.No.194 of 1996 on the file of District Munsif Court, Nannilam.

JUDGMENT

1. The Appellant/Plaintiff has filed the present Second Appeal as against the Judgment and Decree dated 07.07.1999 in A.S.No.76 of 1998 passed by the Learned Principal Sub Judge, Nagapattinam in reversing the Judgment and Decree dated 28.08.1997 in O.S.No.194 of 1996 passed by the Learned District Munsif, Nannilam.

2.The First Appellate Court viz., the Principal Sub Court, Nagapattinam, while passing the Judgment in A.S.No.76 of 1998 (filed by the Respondent/Defendant) dated 07.07.1999 has among other things observed that the Appellant/Plaintiff is not entitled to get the relief of injunction on the ground that in earlier suit in O.S.No.38 of 91, it has been found that the Appellant/Plaintiff is in possession of the property and therefore, the finding rendered that he is entitled to get the relief of permanent injunction is not a correct one and therefore, set aside the said finding by allowing the Appeal without costs and consequently, dismissed O.S.No.194 of 1996.

3.However, the trial Court in the main suit in O.S.No.194 of 1996 filed by the Appellant/Plaintiff, upon an analysis of the entire oral and documentary evidence on record has come to a clear conclusion that the Defendant in O.S.No.213 of 1996 has filed O.S.No.194 of 1996 as Plaintiff, who is the Appellant before this Court and 6th item of the suit property in O.S.No.213 of 1996 relates to S.No.53/6 measuring an extent of 19 cents and in O.S.No.38 of 91, a finding has been rendered that the Appellant/Plaintiff in O.S.No.194 of 1996 is in enjoyment of the property and has come to a consequent conclusion that pertaining to this property the Appellant/Plaintiff is entitled to get the relief of permanent injunction and granted the relief of injunction in favour of the Appellant/Plaintiff with costs.

4.At the time of admission of the Second Appeal, this Court has formulated the following Substantial Questions of Law:-

1.Whether the Judgment of the Lower Appellate Court is vitiated in its ignoring the clear finding in the earlier suit O.S.No.38 of 91 that this Appellant is in possession of the suit property?

2. Whether the Lower Appellate Court is justified in not advertg to the oral evidence of Respondent wherein he specifically admitted Appellant's possession?

5. The Contentions, Discussions and Findings on Substantial Question of Law Nos. 1 and 2:-

The Learned Counsel for the Appellant/Plaintiff submits that the First Appellate Court has committed an error in not taking into account that the earlier suit in O.S.No.38 of 91 on the file of the District Munsif Court, Nannilam filed by the Respondent/Defendant against the Appellant/Plaintiff and in the said suit, it is clearly held that the Respondent/Defendant is not in possession of the suit property and that the Appellant/Plaintiff has found to be in possession of the suit property and as against the said Judgment and Decree in O.S.No.38 of 91, the Respondent/Defendant has not preferred any Appeal and the said Judgment has become final between the parties.

6. Advancing the arguments of the Learned Counsel for the Appellant/Plaintiff projects a plea that the First Appellate Court should have seen that in the earlier suit in O.S.No.38 of 91, a specific finding has been rendered that the Respondent/Defendant is not cultivating the suit property. Further, the Respondent/Defendant (PW1) has admitted in his cross examination that the Appellant/Plaintiff has been in possession of the suit property.

7. Lastly, it is the submission of the Learned Counsel for the Appellant/Plaintiff that at least based on the Appellant/Plaintiff's possession in respect of the suit property, the relief of bare injunction ought to have been granted by the First Appellate Court.

8. Per contra, it is the submission of the Learned Counsel for the Respondent/Defendant that the First Appellate Court has in an elaborate manner discussed the entire factual aspects of the case and has come to a clear conclusion that the trial Court's finding that the Appellant/Plaintiff is entitled to get the relief of injunction is not a correct one and at this distant point of time, there is no need for this Court to interfere with the findings of the trial Court. In between the parties, there has been an earlier proceedings viz., O.S.No.213 of 1996 filed

by the Respondent/Defendant herein against the Appellant herein, who figured as Defendant in the said case.

