

S.George Vs. S.Alphonse Rani

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Court : Chennai

Decided On : Jun-17-2013

Judge : G.Rajasuria

Appellant : S.George

Respondent : S.Alphonse Rani

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

17. 06.2013 Coram: THE HONOURABLE MR.JUSTICE G.RAJASURIA
S.A.No.602 of 2013 and M.P.No.1 of 2013 1. S.George 2. Stella Mary 3. Amala
Santhosham 4. M.John Gilbert .. Appellants vs.

1. S.Alphonse Rani 2. Miss.Bella .. Respondents This second appeal is directed
against the judgement and decree dated 21.12.2012 passed by the learned
Principal Judge, city Civil Court, Chennai in A.S.No.110 of 2012 confirming the
judgment and decree dated 23.11.2011 passed by the VI Assistant Judge, City
Civil Court, Chennai in O.S.No.4726 of 2010. For Appellant : Mr.S.Udayakumar

JUDGMENT

This second appeal is focussed by the defendants, inveighing the judgement and
decree dated 21.12.2012 passed by the learned Principal Judge, city Civil Court,
Chennai in A.S.No.110 of 2012 confirming the judgment and decree dated
23.11.2011 passed by the VI Assistant Judge, City Civil Court, Chennai in

O.S.No.4726 of 2010.

2. The parties, for the sake of convenience, are referred to here under according to their litigative status and ranking before the trial Court.

3. A re'sume of facts absolutely necessary and germane for the disposal of this second appeal would run thus: a]. The plaintiffs, filed the suit for partition, seeking the following reliefs: To pass a decree (i) declaring that each of the plaintiffs are entitled to 1/6 th share in the schedule ".A". and ".B". mentioned properties. (ii) to appoint an Advocate Commissioner to divide the suit property by metes and bounds into six shares for allotting 1/6 th share to the 1st plaintiff and 1/6 th share to the second plaintiff and pass final decree. (iii) to direct the fourth defendant to account for the income of the schedule mentioned property from the date of plaint. (extracted as such) in respect of the two items of properties described here under:
A SCHEDULE Premises bearing Door No.65/1, Thiruvengadapuram First Street, Choolaimedu Chennai 600 094, S.No.17/4 (Part) admeasuring to an extent of 604 sq.ft bounded on the North by :

1. t plaintiff's property South by : Velu Naicker House East by : Gnanaprakasam Property and West by : George's property (1st defendant) situated within the SRO Kodambakkam and Registration District of Chennai. B SCHEDULE Premises bearing Door No.51, (Plot No.43),Pushpa Nagar, 2nd Street, Nungambakkam, Chennai 600 034, bearing R.S.No.576 and 577 (part) extent of 84 sq.metre. North by : Pushpa Nagar 1st street South by : R.S.No.877 East by : Plot No.44 and West by : Plot No.42 situated within Egmore-Nungambakkam Taluk. (extracted as such)
b]. Precisely and pithily, the case of the plaintiffs' is that the plaintiffs' mother Catherine owned the suit properties. The plaintiffs and the defendants are the daughters and sons of Savariappan and the said Cathrine. Savariappan pre-deceased Cathrine and Cathrine died intestate on 23.09.2003 leaving the plaintiffs and the defendants as her legal heirs. Out of total extent of the plot measuring 1744 sq.ft., Cathrine during her life time settled an extent of 300 sq.ft in favour of the first plaintiff Alphonse Rani. The same Cathrine sold an extent of 840 sq.ft out of the remaining extent of 1444 sq.ft to her son George, the first defendant herein by registered sale deed dated 20.10.1989 and the remaining extent of 604 sq.ft

described as first item of the suit property was in her possession. The second item described in the schedule of the plaint was allotted in favour of the said Cathrine under lease cum Sale agreement dated 23.04.1990 by the Tamil Nadu Slum Clearance Board and till her death no sale deed was executed by the Tamil Nadu Slum Clearance Board in her favour and except that all other formalities were completed in favour of Cathrine. Accordingly, the plaintiffs prayed for dividing the extent of 604 sq.ft in the first item of the suit properties and the entire second item of the suit properties into six shares and allot their aliquot shares. c]. Per contra, denying and refuting the allegations/averments in the plaint, the third defendant filed the written statement, which was adopted by D1, D2 and D4, the gist and kernel of it would run thus: The relationship as found set out in the plaint is true. The first plaintiff as per her own version got from Cathrine 300 sq.ft vide settlement deed dated 21.05.1983. Cathrine during her life time itself after such settlement declared that the first plaintiff was no more entitled to any extent in the first item of the suit properties and according to the wish and will of Cathrine, the extent of 604 sq.ft described in the first item of the suit properties, should be divided equally between defendants 2 and 3 only and the second plaintiff, being the spinster could enjoy the property along with D4. Precisely, the defendants' would contend that over and above 300 sq.ft, which the first plaintiff obtained from her mother, she should not be allotted with any share in the suit property. D1 expressed his intention not to claim any share in the said property because he already purchased 804 sq.ft from his mother. Accordingly, they prayed for the dismissal of the suit. d]. Whereupon issues were framed by the trial court. e]. Up went the trial, during which, the first plaintiff examined herself as PW1 and marked Exs.A1 to A6. On the side of the defendants, D.Ws.1 and 2 were examined and no document was marked. f]. Ultimately, the trial court decreed the suit as prayed for;as against which, the defendants' preferred the appeal for nothing but to be dismissed by the first appellate court, confirming the judgment and decree of the trial court. g]. Challenging and impugning the judgments and decrees of both the courts below, the defendants' have preferred this second appeal on various grounds and also suggesting the following substantial question of law: a) Whether the findings rendered by the trial court as well as the first appellate court that the plaintiffs are entitled to 1/6 th share in the remaining suit properties?. b) Whether the settlement

