

S.Ramkumar Vs. Jayasundari

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Court : Chennai

Decided On : Jun-27-2013

Judge : G.Rajasuria

Appellant : S.Ramkumar

Respondent : Jayasundari

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS Dated:27.6.2013 Coram The Honourable Mr.Justice G.RAJASURIA S.A.No.678 of 2013 and M.P.No.1 of 2013 S.Ramkumar ..Appellant versus Smt.Jayasundari ...Respondent This second appeal is directed against the judgment and decree dated 08.01.2013 passed by the Subordinate Judge, Tirupattur, in A.S.No.10 of 2012 reversing the judgment and decree dated 20.3.2012 passed by the District Munsif Court, Tirupattur, in O.S.No.84 of 2007.

For Appellant : Mr.M.V.Muralidaran

JUDGMENT

This Second appeal is focussed by the defendant animadverting upon the judgment and decree dated 08.01.2013 passed by the Subordinate Judge, Tirupattur, in A.S.No.10 of 2012 reversing the judgment and decree dated 20.3.2012 passed by the District Munsif Court, Tirupattur, in O.S.No.84 of 2007, which was one for injunction.

2.

The parties are referred to hereunder according to their litigative status and ranking before the trial Court.

3.

Compendiously and concisely, the germane facts absolutely necessary for the disposal of this Second Appeal, would run thus: (a)The fiRs.respondent herein, as plaintiff, filed the suit for injunction setting out various averments, the gist and kernel of them could succinctly and precisely be set out thus: (i)One Venkatachalam, who happened to be the original owner of the suit property, executed Ex.A1-the settlement deed 21.7.2003 in favour of his daughter-Jayasundari-the plaintiff, settling the said property, and accordingly she took possession and was in enjoyment.

(ii)While so, the defendant without having any right whatsoever simply attempted to trespass into the suit property; whereupon the suit was filed.

(b)Per contra, inveighing and challenging, refuting and contradicting the allegations/averments in the plaint, the defendant filed the written statement, the warp and woof of the same would run thus: The said Venkatachalam cancelled the settlement deed-Ex.A1 dated 21.7.2003 vide cancellation deed-Ex.B12 dated 12.6.2006 and thereafter executed one other settlement deed-Ex.B1 dated 22.11.2006 in favour of the defendant settling the suit property.

Whereupon the defendant came into possession and enjoyment of the suit property and that absolutely there was no merit in the case of the plaintiff.

Accordingly, the defendant prayed for the dismissal of the suit.

(c)Whereupon issues were framed.

Up went the trial, during which, the plaintiff examined herself as P.W.1 along with P.W.2 and marked Ex.A1.

The defendant examined himself as D.W.1 along with D.Ws.2 to 4 and marked Exs.B1 to B20.

(d) Ultimately the trial Court dismissed the suit, as against which, the appeal was filed by the plaintiff.

Whereupon the fiRs.appellate Court reversed the judgment and decree of the trial Court and decreed the original suit.

4. Being aggrieved by and dissatisfied with the judgment and decree of the fiRs.appellate Court, this second appeal is focussed by the defendant on various grounds and also suggesting the following substantial questions of law: 'A. Whether the settlement deed in Ex.A1 dated 21.7.2003 was acted upon or not?.

B. Whether the plaintiff has took possession of the suit schedule of property immediately after the execution of settlement deed dated 21.7.2003?.

C. Whether the plaintiff has proved the settlement deed dated 21.7.2003 with supporting witness of scribe?.

D. Whether the deceased Venkatachalam having right to cancel the settlement deed dated 21.7.2003 when the plaintiff has not took possession and not accepted the settlement deed?.

E. Whether the settlement deed dated 22.11.2006 executed in favour of the defendant by the deceased Venkatachalam is valid or not?.

F. Whether the defendant has proved that he is in possession and enjoyment of the suit property by marking the possession document?."

(extracted as such) 5. At the outset itself, I would like to fumigate my mind with the following decisions of the Honourable Apex Court: 2012(8) SCC148[Union of India v.

Ibrahim Uddin and another].; an excerpt from it would run thus: ".59.

Section 100 CPC provides for a second appeal only on the substantial question of law.

Generally, a second appeal does not lie on question of facts or of law.

In SBI v.

S.N.Goyal (2008) 8 SCC92 this Court explained the terms ".substantial question of law".

and observed as under: (SCC p.103, para 13) ".13.....The word ".substantial".

prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties.

'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the partiesany question of law which affects the final decision in a case is a substantial question of law as between the parties.

A question of law which arises incidentally or collaterally, having no bearing on the final outcome, will not be a substantial question of law.....There cannot, therefore, be a straitjacket definition as to when a substantial question of law arises in a case."

(emphasis added) 48.To sum up on the issue, it may be held that an application for taking additional evidence on record at a belated stage cannot be filed as a matter of right.

The court can consider such an application with circumspection, provided it is covered under either of the prerequisite conditions incorporated in the statutory provisions itself.

The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and

the circumstances under which such an evidence could not be led in the Court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court.

In case the court comes to the conclusion that the application filed comes within the four corners of the statutory provisions itself, the evidence may be taken on record, however, the court must record reasons as on what basis such an application has been allowed.

However, the application should not be moved at a belated stage.

6. In the same precedent, the following decisions are found referred to: (1) AIR 1962 SC3314 [Chunilal V.

Mehta & Sons Ltd. v. Century Spg.

and Mgf.

Co. Ltd.]. (2) (2011) 1 SCC673 [Vijay Kumar Talwar v.

CIT]. (3) AIR 1947 PC19 [Bibhabati Devi v.