9.It is relevant for this Court to pertinently point out the decision in Subbiah Pillai (died) and others v. M.A.Thirunavukarasu Pillai(died) and others, 1996 2 M.L.J. at p.241, Madras, it is observed that it is necessary that a person must put his own muscular effort into the soil cultivation of the suit property.

10.This Court aptly points out the decision in Tamalarasi v. S.Kumarasamy Gounder and others (2003) 2 M.L.J. at p.710 (D.B.), it is held that the words 'such person' occurring in Tamil Nadu Cultivating Tenants Protection Act, 1955(25/55) means a person who contributes his own physical labour or that of any member of his family in cultivation of any land.

11.In Pankajam v. Chinnaswamy Naidu, AIR 1984 Madras 235, it is held as follows:-

Where the very letting of the suit properties to the respondent for cultivation had been disputed and though it may be that the authorities have to decide that question as a jurisdictional fact before considering the other matters which would be relevant under Section 3(2), yet, those are all matters over which the Record Officer or the other authority functioning under the Act alone will have jurisdiction and the Civil Court cannot go into those questions. If the Civil Court cannot proceed to investigate whether the respondent is a cultivating tenant or not, then equally it cannot declare that he has such rights. The consequential relief of injunction, if at all, could be granted only upon a finding that the respondent is a cultivating tenant. The consequential relief of injunction depends upon the adjudication with reference to the status of the respondent and when that cannot be done by the Civil Court, then the consequential relief also cannot be granted.

12.Indeed, the Courts of Law are in existence to impart justice between the litigants who come for redressal of their grievances. It is an axiomatic principle in law that no injunction can be granted against a true owner at the instance of a person, who remains in an unlawful possession, as opined by this Court.

13.It is quite evident that the relief of injunction ordinarily can be granted only upon the finding that the person is a cultivating tenant, the primary relief of injunction or the consequential relief of injunction clearly revolves upon the determination in regard to a status of a person, whether he is a cultivating tenant or not and when that cannot be done by a Civil Court, then such relief of injunction either primarily or consequently or incidentally cannot be granted by a Court of Law.

14.In the instant case on hand, the Defendant in O.S.No.213 of 1996 has figured as Plaintiff in O.S.No.194 of 1996. The 6th item of suit property in O.S.No.213 of 1996 bearing S.No.53/6 measuring an extent of 19 cents is the suit property and the Appellant/ Plaintiff (Grama Sevak) (Government Servant) in O.S.No.194 of 1996 has found to be in possession of the suit property as held in the Judgment in O.S.No.38 of 1991 and accordingly, the trial Court has granted the relief of permanent injunction in favour of the Appellant/Plaintiff herein. But the first Appellate Court has taken a contra view holding that the Appellant/Plaintiff has not established that he is a cultivating tenant by not only filing any acceptable documentary evidence and further has also not let in any oral evidence in this regard and has negatived. The relief of injunction by holding that the view taken by the trial Court in granting the relief of injunction in favour of the Appellant/Plaintiff is not a correct one.

15.It is not in dispute that the findings rendered by the trial Court in O.S.No.213 of 1996 and O.S.No.194 of 1996 to the effect that the Appellant/Plaintiff has been in possession of the suit property, it has become final between the parties and it is a conclusive one. As per Section 43 of [Indian Evidence Act, 1872](#), a Judgment inter se between the parties, which has become final and conclusive, is binding on the parties concerned.