made under Ex.A2 in favour of the first plaintiff and a portion of the property sold in favour of the first defendant are to be excluded and in the absence of any finding relating to the said important issue is correct in law?. c) Whether the defendants 2 to 4 are getting lesser share in the joint family property by ignoring the settlement deed executed under Ex.A2 and portion of the property was sold in favour of the first defendant and there is no specific finding has been rendered by the courts below has to sustain in the eye of law?. d) That the courts below failed to note that by ignoring the settlement made under Ex.A2 in favour of the first plaintiff and 804 sq.ft., was sold by Catherine Ammal in favour of the first defendant and by allotting further 1/6 th share in favour of the plaintiffs especially the first plaintiff was given share in the property amounts to inequitable partition among the members of joint family?. [extracted as such].

4. Heard the learned counsel for the appellants.

5. The learned counsel for the appellants/defendants would submit that the first plaintiff was not justified in laying claim over the said 604 sq.ft of land described in the first item of the plaint because in that plot measuring an extent of 1744 sq.ft., already she got 300 sq.ft of land by way of settlement from Cathrine and in such a case, she should not be allowed to snatch away the shares of the other heirs of Cathrine. In fact, D1 himself voluntarily stated that he was not claiming any share in respect of the first schedule of the property as he had purchased 840 sq.ft of land from his mother. But both the courts below have not taken note of that fact. Accordingly, he would pray for setting aside the judgments and decrees of both the courts below.

6. At the outset itself, I would like to fumigate my mind with the following recent decision of the Hon'ble Apex Court reported in 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) 7. In the same precedent, the following decisions are found referred to concerning the entertaining of second appeals. (1) AIR 1962 SC3314[Chunilal V. Mehta & Sons Ltd. v. Century Spg. and Mfg. 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].

8. A mere running of the eye over those precedents would connote and denote, exemplify and demonstrate that the second appeal cannot be entertained as a matter of course unless any substantial question of law is involved.

9. Both the fora below au fait with law and au courant with facts took into account the legal position as applicable to Christians, under the Indian Succession Act. Indubitably and indisputably, both the items of properties described in the schedule of the plaint originally belonged to deceased Cathrine, the mother of the plaintiffs and the defendants and her husband pre-deceased her. It is also an incontrovertible and unarguable fact that Cathrine during her life time out of the plot measuring an extent of 1744 sq.ft, donated an extent of 300 sq.ft vide Ex.A2

the settlement deed in favour of the first plaintiff.

10. It is also an admitted fact that the same Cathrine sold an extent of 840 sq.ft out of the remaining extent in the plot measuring an extent of 1744 sq.ft in favour of D1 leaving only 604 sq.ft to be inherited by her legal heirs.

11. The core question arises as to whether the first plaintiff in view of she having enjoyed the bonanza under Ex.A2 in her favour, was precluded from inheriting the 604 sq.ft of land by the other legal heirs of Cathrine.

12. It is obvious and axiomatic, pellucid and palpable that simply because the mother showed some generosity in favour of the first plaintiff during her life time by executing Ex.A2 the settlement deed, the said plaintiff cannot be prevented from claiming her aliquot share along with her sister and brothers, in the extent of 604 sq.ft described in the first schedule of the plaint.

13. The concept, ".legitim". cannot be pressed into service under the Indian Succession Act as against the first plaintiff. In such a case, there is no point on the part of the defendants in harping on the point that the first plaintiff who got the benefit under Ex.A2 from her mother during her life time should be precluded from inheriting along with the other co-sharers, the extent of 604 sq.ft described in the first item of the plaint.

14. Insofar as the second item of the suit property described in the schedule of the plaint is concerned, it is a fact that except for execution of the sale deed by the Tamil Nadu Slum Clearance Board all other formalities were over and in fact, the children of Cathrine stepped into the shoes of their mother's right over that second item of the suit property.

15. Hence, both the courts below ordered partition, with which this court is having no reason to interfere.

16. The learned counsel for the defendants even though submits that D1 candidly and categorically stated that he did not want any share in the first item of the property described in the schedule of the plaint, because he has already got 840 sq.ft of land in that plot measuring an extent of 1744 sq.ft., yet both the courts

below failed to take note of that fact, I would like to point out that if at all D1 wants to stick on to his stand of relinquishment, it is open for him to reiterate his stand during the final decree proceedings and it is for the court to do the needful.

17. With the above observation, this second appeal is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed. vj2 To 1. The Principal Judge, city Civil Court, Chennai 2. The VI Assistant Judge City Civil Court Chennai

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