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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
MANOJ MISRA; J., MANMOHAN; J.
SLP (C) Nos. 1989-1990/2024; February 24, 2026
P. ELAIYAPPAN versus NATARAJAN & ORS.

Civil Procedure Code, 1908 – Section 100 – Second Appeal – Scope of Interference with Concurrent Findings of Fact – Possession and Injunction – The Supreme Court set aside a High Court judgment that had dismissed a suit for permanent prohibitory injunction despite concurrent findings of possession in favor of the appellant by the Trial Court and First Appellate Court – Noted that the High Court failed to frame a specific substantial question of law regarding the correctness or validity of the findings on possession returned by the lower courts - The Supreme Court held that interference with concurrent findings of fact under Section 100 CPC is permissible only on limited grounds, such as perversity, misreading of evidence, or consideration of inadmissible evidence.

Possession of Auction Purchaser – Supreme Court observed that while Order 21 Rule 95 CPC provides a procedure for an auction purchaser to take possession, if the purchaser actually gains possession and maintains it on the date of the suit's institution, they cannot be denied an injunction against a party with no title who seeks to interfere - Even if a specific issue on possession was not formally framed by the Trial Court, since the parties went to trial fully aware that the issue was central and led evidence accordingly, they cannot later claim prejudice - Held – The High Court erred by not considering the extensive documentary evidence (e.g., revenue records, factory registrations, tax payments) relied upon by the First Appellate Court to establish the appellant's possession - The matter was remanded to the High Court for fresh consideration within the scope of Section 100 CPC. [Relied on *Nagubai Ammal and Others v. B. Shama Rao & Ors.*, (1956) 1 SCC 698; *B. Arvind Kumar v. Govt. of India & Ors.*, (2007) 5 SCC 745; Paras 19-25]

[Arising out of impugned final judgment and order dated 27-01-2023 in SA No. 704/2017 27-01-2023 in SA No. 705/2017 passed by the High Court of Judicature at Madras]

For Petitioner(s): M/S. Ksn & Co., AOR Mr. V Balachandran, Adv. Mr. Siddharth Naidu, Adv. Mr. Saurabh Bharadwaj, Adv.

For Respondent(s): Mrs. Malavika Jayanth, AOR Ms. Isha Singh, Adv.

ORDER

1. Leave granted. Heard learned counsel for the parties.
2. These appeal(s) impugn common judgment and order of the High Court of Judicature at Madras¹ dated 27.01.2023 in Second Appeal Nos. 704 and 705 of 2017.
3. Two suits seeking permanent prohibitory injunction in respect of same property were instituted. Original Suit (for short, O.S.) No. 74 of 1998 was instituted by P. Elaiyappan (the appellant herein), *inter alia*, against Natarajan (the first respondent herein). Whereas O.S. No. 371 of 1997 was instituted by the first respondent, *inter alia*, against the present appellant.
4. There is no dispute that the suit schedule property was owned by one Ganapathy. Ganapathy suffered a money decree in execution of which, the suit property was sold

¹ High Court

through court conducted auction dated 03.05.1991 to one Ramasamy. Ramasamy *vide* sale deed dated 15.10.1991 sold it to the present appellant.

5. On the other hand, the first respondent, who instituted O.S. No. 371 of 1997, claimed that though original owner of the suit property was Ganapathy, he died in an accident and prior to his death he had executed a registered Will in favour of the first respondent. As a result, the first respondent is the owner of the suit property.

6. Interestingly, both sides claimed that they are in possession of the suit property and the other side is causing unlawful interference in their possession.

7. The trial court decreed the suit of the present appellant whereas the suit of the first respondent was dismissed.

8. Aggrieved by the decree passed by the trial court, two first appeal(s) were preferred which were dismissed thereby affirming the decree passed by the trial court. Though no specific issue was framed on the question of possession, apparently, both sides led evidence on it as the same was implicit in the relief sought. Further, in paragraph 19 of its judgment, the first appellate court, on the question of possession, observed as follows²:

