

Jambuveni Vs. Leelavathy and Others

Jambuveni Vs. Leelavathy and Others

SooperKanoon Citation : sooperkanoon.com/1178773

Court : Chennai

Decided On : Jan-05-2016

Judge : M. Duraiswamy

Appeal No. : C.R.P.(NPD)Nos. 2869 & 2870 of 2015 & M.P.Nos. 1 & 1 of 2015

Appellant : Jambuveni

Respondent : Leelavathy and Others

Judgement :

(Prayer: Civil Revision Petition No.2869/2015 filed under Article 227 of the Constitution of India, to set aside the order dated 16.06.2015 passed in E.A.No.156 of 2014 in M.P.No.284 of 2004 in E.P.No.107 of 2004 in Ejectment Suit 32 of 1986 on the file of the Registrar, Court of Small Causes, Madras.)

Common Order

1. Civil Revision Petition No.2869 of 2015 arises against the fair and final order passed in E.A.No.156 of 2014 in M.P.No.284 of 2004 in E.P.No.107 of 2004 in Ejectment Suit No.32 of 1986 on the file of the Registrar, Court of Small Causes, Chennai.

2. Civil Revision Petition No.2870 of 2015 arises against the fair and decreetal order passed in E.A.No.157 of 2014 in M.P.No.284 of 2004 in E.P.No.107 of 2004 in Ejectment Suit No. 32 of 1986 on the file of the Registrar, Court of Small

Causes, Chennai.

3. Heard Mr.A.A.Lawrence, learned counsel appearing for the petitioner and Mr.S.Suresh Kumar, learned counsel appearing for the 1st respondent.

4. E.A.No.156 of 2014 was filed by the revision petitioner-1st judgment debtor to direct the 1st respondent-decree holder to produce the original patta in Ex.P23 obtained from the 7th respondent viz., The Tahsildar, Mylapore Triplicane Taluk, Chennai and the original sketch plan in Ex.P24 before the Execution Court for the purpose of comparison with the photostat copies of the documents marked in Exs.P23 and P24.

5. E.A.No.157 of 2014 was filed by the revision petitioner- 1st judgment debtor to issue subpoena to the 7th respondent viz., The Tahsildar, Mylapore Triplicane Taluk, Chennai to produce the Revenue Records relating to issuance of patta dated 16.7.1991 in the name of the 1st respondent-decree holder in respect of the suit property and to tender evidence in respect of the same.

6. Pursuant to the decree passed in Ejectment Suit No. 32 of 1986, dated 22.09.2003, the 1st respondent-decree holder filed an Execution Petition in E.P.No.107 of 2004.

7. Challenging the decree passed in the Ejectment Suit, the petitioner filed Ejectment Appeal with a petition to condone the delay and on 6.8.2004, the said petition was dismissed by the Court of Small Causes and consequently, the Eject Appeal was also dismissed.

8. Challenging the said order, the petitioner preferred a Civil Revision petition before this court in C.R.P.No.2127 of 2004 and this court dismissed the Civil Revision Petition on 23.2.2012 holding that the Ejectment Appeal is not maintainable. Thereafter, the petitioner filed Civil Revision petition in C.R.P.(NPD) No.1961 of 2012 with a delay of 3010 days. The delay was condoned by this court and the Civil Revision petition was dismissed by order dated 10.12.2013.

9. Against the order passed in C.R.P.(NPD) No.1961 of 2012, the petitioner preferred Special Leave Petition in S.L.P.No.20156 of 2014, which was also

dismissed by the Hon'ble Apex Court. The Hon'ble Supreme Court dismissed the Special Leave Petition on 08.08.2014 by passing the following order:-

We find no merits in the special leave petition. The special leave petition is dismissed on merits. ?

The petitioner also filed a petition in M.P.No.284 of 2004 under section 47 of CPC. In the said 47 of CPC petition, the petitioner has filed the impugned applications in E.A.Nos. 156 and 157 of 2014 for the reliefs stated above.

10. The main contention raised by the revision petitioner is that Ex.P23 patta and Ex.P24 sketch are forged documents and that there is a great difference between the measurement in Ex.P1 sale deed and Ex.P24 sketch. Further, the petitioner contended that there is also a difference in Door number in Exs.P23 and P.24.

11. The petitioner having lost before the Trial Court, before this court and before the Hon'ble Supreme Court of India had successfully dragged on the matter for nearly 30 years.

12. The learned counsel appearing for the petitioner submitted the Hon'ble Supreme Court has not dismissed the petition on merits, in spite of the fact that the Hon'ble Supreme Court has held that the Special Leave Petition was dismissed on merits.

