

Ranjitkumar Vs. Gopal and anr.

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Court : Chennai

Decided On : Feb-06-2003

Reported in : 2003(1)CTC526; (2003)1MLJ573

Judge : K. Sampath, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 1, Rule 10; [Evidence Act, 1872](#) - Sections 13

Appeal No. : C.R.P. No. 1257 of 2002

Appellant : Ranjitkumar

Respondent : Gopal and anr.

Advocate for Pet/Ap. : Ar.L. Sundaresan, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K. Sampath, J.

1. The civil revision petition arises under the following circumstances: The first respondent herein filed suit/ O.S. No. 521 of 1996, before the District Munsif's Court, Valangaiman, against his brother/ the second respondent herein for a

declaration that the suit property belonged to him absolutely pursuant to a settlement deed, dt. 8.12.1986, by Late Sulochana Bai, mother of the parties. The second respondent was given permission to occupy the property for a period of six months to enable him to get possession of another property which the mother wanted to give him, and before doing which, she passed away. After her death, her heirs, including the first respondent herein, settled the other property on the second respondent. As the defendant did not vacate the property, notice was issued. The second respondent sent a reply refusing to vacate the premises stating that Sulochana Bai had executed a Will on 21.2.1986 bequeathing the suit property to his son as well as the first respondent's son and therefore the first respondent had no title over the same. The first respondent took a stand that the registered Will alleged to have been executed by Sulochana Bai was cancelled by her by revocation deed dt.7.12.1986 and it was only thereafter she executed the settlement deed in his favour. Sulochana Bai died on 15.1.1987 and it was contended by the second respondent that on her death, the Will came into force, and that he was in possession of the property as of right since his son was entitled to one-third share, and he was not residing in that property on the basis of the permission granted by the first respondent. He also disputed the settlement deed. According to him, during the relevant period Sulochana Bai was ill and was not able to understand the consequences of her acts, and further that the settlement deed was also not acted upon.

2. The trial Court held that the Will was duly cancelled by Sulochana Bai, that she had validly executed the said settlement deed, and that pursuant to the settlement deed the first respondent herein got absolute title. So holding, the trial Court decreed the suit.

3. On appeal in A.S. No. 50 of 1997 by the second respondent, the decision of the trial Court was confirmed. Against this the second respondent filed S.A. No. 1702 of 1999 before this Court. By judgment and decree, dt. 3.1.2000, S.S. Subramani, J. (as the learned Judge then was) confirmed the decision of the Courts below and dismissed the second appeal. While dismissing the second appeal, the learned Judge in para 10 observed as follows:

'One big circumstance was also brought to the notice of the Court to contend that Ex.A.3 is a genuine document. Late Sulochana Bai Ammal had another property at Door No. 23, Ellaiya Chetty Street, i.e. Close to the plaint schedule property. She wanted to settle that item in favour of defendant, and arrangements were also made for the same. But, before it could materialise, she died. Taking into consideration her last wish, plaintiff and his sisters released all their rights in favour of defendant by executing a registered document. The fact that the defendant obtained a release deed from his brother and his sisters in respect of Door No. 23 is admitted. It is also the case of plaintiff that late Sulochana Bai Ammal found it inconvenient to retain the Will. She did not want the plaint schedule property to be divided into three shares, one-third to defendant's son and two-thirds to plaintiff's two sons. Taking into consideration the difficulties in enjoyment, she thought of executing a settlement deed in respect of the plaint schedule property in favour of the plaintiff and Door No. 23 to the defendant so that on her death their children also can get absolute right over the respective items. The said explanation offered by plaintiff was also accepted by the trial Court as well as by the lower appellate Court. It could also be seen that as provided in the settlement deed/Ex. A.3, plaintiff also discharged debts by paying Rs. 6,000 to the creditor, and he has redeemed the property. The fact that Ex. A.3 was presented before the Sub-Registrar by Sulochana Bai Ammal and she got it registered also adds to its genuineness. The Certificate of Registration along with the evidence of P.W.3 also proves that Ex.A.3 is genuine. The concurrent findings of the Courts below are based on evidence, and the lower appellate Court has approached the question in the right perspective, and I do not find any ground for interference under Section 100 C.P.C.'

