

(2018)2 SCeJ 1306

SUPREME COURT OF INDIA

Present: Justice Abhay Manohar Sapre and Justice A. Abdul Nazeer, JJ.

The Corporation of Madras & Anr.

Versus

M. Parthasarathy & Ors.

Civil Appeal No.3033 OF 2006 With Civil Appeal No.8185 OF 2018 (Arising out of S.L.P.(c) No. 21796 of 2018) (D.No.15579/2017)

10 August, 2018

(i) Civil Procedure Code, 1908 Order 41 Rule 27 – Additional evidence – Appellate court took into consideration the additional piece of evidence while deciding the appeals on merits without affording any opportunity to the appellant to file any rebuttal evidence to counter the additional evidence adduced - This caused prejudice to the appellants herein because they suffered the adverse order from the Appellate Court on the basis of additional evidence adduced by the respondents for the first time in appeal against them – Additional evidence was not only taken on record but also relied on by the Appellate Court for allowing the appeals filed by the respondents which, in consequence, resulted in decreeing the civil suit - First Appellate Court committed jurisdictional error in allowing the appeals. [Para 15]

(ii) Civil Procedure Code, 1908, Order 41 Rule 27, Order 41 Rule 23-A, 25 - Having allowed the application for leading additional evidence under Order 41 Rule 27 of the Civil Procedure Code, 1908 the first Appellate Court had two options - First it could have either set aside the entire judgment/decree of the Trial Court by taking recourse to the provisions of Order 41 Rule 23-A of the Code and remanded the case to the Trial Court for re-trial in the suits so as to enable the parties to adduce oral evidence to prove the additional evidence in accordance with law or - Second, it had an option to invoke powers under Order 41 Rule 25 of the Code by retaining the appeals to itself and remitting the case to the Trial Court for limited trial on particular issues arising in the case in the light of additional evidence which was taken on record and invite findings of the Trial Court on such limited issues to enable the first Appellate Court to decide the appeals on merits - First Appellate court failed to take note of both the above mentioned provisions and proceeded to allow the appeal wrongly – We take recourse to the powers under Order 41 Rule 23-A of the Code and accordingly set aside the judgment and decree of the first Appellate Court to the extent it allows the respondents’ appeals on merit but at the same time uphold that part of the order which has allowed application for leading additional evidence filed by the plaintiffs for adducing additional evidence and remand the cases to the Trial Court for re-trial. [Para 17, 20, 21]

JUDGMENT

Abhay Manohar Sapre, J.

- 1) Leave granted in S.L.P.(c) No D.No.15579/2017).
- 2) These appeals are directed against the final judgment and order dated 09.10.2002 passed by the High Court of Madras in Second Appeal Nos.126 to 129 of 1997 and Writ Petition No.13097 of 1993 whereby the High Court dismissed the second appeals filed by the appellants herein and allowed the writ petition filed by the respondents herein.
- 3) In order to appreciate the issue arising in these appeals, few relevant facts need to be mentioned hereinbelow.
- 4) The appellants are the defendants whereas the respondents are the plaintiffs in the civil suits out of which these appeals arise.
- 5) The dispute relates to a land measuring about 3600 sq. ft. in Block No.15, Aminjikarai Village, Pulla Reddy Avenue, Chennai (hereinafter referred to as the “suit land”).
- 6) The respondents claiming to be the owners of the suit land filed four civil suits bearing O.S. Nos.2207 of 1992, 2345 of 1992, 2346 of 1992 and 2347 of 1992 against the appellants (defendants) in the City Civil Court at Chennai for permanent injunction.
- 7) The appellants on being served denied the claims set up by the respondents by filing writ-

ten statement. Since all the four suits were between the same parties and relate to one piece of land though part of different four sale deeds and further there was no multiplicity of causes of action, the Trial Judge clubbed all the four suits for their analogous disposal. The Trial Court accordingly framed common issues on the basis of the pleadings. Parties adduced their common evidence. The Trial Court, by a common judgment/decreed dated 24.09.1993, dismissed all the four suits filed by the respondents with costs.

8) The plaintiffs (respondents herein) felt aggrieved filed first appeals being A.S. Nos.338 to 341 of 1993 in the Court of 8th Additional District Judge, Chennai. In the appeals, the plaintiffs filed an application under Order 41 Rule 27 of the Civil Procedure Code, 1908 (for short "the Code") and sought permission to adduce additional evidence in support of their case (CMP No.1559/93).

9) By judgment/decreed dated 17.12.1993, the Additional District Judge allowed the application filed under Order 41 Rule 27 of the Code thereby permitting the plaintiffs (appellants before the first Appellate Court) to file the additional evidence. The Appellate Court then exhibited the additional evidence as Exs. P-16 to P-20 and placing reliance on the additional evidence tendered by the plaintiffs for the first time at the appellate stage, allowed the appeals, set aside the judgment and decree of the Trial Court and decreed all the four civil suits filed by the respondents against the appellants.