13. The petitioner have raised all contentions, which were already decided in the Ejectment Suit and in the Civil Revision Petition. This court also elaborately considered the case of the parties and confirmed the judgment and decree passed by the court of Small Causes in the Ejectment Suit.

14. The learned counsel appearing for the petitioner submitted that the decree was obtained by the first respondent-plaintiff by playing fraud on the court and therefore, the judgment and decree passed by the Trial Court should be set aside.

15. When the Civil Revision Petitions have been filed only challenging the fair and final orders passed in E.A.Nos. 156 and 157 of 2014, the learned counsel for the petitioner argued that the judgment and decree passed by the Trial court was

obtained by fraud and it is a nullity. In support of his contention, the learned counsel relied upon the following judgments:-

- (i) AIR 1972 SC 1371 [Bhavan Raja and others v. Solanki Hanuji]
- (ii) AIR 1973 Bombay 139 [Shewa Lachha Banjar v. Bhawarilal Ganeshmal]
- (iii) AIR 2007 Orissa 24 [Bandhu Das and Another v. Uttam Charan Pattanaik]
- (iv) AIR 2003 SC 643 [Pratibha Singh and another v. Shanti Devi Prasad and another]
- (v) 2007(4) SCC 221 [A.V.Papayya Sastry and others v. Government of A.P. and others]
- (vi) 1995(4) SCC 163 [Asharfi Lal v. Koili (Smt) Dead by LRs.
- (vii) AIR 2006 Bombay 203 [Uday Pundalik Nadkarni v.amarnath N.S.Talwadkar]
- (viii) AIR 1994 SC 591 [Government of A.P. and others v. Karri Chinna Venkata Reddy and others]
- (ix) AIR 1995 Madhya Pradesh 134 [Sitaram v. Ramcharan and others]
- (x) AIR 1992 Calcutta 160 [Shib Chadra Singha and others v. Gour Chadra Paul and others]
- (xi) 2005(4) SCC 424 [U.P. State Road Transport Corporation through its Chairman v. Omaditya Verma and others]
- (xii) AIR 1994 SC 853 [S.P.Chengalvaraya Naidu (dead) by LRs v. Jagannath (dad) by LRs and others]
- (xiii) 2008 (9) SCC 54 [Raju Ramsingh Vassave v. Mahesh Deorao Bhivapurkar and others]
- (xiv) 2008(12) SCC 353 [Ganpatbhai Mahjibhai Solanki v. State of Gujarat and others]

- (xv) 2007(8) SCC 751 [T.Vijendradas and another v. M.Subramanian and others]
- (xvi) 2004 (4) SCC 389 [Sudhangshu Mohan Deb (dead) by LRs v. Niroda Sundari Debidhup and others)
- (xvii) AIR 2006 Andhra Pradesh 8 [Nandanam Mohanamma and others v. Markonda Narasimha Rao and another]
- (xviii) AIR 1995 SC 1205 [Mahboob Sahab v. Syed Ismail and others]
- (xix) 1996 APHC 1006 [K.Pedda Jangaiah v. Mandal Revenue Officer, Moinabad Mandal, Ranga Reddy District]
- (xx) 2004(1) LW 192 [Hussainy Begum v. R.Natarajan]
- (xxi) 2004(4) SCC 217 [P.Varadaajulu v. Agricultural Produce Market Committee]
- (xxii) 1992(2) MLJ 214 [Ramachandran v. Janardhanam and others]
- (xxiii) 2002(3) MLJ 496 [Nawab Masjid Trust by its Manager A.Ahmed Akli Mohagir v.Chubhagmuell Gulecha]
- (xxiv) AIR 1941 Oudh 77 [Khadim Ali v. Jagannath]
- (xxv) 2000(3) LW 542 [S.Mahmaidoss v. Vanathayya and others]

16. Mr.S.Suresh Kumar, learned counsel appearing for the 1st respondent-decree holder submitted that Ex.P23 and P24 are true and genuine documents and therefore, the document were rightly marked before the Trial Court. The learned counsel further submitted that the petitioner-1st judgment debtor has filed the applications only to drag on the matter and to cause hardship to the 1st respondent-decree holder.

17. On a perusal of the judgments cited above, it is clear that the learned counsel appearing for the petitioner had made his submissions beyond the scope of the Civil Revision Petition. When the impugned order relates only to the production of the original documents and issuance of subpoena to the Tahsildar, Mylapore Triplicane Taluk, Chennai, the learned counsel made his submissions attacking

the judgment and decree passed in the Ejectment Suit and in the C.R.P.(NPD) No.1961 of 2012. When this court had confirmed the judgment and decree passed in the Ejectment Suit, which was also confirmed by the Hon'ble Apex Court, I do not find any merit in the submissions made by the learned counsel appearing for the petitioner. In spite of caution made by this court to the learned counsel appearing for the petitioner with regard to the submissions made by him, the learned counsel went on to make his submissions attacking the findings made in the Ejectment Suit and in the Civil Revision Petition in C.R.P.(NPD) No.1961 of 2012.