4. The first respondent put the decree into execution. At that stage, the second respondent's son Ranjit Kumar, the petitioner herein, took out a third party application in E.A.No.97 of 2000 in the Execution Petition for impleading him as a party to the Execution Petition, and ranking him as the second respondent. He set up the Will executed by Sulochana Bai as root of title. In the petition, in support of the application, he further stated that the judgment and the decree in the suit between the respondents was not binding on him, that he had already filed O.S.No.55 of 2000 before the District Munsifs Court for partition and other reliefs

basing his claim on the Will executed by Sulochana Bai, that the first respondent, taking advantage of the fact that only notice was ordered in the injunction application, had been pressing for execution of the decree obtained by him against the second respondent, and that in such circumstances the application for impleading came to be filed. The application was opposed by the first respondent setting out in detail the circumstances under which he became entitled to the property and how he could execute the decree.

5. The second respondent naturally did not oppose the application, and for obvious reasons, remained ex parte in the application. The learned District Munsif, Kumbakonam having dismissed the application by order dt. 13.3.2002, the present civil revision petition has been filed.

6. Mr. AR.L. Sundaresan, learned counsel for the revision petitioner, vehemently submitted that the decision in the suit between the respondent would not bind the revision petitioner, that the revision petitioner claimed under the Will from his grandmother and the dismissal by the lower Court, even without impleading the revision petitioner as a party to the Execution Petition, was clearly unsustainable. The learned counsel submitted that the revision petitioner should be afforded an opportunity by being impleaded as a party and by being allowed to raise all the objections available to him regarding the executability of the decree obtained by the first respondent against the second respondent.

7. The learned District Munsif while dismissing the application has observed that the revision petitioner had not produced any document to show his entitlement to the suit property, and that he had been set up by his father the second respondent herein, to delay and defeat the rights of the first respondent.

8. It has been held in S.A. No. 1702 of 1999 that the settlement deed executed by Sulochana Bai superseded the Will earlier executed by her giving 1/3rd share in the suit property to the revision petitioner and 2/3rds to the son of the first respondent. The learned Judge has elaborately adverted to the oral and the documentary evidence and confirmed the concurrent decisions of the Courts below while deciding the second appeal. I have already extracted the relevant portion from the judgment in Second Appeal No. 1702/99. I have the least doubt

that the revision petitioner has been set up by his father, the second respondent herein to somehow or other obstruct delivery, pursuant to the decree. When once it has been found that the settlement deed would prevail over the Will, executed by Sulochana Bai, the claim of the revision petitioner cannot at all be sustained. The argument of the learned counsel that the petitioner could be impleaded and his objections could be heard and the matter decided, will be an unnecessary exercise and will only pave the way for prolonging the agony of the first respondent particularly when he had successfully established his title to the suit property.

9. In *Tirumala Tirupati Devasthanams v. K.M. Krishnaiah*, : the Supreme Court following the decision in *Srinivas Krishna Rao Kango v. Narayan Devji Kango*, : has held that judgment not inter parties is admissible in evidence under Section 13 of the Evidence Act as evidence of an assertion of a right to property in dispute. Even otherwise it will be a binding precedent.

10. It has already been pointed out that the revision petitioner has been set up by his father, the second respondent herein to stall the execution of the decree obtained by the first respondent against the second respondent. The order cannot be stated to be in error of jurisdiction or unjust since the second respondent had got a property for himself thanks to the large heartedness of the first respondent and his sisters who with a view to fulfil the wishes of their mother settled the other property in favour of the second respondent. He having secured another property, it will be the height of injustice if we are to countenance his claim to get at the suit property through his son, the revision petitioner. I do not find any merit in the civil revision petition. The civil revision petition fails and the same is dismissed in admission.

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