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

Thanka vs Balakrishnan

Thanka vs Balakrishnan

SooperKanoon Citation : sooperkanoon.com/1473706

Court : Kerala

Decided On : Nov-30-2022

Judge : Honourable Mrs. Justice M.R.Anitha

Appeal No. : RSA/95/2018

Appellant : Thanka

Respondent : Balakrishnan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE M.R.ANITHA WEDNESDAY, THE 30TH DAY OF NOVEMBER 2022 / 9TH AGRAHAYANA, 1944 RSA NO. 95 OF 2018 AGAINST THE JUDGMENT AND ORDER IN AS 30/2014 ON THE FILE OF IV ADDITIONAL DISTRICT COURT, THRISSUR DATED 30.06.2017 AND MADE IN OS 277/1993 ON THE FILE OF PRINCIPAL SUB COURT, THRISSUR DATED 12.12.2013. APPELLANTS/APPELLANTS 2 TO 5 AND 7 TO 10/PLAINTIFFS 2 TO 5 AND 7 TO 10: 1 THANKA, AGED 82 YEARS, D/O. LATE KOCHUNNY, PERUVANATH HOUSE, PERUMBILLISSERY DESOM, CHOVVUR VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT. (APPELLANTS 2 TO 8 ARE

RECORDED AS THE LEGAL HERIS OF DECEASED 1ST APPELLANT AS PER THE

ORDER DATED 26.07.2021 VIDE MEMO DATED 05.07.2021)

2 KOUSALYA, AGED 62 YEARS, D/O. LATE KOCHUNNY, PERUVANATH HOUSE, PERUMBILLISSERY DESOM, 3 BABU, AGED 60 YEARS, S/O. LATE KOCHUNNY, PERUVANATH HOUSE, PERUMBILLISSERY DESOM, 4 GEETHA, AGED 58 YEARS, D/O. LATE KOCHUNNY, PERUVANATH HOUSE, PERUMBILLISSERY DESOM, 5 SAHADEVAN, AGED 54 YEARS, S/O. LATE KOCHUNNY, PERUVANATH HOUSE, PERUMBILLISSERY DESOM, 6 SANDHYA, AGED 52 YEARS, D/O. LATE KOCHUNNY, PERUVANATH HOUSE, PERUMBILLISSERY DESOM, 7 THARA, AGED 50 YEARS, D/O. LATE KOCHUNNY, PERUVANATH HOUSE, PERUMBILLISSERY DESOM, 8 SUBHASH, AGED 48 YEARS, D/O. LATE KOCHUNNY, PERUVANATH HOUSE, PERUMBILLISSERY DESOM, BY ADVS. SRI.K.MOHANAKANNAN SMT.A.R.PRAVITHA SMT.M.A.ZOHRA

RESPONDENTS/RESPONDENTS 2 TO 12 AND 6TH APPELLANT/DEFENDANTS AND PLAINTIFF NO.6:

1 BALAKRISHNAN, AGED 49 YEARS, S/O. KUTTAN. 2 NARAYANANKUTTY, AGED 67 YEARS, S/O. KUTTAN. 3 RAMACHANDRAN, AGED 65 YEARS, S/O. KUTTAN, PERUVANATH THATTAN HOUSE, PERUMBILLISSERY DESOM, 4 PREMA, AGED 63 YEARS, D/O. KUTTAN, PERUVANATH THATTAN HOUSE, PERUMBILLISSERY DESOM, CHOVVUR VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT. 5 KOMALA, AGED 61 YEARS, D/O. KUTTAN,PERUVANATH THATTAN HOUSE, PERUMBILLISSERY DESOM, CHOVVUR VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT. 6 VIJAYAKUMAR, AGED 59 YEARS, S/O. KUTTAN,PERUVANATH THATTAN HOUSE, PERUMBILLISSERY

