

Kolandasamy Vs. Kuttiammal and Another

Kolandasamy Vs. Kuttiammal and Another

SooperKanoon Citation : sooperkanoon.com/1190787

Court : Chennai

Decided On : Jun-03-2016

Judge : P. Kalaiyarasan

Appeal No. : SA.No. 1344 of 2005, CMP.No. 17828 of 2005 & VCMP.No. 136 of 2006

Appellant : Kolandasamy

Respondent : Kuttiammal and Another

Judgement :

(Prayer: Second Appeal is preferred under Section 100 of the Code of Civil Procedure against the Judgment and Decree, dated 23.11.2004 made in A.S.No.48 of 2004 on the file of the I Additional Sub-Court, Erode, confirming the Judgment and Decree, dated 14.07.2004 made in O.S.No.153 of 2001 on the file of the District Munsif-cum-Judicial Magistrate Court, Perundurai.)

1. This Second Appeal is filed against the Judgment and Decree, dated 23.11.2004 made in A.S.No.48 of 2004 on the file of the I Additional Sub-Court, Erode, confirming the Judgment and Decree, dated 14.07.2004 made in O.S.No.153 of 2001 on the file of the District Munsif-cum-Judicial Magistrate Court, Perundurai.

2. The plaintiff in O.S.No.153 of 2001 on the file of the District Munsif-cum-Judicial Magistrate Court, Perundurai is the appellant herein.

3. The suit was filed for permanent injunction as against the respondents / defendants.
4. The parties herein will be referred to according to their rank in the suit.
5. The plaintiff is the descendant through the first wife of Vadivelappa Gounder, whereas the defendants are the descendants through the second wife of Vadivelappa Gounder. The suit property was settled by Pongiammal under the Settlement Deed, dated 17.03.1950 to her daughter Seerakka. She left the property to her sister Nallammal. After the demise of Nallammal, her son, the plaintiff has got the suit property in family partition and has been in possession and enjoyment of the same. Patta was given in the name of the plaintiff, with respect to the suit property, excepting the eastern portion of 3 1/2 cents. The plaintiff is taking steps to get the patta for the entire suit property.
6. The defendants never been in possession and enjoyment of the suit property. The defendants are residing on the southern side of the suit property. Except foot pathway right on the western side of the suit property, the defendants have no other right. The defendants attempted to trespass into the suit property and therefore, the suit has been filed.
7. The defendants in their written statement contended that the defendants property is lying on the southern and eastern side of the plaintiff's house. The said property belongs to the defendants, as per the partition deed, dated 11.12.1952. From then, the defendants have been in possession and enjoyment of the said property. Therefore, it is not correct to say that the plaintiff has been in possession of 3 1/2 cents of land on the eastern side of his property. The defendants have also got right to draw water from the well in front of the plaintiff's house. Further, defendants using the 20 feet pathway lying on the western side of the house to the plaintiff, for the past more than 60 years. The western boundary shown as Ramasamy Gounder's house in the plaint is not correct. On the western side of the suit property, 20 feet road and Ramasamy Gounder's house are situated. The plaintiff's house is situate on the eastern side of the 20 feet pathway. In order to grab 3 1/2 cents of land on the eastern side of the plaintiff's house, the present suit has been filed. The plaintiff also attempts to close the common well. The

defendants never interfered with the possession and enjoyment of the house by the plaintiff.

8. The trial Court, after raising issues, took oral and documentary evidence. On the side of the plaintiff, Ex.A.1 to Ex.A.8 were marked and the plaintiff was examined as P.W.1 and on the side of the defendants, the first defendant was examined as D.W.1 and Ex.B.1 was marked. The Advocate-Commissioner's Report and Plan were marked as Ex.C.1 to Ex.C.4.

9. The trial Court, after discussing the entire evidence oral and documentary, came to the conclusion that the plaintiff has not established his possession and enjoyment with respect to eastern 3 1/2 cents vacant land in the suit property and dismissed the suit.

10. The plaintiff preferred appeal in A.S.No.48 of 2004 on the file of the I Additional Sub-Court, Erode. The First Appellate Court also re-appreciated the entire evidence and came to the conclusion that no ground is made out to interfere in the finding and conclusion of the trial Court and dismissed the appeal.

11. The concurrent Judgment and Decree of both the Courts below is challenged in this Second Appeal.

12. At the time of admission, the following Substantial Question of Law has been raised :

"Whether in law the Courts below are right in giving perverse findings of fact on misreading the oral and documentary evidence, thus requiring interference under Section 100 CPC, vide AIR 2001 SC 1273."

13. Heard Ms.Nilapher, learned counsel appearing for the appellant as well as Mr.N.Manokaran, learned counsel appearing for the respondents.

14. Section 100 CPC has introduced a definite restriction on to the exercise of jurisdiction in a Second Appeal. In a Second Appeal, a finding of fact, even if erroneous, will generally not be disturbed, but where it is found that the findings stands vitiated on wrong test and on the basis of assumptions and conjectures and

resultantly there is an element of perversity involved therein, the High Court, will be within its jurisdiction to deal with the issue.

15. In this case, both the trial Court as well as the First Appellate Court gave a concurrent finding that the plaintiff has not established his possession and enjoyment with respect to 3 1/2 cents land, i.e., eastern portion of the suit property and therefore, dismissed the suit.

16. This Court, has to see whether there is any perversity in the findings of the Courts below, warranting interference of this Court in this Second Appeal.

17. The defendants in their written statement specifically stated that they never interfered with the possession and enjoyment of the house of the plaintiff. They dispute the claim of the plaintiff with respect to eastern 3 1/2 cents of land in the suit property and western side pathway.

18. Both the Courts below elaborately dealt with the Settlement Deed (Ex.A.1) through which the plaintiff claims title to the suit property and also the patta (Ex.A.2) issued in the name of the plaintiff. The plaintiff himself says in his pleadings that patta was issued in his name, excluding 3 1/2 cents eastern side land and he has been taking steps to get patta.

19. As rightly found by the Courts below, the Settlement Deed does not include the disputed 3 1/2 cents land. The findings of both the Courts are based on the available evidence before them. I do not see any perversity involved therein. This Court finds no reason to interfere with the concurrent findings of the Courts below. The trial Court and the First Appellate Court have rightly dismissed the suit. Hence, the Substantial Question of Law is answered against the appellant and in favour of the respondents.

In the result, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.