“19. Suit properties were purchased by defendant Elaiyappan on 15.10.1991. After so purchasing, patta was granted in the name of defendant Elaiyappan in respect of the suit properties. The land ownership register for that is exhibit D-6. The notices given by the plaintiff Natarajan to the Revenue Officers not to change the name in patta are exhibits P-15 and P-16. But as exhibit D-6 was given in the name of defendant Elaiyappan, in the appeal filed by the plaintiff Natarajan to cancel that the Sub Collector passed an order dated 22.03.1994 in exhibit P-20 that no order can be passed for patta name transfer as the dispute as to title of the suit properties were pending in civil court. For the tapioca mill in the suit property, the registration certificate issued by the Deputy Commercial Tax Officer, Rasipuram is in the name of defendant Elaiyappan. That Form-D2 in exhibit D-7 is what was issued in the name of defendant Elaiyappan by the aforesaid Deputy Commercial Tax Officer, Rasipuram. That is exhibit D-8. In order to run tapioca mill in the suit properties, Small Scale Administration Registration Certificate has been given in the name of defendant Elaiyappan by the Tamil Nadu Government. That is exhibit D-9. For the tapioca mill in the suit properties which was in the name of Ganapathy, the Commissioner passed an order dated 15.11.1993 transferring it in the name of defendant Elaiyappan. That is exhibit D-10. For running business in the suit properties in the name of Sri Lakshmi Seco Factory of Ganapathy, Deputy Chief Inspector of Industries, Salem passed an order exhibit D-12. The exhibits D-13 to D-16 confirm that the payments to be made to the government for the suit properties and the tax to be paid for the buildings situated therein were made by defendant Elaiyappan. Exhibit D-17 confirms that the defendant Elaiyappan is running the tapioca mill in the suit property and sending the product manufactured in the tapioca mill to Salem Starch and Seco Manufacturers Service Industrial Co-operative Sangam. For the product manufactured in tapioca mill situated in the suit properties was being done by distribution representative Elaiyappan. For that sale tax has been collected by Collection Inspector. Exhibits D-18 and D-19 series are documents confirming it. Electricity connection in the suit properties are numbered 49 and 58. They have not been transferred in the name of defendant Elaiyappan. They are continuing in the name of Ganapathy. Still for the aforesaid electricity connection, it is confirmed by documents exhibits D-21 and D-22 in the name of defendant. Exhibits D-23 and D-24 are the electricity payment cards filed in respect of the aforesaid electricity connections. Exhibit D-39 is a copy of cultivation Adangal Accounts proving that the suit properties are in the possession of Elaiyappan. Chitta has been issued in the name of defendant Elaiyappan for the suit properties. As such the aforesaid documents prove that the suit properties are in possession of defendant Elaiyappan. DWs 1 to 4 examined on behalf of the defendants also confirm that the suit properties are in possession of defendant Elaiyappan.

² Note: The extract is copied from Annexure P-4. Possibility of typographical errors in the said Annexure are not ruled out.

When exhibit C-1 commissioner's report is perused, he has mentioned that when he inspected the suit properties Sri Laskhmi Seco Mills was functioning in the suit properties. Further, the commissioner has mentioned in his exhibit C-1 report that certificates given for running the tapioca mill in the name of defendant Elaiyappan were found in the mill's office room. Though the commissioner cannot be used as an instrument to prove as to in whose possession suit properties are, when the commissioner has mentioned through his report exhibit C-1 as to the features of the suit properties when he had inspected, it will confirm that the suit properties were in possession of the defendant Elaiyappan. When it has been proved on behalf of defendant Elaiyappan that the suit properties are only in the possession on the basis of the oral and documentary evidences filed, it is not possible for this Court to conclude that the contention on behalf of the plaintiff Natarajan that the suit properties are in his exclusive possession can be accepted."

9. Being aggrieved by dismissal of his appeals, the first respondent filed two second appeals before the High Court. While entertaining the Second Appeal, the High Court framed following substantial questions of law for its consideration:

"i. Are the Courts below justified in dismissing the suit O.S. No. 271/1997 in spite of the fact that the appellant had proved the Will Ex. A2 in the manner known to law?

ii. Whether Court below was justified in granting decree in favour of respondent in O.S No. 74 of 1998 while respondent taken possession not in accordance with law?"

10. Thereafter, the High Court proceeded to hold that, though title to the suit property vested in the appellant (i.e., P. Elaiyappan) consequent to a sale deed executed by the auction purchaser being in his favour, there is no documentary evidence on record to indicate that possession of the suit property was lawfully taken by the predecessor-ininterest of the appellant. Based on above, the High Court partly allowed the appeals and dismissed both suits by observing that the plaintiff (the appellant herein) had failed to prove his lawful possession on the date of institution of the suit.

11. Aggrieved by the decision of the High Court, these appeal(s) have been preferred.

12. The learned counsel for the appellant has submitted that once the High Court had concluded that title in the suit property was with the present appellant, the appellant was entitled to injunction as he was in possession. It is also submitted that the High Court has ignored the findings of the two courts below on possession being with the appellant. Further, the High Court has not referred to the documents brought on record by the appellant to indicate that there was a running factory located over the land in suit which was run and managed by the appellant since before the institution of the suit and, therefore, on the date of institution of the suit, the appellant was in possession of the suit property and as such entitled to the relief of injunction.