DESOM, CHOVVUR VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT. 7 KOCHUNNY@ MOHANDAS, AGED 57 YEARS, S/O. KUTTAN, PERUVANATH THATTAN HOUSE, PERUMBILLISSERY DESOM, 8 LATHA, AGED 55 YEARS, D/O. KUTTAN, PERUVANATH THATTAN HOUSE, PERUMBILLISSERY DESOM, CHOVVUR VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT. 9 GEETHA, AGED 53 YEARS, D/O. KUTTAN, PERUVANATH THATTAN HOUSE, PERUMBILLISSERY DESOM, CHOVVUR VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT. 10 MANNAN @ ARAVINDAN, AGED 61 YEARS, S/O. KUTTAN, PERUVANATH THATTAN HOUSE, PERUMBILLISSERY DESOM, 11 USHA, AGED 61 YEARS, S/O. KUTTAN, PERUVANATH THATTAN HOUSE, PERUMBILLISSERY DESOM, CHOVVUR VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT. 12 JAYACHANDRAN, AGED 57 YEARS, S/O. LATE KOCHUNNY, PERUVANATH HOUSE, PERUMBILLISSERY DESOM, CHOVVUR VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT. BY ADVS. SRI.FRANCO T.J.-R1 TO R11 SRI.G.SANTHOSH KUMAR-R1 TO R11 SRI.V.R.SASSIDHARAN THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON

30.11.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 30th day of November, 2022. This appeal has been directed against the judgment and decree in A.S.No. 30 of 2014 on the file of IV Additional District Court, Thrissur which in turn arise out of judgment and decree in O.S.No. 277 of 1993 on the file of Principal Sub Court, Thrissur.

2. Suit is one for declaration and injunction. Appellants are

plaintiff Nos. 2 to 5 and 7 to 10. Plaint schedule property is 21 Cents originally belonged to one Meenakshi Amma and Others as per registered partition deed No.1980/1976 of SRO, Cherpu. Plaintiffs purchased the property as per document No.155/1978

from Meenakshi Amma and Others. Thereafter, they are in absolute possession and enjoyment of the property. Kuttan, the husband of the 1st defendant and father of the other defendants was holding the property on the eastern side of the plaint schedule property. There were previous litigation between the said Kuttan and the plaintiff's predecessor. All the cases were in favour of the plaintiff's predecessor. Kuttan filed O.S.No.348/1977 against Meenakshi Amma and Others, that was dismissed for default and petition for restoration was also dismissed. Thereafter, plaintiffs purchased the property from Meenakshi Amma and Others. After the purchase of property by the plaintiffs, Kuttan trespassed into 7 Cents of property on the eastern side of plaint schedule property. For recovery of that property, plaintiffs filed O.S.No.68/1982 impleading the assigners Meenakshi Amma and Others as defendant Nos.1 to 5. Kuttan was 7th defendant. Pending the suit Kuttan died and their legal heirs were impleaded. That suit was

dismissed on 15.02.1993. After the dismissal of that suit, defendants attempted to trespass into the other portion of the plaint schedule property covered by document No.155/1978. Hence the suit.

3. Defendants filed written statement contending that Meenakshi Amma and Others had no right or possession over the plaint schedule property and they are not entitled to assign the

property to the plaintiffs as per document No.155/1978. The identity of the property is specifically disputed. There were many litigation between the defendants and Meenakshi Amma .In all suits Meenakshi Amma and Others were the defeated party. O.S.No.68/1982 is a suit between the same party with respect to the same property. So the present case is not maintainable.

4. PWs1 to PW3 examined and Exts.A1 to A7 were marked from the side of the plaintiffs. DW1 examined and Ext.B1 to B13 were marked from the side of the defendants. Exts.C1, C2, C2(a) and C3 were also marked.

5. The Trial court on evaluating the facts, circumstances and

evidence adduced, found that the plaintiffs have no actual possession over the plaint schedule property and the alleged boundaries of plaint schedule property and defendants property is only imaginary. Hence, it is found that plaintiffs failed to prove better title and possession over the plaint schedule property. Where as by virtue of Ext.B2 purchase certificate, it is concluded that defendant's predecessor in interest, Kuttan obtained purchase certificate from the competent authority with respect to the property described therein. Accordingly the suit was dismissed. Against which, appellants filed appeal and 1st appellate court on re appreciating the facts and circumstances and evidence adduced, confirmed the judgment and decree passed by the Trial court. Against which, appellants approaches this Court in this Second appeal.