16.At this juncture, it is worth to mention the evidence of PW1 in O.S.No.213 of 1996(Respondent/Defendant before this Court in the Second Appeal) to the effect that O.S.No.38 of 91 has been dismissed and in O.S.No. 38 of 91, a Judgment has been rendered that he is not in enjoyment of the suit property and as against the said Judgment, he has filed the Appeal and since the Appellant/Plaintiff herein has informed him, after receiving a sum of Rs.50,000/-(Rupees fifty thousand only)

that he need not file an Appeal and also he has handed over possession to him and after four years later, the Appellant/Plaintiff has requested him to hand over the suit property to him and that he has received a sum of Rs.50,000/- (Rupees fifty thousand only) from the Appellant/Plaintiff and that he has taken a document in writing for handing over possession of the suit property. For this kind of evidence of PW1 (Respondent/Defendant), the Respondent/Defendant has requested him not to prefer appeal and that he has received a sum of Rs.50,000/- (Rupees fifty thousand only) from him, there is no positive, acceptable proof/evidence to the subjective satisfaction of this Court and as such this Court outrightly rejects the said evidence of PW1 as unworthy of credence.

17. In view of the fact that in Ex.B1 xerox copy of the Judgment dated 27.08.1992 in O.S.No.38 of 1991 passed by the Learned District Munsif, Nannilam to the effect that the first Defendant therein viz., the Appellant (in the second appeal-Plaintiff in O.S.No.194 of 1996) has been found to be in possession of the suit property, as against the said finding, no appeal has been filed by the Respondent/Defendant before the higher forum. Hence, the said decision in O.S.No.38 of 1991 between the parties has become final and certainly it operates as Res Judicata. Even an erroneous finding or Judgment binds the inter se parties till the same is set aside by a competent forum as per law.

18. Viewed in that perspective, the contra view taken by the first Appellate Court in A.S.No.76 of 1998 is certainly invalid and illegal one besides the same is not permissible in law. Moreover, both the parties to the present litigation are found to be persons not entitled to claim the benefits of cultivating tenant as per Section 2(aa)(ii)(a) of Tamil Nadu Cultivating Tenants Protection Act, 1955 (25/55). As such this Court holds that the first Appellate Court has ignored the clear finding in earlier suit in O.S.No.38 of 91 that the Appellant/Plaintiff is in possession of the suit property and the First Substantial Question of Law No.1 is so answered.

19. Coming to the plea that the first Appellate Court has not adverted to the oral evidence of the Respondent/Defendant, it is to be pointed out that the Judgment of the first Appellate Court shall deal with the following:- (a) the points for determination;

(b) 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 at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein as per Order 41, Rule 31 of Civil Procedure Code. The ingredients of Order 41, Rule 31 are mandatory in character. The reason for the decision should be mentioned by the first Appellate Court, not only when a decree of the trial Court is set aside, but also when it is affirmed in the considered opinion of this Court. Ordinarily, the first Appellate Court being Appellate Authority has to advert to the oral evidence of parties in a given case but in the instant case on going through the first Appellate Court Judgment in A.S.No.76 of 1998 dated 07.07.1999, this Court opines that the first Appellate Court has not adverted to the oral evidence of the witness viz., PW1. But on the facts and circumstances of the case, since a legal plea of Res Judicata is taken, the first Appellate Court not dealing with the oral evidence of PW1 is not fatal to arrive at a decision in the proceedings and all the more when no witness has been examined on the side of Defendant in the suits in O.S.No.213 of 1996 and O.S.No.194 of 1996 on the file of trial Court, tried jointly, wherein a common Judgment has been delivered. Also, the first Appellate Court not dealing with the oral evidence of litigant/party in Appeal Judgment will not preclude this Court in going into the merits of the matter and to render its findings based on available oral, documentary evidence on record, as per law. Accordingly, the Substantial Question of Law No.2 is so answered.

20.In the result, the Second Appeal is allowed, leaving the parties to bear their own costs. The Judgment and Decree passed by the First Appellate Court in A.S.No.76 of 1998 dated 07.07.1999 are hereby set aside by this Court for the reasons assigned in this Appeal to prevent an aberration of Justice. Consequently, the Judgment and Decree of the trial Court in O.S.No.194 of 1996 dated 28.08.1997 are restored.