13. Additionally, it was argued that to obtain relief of injunction, the plaintiff must prove his title and possession on the date of institution of the suit. Once title is with the plaintiff, and he establishes his possession over the suit property on the date of institution of the suit, he cannot be denied injunction, particularly against a person with no title, merely because such possession was obtained by private negotiation or other means. It is contended that the appellant had brought evidence on record to indicate that though, initially, there was resistance in handing over possession of the suit property, a decision was taken in a panchayat to hand over possession to the appellant and based on it, possession was taken over and the documentary evidence indicated that possession of the suit property was with the appellant on the date of institution of the suit. It has also been submitted that the second appellate court's jurisdiction under Section 100 of the

Code of Civil Procedure, 1908³ is limited and findings of fact can be interfered with only where a finding is based either on no admissible evidence or on inadmissible evidence or suffers from misreading of evidence or ignorance of material evidence on record, or is perverse, which is not the case here. As both trial court and the first appellate court have referred to documentary as well as oral evidence in support of their respective findings, those findings were not amenable to interference in exercise of jurisdiction under Section 100 of CPC. Besides, the High Court did not even frame a question of law regarding the correctness or validity of the finding on possession returned by the first appellate court as well as the trial court.

14. Based on the above submissions, it has been prayed that the order passed by the High Court be set aside and the decree passed by the first appellate court is restored.

15. *Per contra*, learned counsel for the contesting respondent submitted that the evidence brought on record indicated that the respondent had all throughout questioned the auction sale made in favour of the predecessor-in-interest of the appellant. Thus, even if challenge to the auction sale may not have succeeded, there was no question of surrendering or handing over of possession to the predecessor-in-interest of the appellant or to the appellant. Therefore, in absence of evidence that possession was taken over in accordance with the provisions of Order 21 Rule 95 of CPC, there was no basis to hold that possession was with the present appellant. Moreover, if CPC prescribes a procedure for taking over possession of a property subjected to an auction, evidence of obtaining possession through out of court settlement or by private means has no sanctity in law.

16. In such circumstances, it is submitted on behalf of the respondent, when possession of the suit property is disputed, the view taken by the second appellate court absent documentary evidence to indicate handing over of possession, cannot be faulted. It has, thus, been prayed that these appeal(s) be dismissed.

17. We have accorded due consideration to the rival submissions and have carefully perused the materials available on record.

18. Before we address the vexed issue of possession, we may notice that the suit property was subjected to auction in execution of a money decree, and the said sale was confirmed in favour of the predecessor-in-interest of the appellant. It is trite law that title in immovable property vests in the auction purchaser on confirmation of sale⁴. No doubt, Order 21 Rule 95 CPC provides for the procedure to take possession by an auction purchaser but if the auction purchaser gets possession and is in possession on the date of institution of the suit, in our view, he cannot be denied injunction against a non-title holder seeking to interfere with his possession. Therefore, the question of possession on the date of institution of the suit was important for deciding the suit(s) in question.

19. Surprisingly, it appears, a specific issue on possession was not framed. However, where parties go to trial with knowledge that a particular question is in issue, though no specific issue has been framed thereon, and adduce evidence relating thereto, they cannot claim prejudice for the issue being not specifically framed.⁵

20. In the instant case, it appears, parties went to trial fully aware that issue of possession is central to the two suit(s), and they seem to have led evidence accordingly. A perusal of the lower court(s) judgment would indicate that they had taken notice of the documentary evidence which disclosed that there was a running factory over the suit

³ CPC

⁴ B. Arvind Kumar V. Govt. of India & Ors., (2007) 5 SCC 745, paragraph 12

⁵ See: Nagubai Ammal and Others v. B. Shama Rao & Ors., (1956) 1 SCC 698 : 1956 SCC OnLine SC 14

property, and some documents pertaining to the factory reflected the name of the current appellant.

21. Besides, the first appellate court, in paragraph 19 of its judgment, has referred to various documentary evidence available on record to indicate the possession of the present appellant over the suit property. 23. It is well-settled that where a finding is returned by a court and the same is assailed before the appellate court, the appellate court, if it is a court of fact, may reverse it by appreciating the evidence, but would have to record reasons in support of its conclusion. However, when the High Court exercises its jurisdiction under Section 100 of CPC, particularly where there are concurrent finding(s) of fact by two courts below, interference with it is permissible on limited grounds such as where the finding in question is perverse, or is based on consideration of inadmissible evidence, or by misreading or grossly misconstruing the evidence, or is recorded without considering relevant evidence.

24. In the present case, the second appellate court i.e., the High Court has not at all adverted to the documentary evidence relied by the first appellate court in support of its order affirming the trial court decree. In fact, the second appellate court has not even framed a question of law much less a substantial question of law to test the finding of the first appellate court on the issue of possession within the scope of Section 100 of CPC.

25. In such circumstances, we are of the view that the matter requires reconsideration by the High Court as it had set aside the decree of the court below without considering whether the finding(s) of the court(s) below on plaintiff's (appellant herein) possession over the suit property on the date of institution of the suit was amenable to interference within the scope of jurisdiction under Section 100 of CPC.

26. For the foregoing reasons, we deem it appropriate to remand the matter to the High Court.

27. The appeal(s) are, accordingly, partly allowed. The impugned judgment and order of the High Court is set aside.

28. The second appeal(s) shall stand restored on the file of the High Court to be decided afresh in accordance with law.

29. No order as to costs.

30. Pending application(s), if any, shall stand disposed of.

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