CASE NO.:
Appeal (civil) 1360-1363 of 2001

PETITIONER:
K. SELVARAJ

RESPONDENT:
NEELI VISWANATH CHETTY & OTHERS

DATE OF JUDGMENT: 12/02/2008

BENCH:
H.K. SEMA & MARKANDEY KATJU

JUDGMENT:
JUDGMENT

O R D E R

CIVIL APPEAL NOS. 1360-1363 OF 2001

This appeal preferred by the plaintiff is directed against the judgment and order dated 19.11.1999 passed by the High Court in Second Appeal Nos. 48, 49 and 61 of 1998.

We have heard the parties.

Plaintiff \026 appellant's suit for permanent injunction in respect of land measuring 4 acres out of 11 acres and 99 cents in Survey No. 254/2 of village Mevalurkuppam, Thandalam Firke of Sriperumbudur Taluk was decreed by the trial court. The First Appeal filed by the defendant, respondent herein, was dismissed by the appellate court. Aggrieved thereby, the defendant filed the aforesaid Second Appeal before the High Court under Section 100 C.P.C. The High Court reversed the concurrent finding after re-appreciating the finding of facts recorded by the two Courts below in the Second Appeal.

By now it is a well settled principle of law that a Second Appeal, filed under Section 100 C.P.C., can only be considered purely on a substantial question of law.

In the present case the High Court has framed the following alleged substantial questions of law:-

1.Whether the lower appellate court completely misconstrued Exs.A13 and A14 and failed to note that the particulars in columns 12 and 13 of Ex.A13 are wholly inconsistent and contradictory to the particulars in column 26?

2.Whether the courts below erred in their approach and appreciation by placing the burden of proof on the defendant?

3.Whether the lower appellate court having held that the civil court has jurisdiction to go into the question of title inspite of the issue of a patta, failed to ascertain the extent of Paimash Nos. 520/1 and 520/3 and also to ascertain how there has been an excess of extent of nearly 8 acres in S.No.254/2?

Exhibit A13 and A14 are the Survey and Settlement Registers in which list of properties taken over by Inam Abolition Act, 1948 has been listed. Apart from the properties listed, their identity was admitted by the defendant in his written statement vide paragraphs 4 and 5 thereof. As regards question No.2, it is well settled that burden of proof loses relevance when both sides have led evidence. Question No. 3 framed by the High Court relates to questions of fact and, in Second Appeal the High Court cannot sit over the findings of fact of the Courts below by re-appreciation of evidence and by re-examining the findings of fact already recorded by the two Courts below.

That the disputed land consists of 4 acres out of 11 acres and 99 cents has been admitted by the defendant in his written statement. In paragraphs 4 and 5 of his written statement, the defendant had clearly stated that his interest is in the suit property measuring 4 acres out of the total extent of land measuring 11 acres and 99 cents.

The so called substantial question of law framed by the High Court was answered by the High Court in paragraph 24 of its judgment. This is what the High Court has stated in paragraph 24 of the judgment:-

"The courts below have failed to note that there is clear evidence to show the extent of Paimash Nos. 520/1 and 520/3. the extent of Paimash No.520/1 is 0.140.0 kanis which is equivalent to 1.17 acres, while the extent of Paimash no. 520/3 is 2.0.0 kanis, equivalent to 2.65 acres. Thus the total extent would come to about 3 acres 82 cents. Adding the 4 acres, at best it may come to only about 8 acres."

A reading of the findings recorded in paragraph 24 of the judgment of the High Court in Second Appeal clearly shows that the High Court has re-appreciated the findings of fact already recorded by the two Court below which had recorded concurrent findings of fact. This is not permissible under Section 100 C.P.C.

For the reasons aforestated, the impugned order of the High Court is set aside. The order of the trial court and the first appellate court is restored. The suit of the plaintiff stands decreed.

The appeals are disposed of accordingly. No costs.