6. Notice was issued to the respondents and both sides were heard.

7. According to the learned counsel for the

appellants/plaintiffs, plaintiffs proved the title and possession with respect to the plaint schedule property by virtue of Exts.A1 & A8 and without properly appreciating the said documents and giving undue importance to Ext.B2, both courts below dismissed

the suit filed by the plaintiffs. It is also her contention that the document produced by the defendants itself would prove that they are claiming excess land covered by the purchase certificate. It is also contended that evidence of the plaintiff and that of PW3 was not properly appreciated and non suited the plaintiffs without property appreciation of facts , circumstances and evidence.

8. The learned counsel for the defendants on the other hand

would contend that an earlier suit was filed by the plaintiffs with respect to 7 Cents of property covered by Ext.A1 and that suit was dismissed and subsequently the present suit has been filed with respect to the same property covered by Ext.A1 and hence, it is not maintainable. It is also his contention that the defendants proved the right and title over the property covered by Ext.B2 and hence

courts below rightly dismissed the suit finding that plaintiffs failed to prove plaintiffs title and possession of the over the plaint schedule property and hence no substantial question of law involved for entertaining the 2nd appeal.

9. Plaint schedule property is 21 Cents of property which was purchased by the plaintiffs as per Ext.A1 sale deed from Meenakshi Amma and Others. Meenakshi Amma and Others obtained the said

property as per Ext.A2 partition deed of the year 1976 as item No.3 of B schedule. Where as defendants claims right and title over the property as per Ext.B2 purchase certificate. From the very beginning, the contention of the defendants is that Ext.A1 sale deed will not confer any title upon the plaintiffs over plaint schedule property because the predecessor in interest of plaintiffs

has no salable interest over the property. Plaintiffs had filed

O.S.No.68/1982 before Munsiffs Court, Thrissur against predecessor in interest of the defendants by name Kuttan, with respect to 7 Cents of property covered by Ext.A1 and it was dismissed and appeal filed against the judgment also stand dismissed. Though the plaintiffs took up the matter in 2 nd appeal, it was also dismissed. But as rightly found by the courts below, the earlier suit O.S.No.68/1982 was with respect to 7 Cents of property

covered by Ext.A1. In the present suit, plaintiffs are seeking declaration of title with respect to remaining 21 Cents. Reliance was placed in Ext.B4 which is certified copy of the plaint in O.S.No.68/1982 wherein there are pleadings to the effect that consideration need not to be paid with respect to the sale deed at

the time of execution of the sale deed. Ext.B1 copy of the deposition of the plaintiffs in O.S.No.68/1982 also would go to show that the consideration with respect to Ext.A1 was not paid and original of Ext.A1 was not handed over. So it was concluded that it is only because of non payment of balance of sale consideration that the original of Ext.A1 was not handed over by the seller.

10. On the other hand, the defendants produced Ext.B2

purchase certificate obtained by their predecessor in interest Kuttan which is prior to Ext.A1. Kuttan obtained property as per Ext.A13 partition deed and Ext.B2 would go to show that he obtained purchase certificate with respect to 1 Acre 27 Cents of property in Survey 80/2, 80/5 and 80/8. The plaintiffs have got a contention that Kuttan even before obtaining the purchase certificate, sold property out of 1 Acre 27 Cents to one Krishnankutty Menon and his wife Janaki Amma and at the time of obtaining purchase certificate, he was holding only 72 and Cents in survey 80/2, but Kuttan applied for purchase certificate with respect to the entire property of 1 Acre 27 Cents. But it has come out in evidence that the plaintiffs filed appeal against issue of Ext.B2 purchase certificate in favour of Kuttan and Ext.A14 is the

order of appellate authority which would prove that appeal has

been dismissed on the ground of delay. Ext.B2 purchase certificate issued in favour of the predecessor of the defendants, Sri. Kuttan, has become final. It is relevant in this context to note that Section 72K(2) of the Land Reforms Act, 1964 (Kerala) provides that certificate when issued shall be conclusive proof of assignment to the tenant of the right title and interest of the land owner and the intermediaries, if any, over the holding or portion thereof to which the assignment relates and tenant means a cultivating tenant always in possession of the proceedings.