Kumar Ramendra Narayan Roy]. (4) (1949) 17 ITR269 (Nag) [Suwalal Chhogalal v.

CIT]. (5) AIR 1957 SC852 [Oriental Investment Co. Ltd. v. CIT]. (6) AIR192SC1604 [Jagdish Singh v.

Natthu Singh]. (7) (1996) 5 SCC353 [Parativa Devi v.

T.V. Krishnan]. (8) (1998) 6 SCC423 [Satya Gupta v.

Brijesh Kumar]. (9) AIR 2000 SC534 [Ragavendra Kumar v.

Firm Prem Machinery & Co.]. (10) AIR 2000 SC1261 [Molar Mal v.

Kay Iron Works (P) Ltd.]. (11) (2010) 11 SCC483 [Bharatha Matha v.

R. Vijaya Renganathan]. (12) (2010) 12 SCC740 [Dinesh Kumar v.

Yusuf Ali].(13) (2002) 3 SCC634[Jai Singh v.

Shakuntala].(14) (2008) 12 SCC796[Kashmir Singh v.

Harnam Singh].7.A mere running of the eye over the above precedents would connote and denote, exemplify and demonstrate that unless there is any substantial question of law is involved, the question of upsetting the finding of the court below would not arise.

8.Keeping in mind the dictum as found enunciated in the aforesaid precedents of the Supreme Court, I would like to analyse the records.

9.Shockingly and surprisingly, Venkatachalam cancelled Ex.A1-the settlement deed dated 21.7.2003 unilaterally without approaching the Court and such a couRs.adopted by him is non-est in the eye of the law.

Ex.A1-the settlement deed could not legally be got annuled, as per the execution of the subsequent cancellation deed-Ex.B12 dated 6.11.2006 and ultimately the subsequent execution of the settlement deed-Ex.B1 dated 22.11.2006 in favour of the defendant should also be taken as non-est in the eye of the law.

The Full Bench judgment of this Court reported in 2011(2) CTC1 LATIF ESTATE LINE INDIA LTD., REP.BY ITS MANAGING DIRECTOR, REP.BY ITS MANAGING DIRECTOR, MR.HABIB ABDUL LATIF V.

1.HADEEJ.AMMAL2THE INSPECTOR GENERAL OF REGISTRATION, SANTHOME, CHENNAI-4 AND3THE SUB-REGISTRAR, AMBATTUR, CHENNAI, is precisely on the point.

Certain excerpts from it would run thus: ".59.

After giving our anxious consideration on the questions raised in the instance case, we come to the following conclusion: (i) A deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect.

Such a document does not create any encumbrance in the property already transferred.

Hence, such a Deed of Cancellation cannot be accepted for registration.

(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of Cancellation even with the consent of the parties.

The proper couRs.would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.

(iii) Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a Deed of Cancellation with the consent of both the parties on the ground of non-payment of consideration.

The reason is that in such a Sale Deed, admittedly, the title remained wit the transferor.

(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recouRs.to the civil Court by obtaining a decree of cancellation of Sale Deed on the ground of inter alia of fraud or any other valid reasons."

10.The judgment of this Court reported in 2009-2-L.W.247 G.D.Subramaniam v.

1.The Sub Registrar, Office of Konur Sub Registrar, SIDCO Nagar, Chennai-49 and three otheRs.would also exemplify the same view.

11.In wake of the settled proposition of law as stood enunciated in the precedents cited supra, the settlement deed-Ex.A1 executed by the executor cannot be held to have been cancelled.

However, in this case, Venkatachalam did choose to unilaterally ignored the said document Ex.A1, which cannot be countenanced.

12.As per the aforesaid dictum, in the facts and circumstances of this case, it is unambiguously and unequivocally clear that the plaintiff alone should be taken as the owner of the suit property and accordingly as found specified in the settlement deed-Ex.A1 itself, her possession alone has to be upheld.

13.The learned counsel for the appellant/defendant, inviting the attention of this Court to Exs.B1 to B.20 and more specifically, Exs.B2 and B3-the computer photo copies of the land survey record and patta, Ex.B4-dated 26.8.2011-the photocopy of the patta in the name of Venkatachalam, Sundaravel and the defendant, Ex.B5 dated 16.9.2011-the computer photo copy of the land survey record and patta, Ex.B6-dated 24.12.2009-the extracts of adangal in the name of the defendant, Exs.B7,dated 8.9.2010 and Ex.B8 dated 10.9.2011-the photo copies of the adangal extracts in the name of the defendant given by the Village Administrative Officer, Exs.B9, B10, B11 dated 9.4.2007, 20.1.2009 and 9.2.2010-the kist receipts for the fasli 1416, 1418 and 1419 respectively, would pyramid his argument that all those documents would exemplify and demonstrate that the defendant has been in possession and enjoyment of the suit property.

14.In my considered opinion all those documents do not speak in support of the defendant's case.

It is quite obvious that most of the documents are pendente lite documents and over and above that those documents speak in the name of Venkatachalam-the original owner and in such a case, absolutely there is nothing to display and demonstrate that the defendant was in possession and enjoyment of the suit property.

15.The fiRs.appellate Court au fait with law and au courant with facts and that too, considering all the documents as well as oral evidence, held that the plaintiff's suit should be decreed and I could see no perversity or illegality in the said judgment.

16.In the result, the second appeal is dismissed.

However, there is no order as to costs.

Consequently, connected miscellaneous petition is dismissed.

Ms.27.6.2013 To 1.The Subordinate Judge, Tirupattur.

2.The District Munsif Court, Tirupattur.

G.RAJASURIA,J.

Ms.S.A.No.678 of 2013 27.6.2013

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