10) The defendants (appellants herein) felt aggrieved and filed second appeals in the High Court. The plaintiffs (respondents herein) also filed a writ petition in the High Court in relation to the land in question. By impugned judgment, the High Court dismissed the second appeals filed by the defendants (appellants herein) and allowed the writ petition filed by the respondents herein as a consequence of dismissal of the appellants' second appeals and affirmed the judgment/decreed passed by the first Appellate Court. It is against this order of the High Court, the defendants felt aggrieved and filed the present appeals by way of special leave in this Court.

11) Heard Mr. R. Basant, learned senior counsel for the appellants and Ms. Aruna Prakash, learned counsel for the respondents.

12) Having heard the learned counsel for the parties and on perusal of the written submissions filed by the learned counsel for the respondents, we are of the considered view that these appeals deserve to be allowed in part on a short ground as indicated infra.

13) It is an admitted fact that the respondents (plaintiffs) had filed an application under Order 41 Rule 27 of the Code in their first appeals before the first Appellate Court (CMP No.1559/93) praying therein for production of additional evidence in appeals. It is also an admitted fact that this application was allowed and the additional evidence was not only taken on record but also relied on by the Appellate Court as Exs.P-16 to P-20 for allowing the appeals filed by the respondents which, in consequence, resulted in decreeing all the four civil suits.

14) In our considered opinion, the first Appellate Court committed two jurisdictional errors in allowing the appeals.

15) First, it took into consideration the additional piece of evidence while deciding the appeals on merits without affording any opportunity to the appellants herein (who were respondents in the first appeals) to file any rebuttal evidence to counter the additional evidence adduced by the respondents (appellants before the first Appellate Court). This caused prejudice to the appellants herein because they suffered the adverse order from the Appellate Court on the basis of additional evidence adduced by the respondents for the first time in appeal against them. (See **Land Acquisition Officer, City Improvement Trust Board vs. H. Narayanaiah & Ors.**, (1976) 4 SCC 9, **Shalimar Chemical Works Ltd. vs. Surendra Oil & Dal Mills (Refineries) & Ors.**, (2010) 8 SCC 423 and **Akhilesh Singh vs. Lal Babu Singh & Ors.**, (2018) 4 SCC 759).

16) Second error was of a procedure which the first Appellate Court failed to resort in disposing of the appeals. This also involved a question of jurisdiction.

17) Having allowed the CMP No.1559/1993 and, in our opinion rightly, the first Appellate Court had two options, first it could have either set aside the entire judgment/decreed of the Trial Court by taking recourse to the provisions of Order 41 Rule 23-A of the Code and remanded the case to the Trial Court for re-trial in the suits so as to enable the parties to adduce oral evidence to prove the additional evidence in accordance with law or second, it had an option to invoke powers under Order 41 Rule 25 of the Code by retaining the appeals to itself and remitting the case to the Trial Court for limited trial on particular issues arising in the case in the light of addi-

tional evidence which was taken on record and invite findings of the Trial Court on such limited issues to enable the first Appellate Court to decide the appeals on merits.

18) The first Appellate Court failed to take note of both the above mentioned provisions and proceeded to allow it wrongly.

19) Due to these two jurisdictional errors committed by the first Appellate Court causing prejudice to the appellants herein while opposing the first appeals, the judgment rendered by the first Appellate Court, in our opinion, cannot be sustained legally on merits.

20) The High Court also while deciding the second appeals failed to notice these two jurisdictional legal errors which went to the root of the case. It is for this reason, the impugned order also cannot be legally sustained calling interference by this Court.

21) In the light of the foregoing discussion and having regard to the totality of the facts of the case and to enable the parties to have full and fair trial, we consider it proper to take recourse to the powers under Order 41 Rule 23-A of the Code and accordingly set aside the judgment and decree of the first Appellate Court to the extent it allows the respondents' appeals on merit but at the same time uphold that part of the order which has allowed CMP No.1559/1993 filed by the plaintiffs for adducing additional evidence and remand the cases to the Trial Court for re-trial of all the four civil suits on merits afresh.

22) All parties to the four civil suits (appellants and the respondents) are allowed to amend their respective pleadings, if they wish to do so. The appellants are allowed to adduce additional evidence in rebuttal. Let the additional evidence taken on record by the first Appellate Court be remitted to the Trial Court for its proving in evidence in accordance with law. The Trial Court, if considered appropriate, can also frame additional issues. Parties will be allowed to adduce their oral and documentary evidence in addition to one already adduced.

23) The Trial Court will then decide the suits afresh on merits on the basis of entire evidence without being influenced by any of the previous orders/judgments rendered in this case including this order because having formed an opinion to remand the case for re-trial, we have refrained from entering into the merits of the issues. Let the trial be over within one year.

24) In view of the foregoing discussion the appeals succeed and are allowed. Impugned order is set aside.