18. Though there is no dispute with regard to the ratios laid down in the judgments relied upon by the learned counsel appearing for the petitioner, since the submissions made by the learned counsel appearing for the petitioner and the judgments relied upon by him are beyond the scope of the present Civil Revision Petitions, the same cannot be applied to the facts and circumstances of the present case.

19. So far as Exs.P23 and P24 are concerned, they were allowed to be marked before the Trial Court without any objection. Now, the petitioner is raising objections with regard to the documents nearly after 30 years. That apart, it is pertinent to note that the revision petitioner, who is the 1st defendant in the suit, has not even entered the witness box. One Mohammed Sheriff was examined as D.W.1. According to the petitioner, D.W.1 is the vendor of the revision petitioner. The revision petitioner even without entering the witness box and letting in oral evidence in support of the averments stated in the written statement, has dragged on the matter for so many years. According to the petitioner, Exs.P23 and P24 are xerox copies, which should not have been marked in the suit. At this juncture, it is pertinent to note that even Ex.R1 marked on the side of the defendant is also a xerox copy of the partition deed. It is also pertinent to note that the revision petitioner is claiming her right under the said partition deed. While so, even without marking the original, when she is claiming right under the xerox copy of the partition deed, now she has filed the application questioning the genuineness of Exs.P23 and P24 stating that those are xerox copies. In the impugned order, the Execution Court has extracted the averments stated in the affidavit filed by the first

respondent-decree holder in M.P.No.1044 of 1990 in Eject Suit No.32 of 1986, which reads as follows:-

I state that since the original patta is to be retained for effectively and enjoying the land, I may be permitted to file the photostat copy of the patta. The original patta may be compared with the photostat copy before marking. The patta is a public document and hence the defendant may not have objection for marking the same.
?

Therefore, even in 1990 itself, at the time of trial, Ex.P23 patta was produced before the Trial Court and the same was compared and only thereafter, copy of the document was allowed to be marked. Ex.P24, which was marked in the cross examination of D.W.1 on 18.4.1996, is the photostat copy of the plan showing the properties sold by D.W.1 to the 1st respondent-plaintiff. D.W.1, in his evidence, has admitted that he was doing finance business and when he sold the property, he gave Ex.P24 plan along with the sale deed. Therefore, it is clear that Ex.P24 plan was shown to D.W.1 and was also admitted by him in his cross examination and only thereafter, the document was allowed to be marked by the Trial Court. When both, Exs.P23 and P24, were allowed to be marked by the Trial Court with the consent of the defendants, they cannot turn around and question the genuineness of the document after a lapse of several years.

20. As already stated, the suit was filed in the year 1986. The decree was obtained by the 1st respondent-plaintiff on 22.09.2003. Pursuant to the decree, the Execution Petition was filed in the year 2004. The revision petitioner filed a petition under section 47 of CPC in M.P.No.284 of 2004 in the year 2004 . Even after a lapse of nearly 30 years, in spite of the judgment and decree passed in the Ejectment Suit which was confirmed by the Hon'ble Apex Court, the proceedings has not reached the finality till today. The applications filed by the petitioner is clear abuse of process of law and the petitioner is challenging the orders of the Hon'ble Supreme Court and this court.

21. Taking into consideration all these aspects, the Registrar, Court of Small Causes, Chennai has rightly dismissed the applications. Since the petitioner had deliberately filed the applications to drag on the matter, I am of the view that the

1st respondent-decree holder should be compensated with costs.

22. In these circumstances, I do not find any error or irregularity in the orders passed by the Execution Petition. The Civil Revision Petitions are dismissed with cost of Rs.25,000/- (Rupees twenty five thousand only). The petitioner shall pay the said sum of Rs.25,000/- to the 1st respondent-decree holder, within a period of two weeks from the date of receipt of a copy of this order. The Registrar, Court of Small Causes, Chennai, is directed to dispose of the petition in M.P.No.284 of 2004 in E.P.No.107 of 2004 in Ejectment Suit 32 of 1986, within a period of four weeks from the date of receipt of a copy of this order. The Registrar, Court of Small Causes, Chennai is also directed to dispose of the Execution Petition, within a period of two weeks thereafter. The Registrar, Court of Small Causes, Chennai is directed to report the disposal of the Miscellaneous Petition in M.P.No.284 of 2004 and the Execution Petition in E.P.No.107 of 2004 within the stipulated time to the Registry of this court. Consequently, connected miscellaneous petition is closed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com