Subramani and Others Vs. Sarasu and Another

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Court : Chennai

Decided On : Mar-06-2017

Judge : T. Ravindran

Appeal No. : S.A.No. 793 of 2011 & M.P.No. 1 of 2011

Appellant : Subramani and Others

Respondent : Sarasu and Another

Judgement :

(Prayer: This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 20.10.2010 passed in A.S.No.5 of 2009 on the file of the Subordinate Court, Tiruchengode confirming the judgment and decree dated 27.08.2008 passed in O.S.No.186 of 2002 on the file of the District Munsif Court, Tiruchengode.)

1. In this second appeal, the defendants 1 to 4 have impugned the Judgment and decree dated 20.10.2010 passed in A.S.No.5 of 2009 on the file of the Subordinate Court, Tiruchengode confirming the judgment and decree dated 27.08.2008 passed in O.S.No.186 of 2002 on the file of the District Munsif Court, Tiruchengode.

2. The suit has been laid by the plaintiffs for declaration and permanent injunction as regards Item No.1 of the suit properties and declaration of their easementary rights as regards Item Nos.2 and 3 of the suit properties and consequential

permanent injunction.

3. The trial court on a consideration of the evidence adduced by the respective parties declined the relief of declaration and permanent injunction sought for by the plaintiffs as regards the first item of the suit properties, however, granted the reliefs sought for by them as regards Item Nos.2 and 3 of the suit properties with reference to the easementary rights excluding the 15 links North- South cart track existing in the middle of S.No.34/5. Aggrieved over the judgment and decree of the trial court, it is found that the defendants 1 to 4 have preferred A.S.No.5 of 2009. The above said appeal has been preferred against the judgment and decree of the trial court as regards Item Nos.2 and 3 of the suit properties. The first appeal preferred by the defendants ended in dismissal. Challenging the same, the present second appeal has been preferred.

4. In this second appeal, two substantial questions of law are suggested for consideration by the appellants namely that the first appellate court has erred in deciding the relief of declaration in the appeal filed by the defendants when the plaintiffs have neither filed cross objection nor an appeal challenging the findings recorded by the trial court and that the courts below erred in decreeing the suit without taking into consideration that the other necessary and proper parties had not been arrayed as the defendants in the suit.

5. As regards the first substantial question of law suggested, it proceeds on the footing that inasmuch as the plaintiffs have not preferred any cross objection or appeal against the judgment and decree of the trial court declining the relief sought for by them as regards Item No.1 of the suit properties, the same should not have been dealt with by the first appellate court in the appeal preferred by the defendants. However, it is found that the plaintiffs have preferred an independent appeal in A.S.No.1 of 2009 against the judgment and decree of the trial court declining the relief sought for by them as regards the first item of the suit properties. The said appeal has been hotly contested by the defendants and it is also found that in the said appeal, the first appellate court has granted the relief in favour of the plaintiffs declaring that they are entitled to share of Kulandaivel and 1/3 share of Muthu Gounder in Item No.1 of the suit properties and accordingly,

granted the consequential relief of permanent injunction with reference to the first item of the suit properties. It is therefore found that the plaintiffs have preferred a separate appeal and accordingly also been granted the appropriate relief as regards the first item of the suit properties. It is also noted that both the appeals preferred by the defendants as well as the plaintiffs have been dealt with by the same judge, however, pronouncing judgments on two different dates i.e., the appeal preferred by the defendants was disposed of on 20.10.2010 and the appeal preferred by the plaintiffs has been disposed of on 26.10.2010. That apart, it is also found that the same counsel had represented the contesting parties in both the appeals. In such view of the matter, it could be seen that the first substantial question of law suggested by the appellants falls to the ground.

6. That apart it is also contended by the respondents' counsel that the appellants have not preferred any appeal against the judgment and decree dated 26.10.2010 made in A.S.No.1 of 2009 on the file of the Sub Court, Tiruchengode. The same has been fairly admitted by the appellants' counsel also. It is argued by the respondents' counsel that the defendants having not preferred any appeal against the judgment and decree passed in A.S.No.1 of 2009 cannot be allowed to canvass the above substantial question of law and in this connection strong reliance is placed upon the decision reported in 2015 (1) LW 1(Sri Gangai Vinayagar Tample and another Vs. Meenakshi Ammal and Others).

7. A perusal of the above said decision would go to show that the defendants having failed or neglected or concertedly avoided filing appeal against the judgment and decree rendered in A.S.No.1 of 2009, the case of the defendants has been permanently sealed and foreclosed since resjudicata would apply against them. In such view of the matter, it could be seen that the first substantial question of law projected by the appellants does not survive any further and accordingly, the same cannot be accepted.

8. As regards the second substantial question of law suggested namely that the suit levelled by the plaintiffs is bad for non joinder of necessary and proper parties, it is found that the said issue had been gone in detail by the first appellate court in A.S.No.1 of 2009 and clear findings have been given that it is unnecessary for

impleading all the parties to the suit, who are not at all disputing or disturbing the plaintiffs' title and enjoyment of the suit property. Accordingly, the first appellate court has held that the suit is not bad for non joinder of proper and necessary parties. As seen above the defendants have not preferred any appeal against the above said judgment and decree in A.S.No.1 of 2009. Therefore, in the light of the above position and the authority above referred to, the second substantial question of law suggested also does not survive any further and liable to be rejected.

9. The learned counsel for the respondents also contended that the plaintiffs and the defendants derived title to their respective properties only by virtue of the partition deed dated 01.07.1982. It could be seen that accordingly, when the properties belonging to the parties are divided for the sake of convenience and enjoyment, necessary easementary rights had also been granted to the parties concerned. In the light of the above position, the learned counsel contended that inasmuch as the trial court had erred in declining the relief sought for by the plaintiffs as regards the first item of the suit properties, the plaintiffs had been necessitated to prefer the first appeal in A.S.No.1 of 2009. As regards the position of law that the easementary right and the dominant heritage cannot be transferred separately by segregating one from the other to two different persons, since such easementary right would automatically follow the right on the dominant heritage if such dominant heritage is transferred to another person and laying stress on the above proposition of law, he would rely upon the authority reported in 2016 (5) LW 616(T.V.Ravi Vs. B.R. Mohan and Others). The principles of law enunciated in the above said decision are also taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

10. In view of the above discussions, I find that no substantial question of as such is involved in this second appeal. Accordingly, the second appeal fails and is dismissed. No costs. Consequently, connected miscellaneous petition is closed.