11. In Mathew v. Taluk Land Board [1979 KLT 601] the Apex

court held that evidentiary value of certificate of purchase could not be disregarded except where it was inaccurate on its face, or has been obtained by fraud or collusion.

12. In Lakshmi v. Viswanathan [1999 (2) KLT 621], it has

been held by another learned Single Judge of this Court while dealing with 72K(2) of the Act that a certificate issued by a competent land tribunal after finding that a person in possession of the schedule property is a cultivating tenant as per Section 72K(2) of the Act such certificate when issued shall be conclusive proof of

the assignment to the tenant of right title and interest of the land owner and the intermediaries if any over the holding or portion thereof to which assignment relates. It is also held that such certificate is conclusive proof of possession as well unless it is set aside by a competent authority or a court of law.

13. Hence genuineness of Ext.B2 purchase certificate can not

be challenged by the plaintiffs in this proceedings. In pursuance of Ext.B2 purchase certificate, Ext.B3 Tax receipt were also produced from the side of the defendants to prove their possession over the property covered by Ext.B2 purchase certificate. It is also to be noted that Ext.A2 partition deed would show that predecessor of the plaintiffs was allotted item No.3 in plaint B schedule property in Ext.A2 and item No.3 in B schedule is the plaint schedule property. On going through the description of the item No.3 of B schedule, it could be seen that there is specific reference with respect to the order in O.A.No.803/1971 of Cherppu Land Tribunal. But the said purchase certificate has not been produced. On the other hand, defendant could establish the right and title as well as the possession over the property as per Exts.B2 and B3 series.

14. So also, though PW3 was examined from the side of the

plaintiffs to prove the possession of plaint schedule property and his eidence is that plaintiff has been conducting an Auto mobile workshop in the plaint schedule property and after the death of the plaintiff, his son, PW1 is conducting the workshop. But he categorically admitted that presently vehicles are not being parked there. In Exts.C1 and C1(a), Commissioner reported that plaint schedule property has not been separately demarcated and

identified as stated by the plaintiff. It is also reported that there is no boundary mark separating the defendant's property and the plaint schedule property. Ext.C1(a) plan also will not help the plaintiffs to prove the possession over the plaint schedule property. So on over all evaluation, both courts concurrently found that the evidence of the commissioner and Ext.C2 report also will not enable the plaintiff to identify the plaint schedule property. It is true that O.S.No.921/1979 has been filed by Kuttan against the predecessor in interest of the plaintiffs Meenakshi

Amma and others for recovery of possession on the strength of title of B schedule property having an extent of 27 Cents and in that case, defendants contended that they have sold the property to the plaintiffs herein and the court found that defendants in that suit

are not in possession of the plaint B schedule property. The court also found that the plaintiff is not aware as to who is in possession of the property over which he has got title and is not aware of the extent of property trespassed upon by the defendants and ultimately found that the trespass alleged is not convincing and

dismissed suit. In appeal that judgment and decree was confirmed and question as to whether the plaintiffs in that case is entitled to plaint B schedule was left open for want of necessary parties. But weakness of defence case is not a reason to accept the plaintiffs case and plaintiff has to prove the case on his own. So also after the dismissal of that suit, the purchase certificate issued in favour of Kuttan the predecessor in interest of defendants was challenged. But it was dismissed as stated earlier.

15. In Union Of India & Ors vs Vasavi Co-Op. Housing Society [2014

2 SCC 269] it has been held that in a suit for declaration of title and possession burden of proof is on the plaintiff to establish the case irrespective of the fact whether the defendant proved their case or not. The weakness of the case set up by the defendant cannot be a ground to grant relief to the plaintiff. So on a meticulous evaluation of the judgment and decree passed by the courts below, I am of the considered view that courts below have evaluated the facts and circumstances and evidence adduced in correct perspective and dismissed the suit. I dont find any substantive question of law emerging for consideration for entertaining this 2nd appeal.

In the result, appeal is found to be devoid of any merit and hence dismissed. Sd/-rps/ M.R.ANITHA, JUDGE

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