

Stephen Vs. Paranjothi

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Court : Chennai

Decided On : Oct-31-2011

Judge : G.Rajasuria, J.

Acts : Code of Civil Procedure (CPC) - Order 41 Rule 27

Appeal No. : S.A(MD)No.1672 of 2001

Appellant : Stephen

Respondent : Paranjothi

Judgement :

1. This Second Appeal is focussed by the original defendants animadverting upon the judgment and decree dated 10.10.2000, passed in A.S.No.169 of 1998 by the learned Principal District Judge, Tuticorin in confirming the judgment and decree dated 21.08.1998, passed in O.S.No.423 of 1991 by the learned District Munsif, Srivaikundam.

2. The parties, for the sake of convenience, are referred to hereunder according to their litigative status and ranking before the trial Court.

3. Narratively but precisely, broadly but briefly, the relevant facts absolutely necessary and germane for the disposal of this appeal would run thus:

The plaintiffs filed the suit seeking the reliefs of declaration and permanent injunction in respect of the suit property on the main ground that the suit property and the adjacent properties originally belonged to their father viz., Arumuganainar Nadar, who subsequently came to be known as Arulprakasam Nadar and after his death, they inherited the properties and got the properties partitioned among themselves under Ex.A1. While so, the defendants without any manner of right whatsoever started laying claim over the suit property found set out in the plaint, which necessitated the plaintiffs to file a suit.

4. The defendants resisted the claim by filing the written statement averring as though there is a pathway in the suit property, dedicated for the use of the villagers, including the students and the defendants herein.

5. Whereupon, relevant issues were framed by the trial Court.

6. During trial, on the side of the plaintiffs, Exs.A.1 to A.8 were marked, however no oral evidence was let in. On the side of the defendants, the second defendant examined himself as D.W.1, however no documentary evidence was produced. The Advocate Commissioner was examined as C.W.1 and through him Exs.C.1 to C.4 were marked.

7. Ultimately, the trial Court decreed the suit as against which, the appeal was filed by the defendants for nothing but to be dismissed.

8. Being aggrieved by and dissatisfied with the judgments and decrees of the Courts below, the defendants preferred this Second Appeal on various grounds, suggesting the following substantial questions of law: "(a) Whether the findings of the Lower Appellate Court not vitiated in law by the failure to consider the entire evidence on record and fails to apply the correct principle of law?

(b) Is it the first Appellate Court has not exercised its jurisdiction vested on it under order 41 Rule 27 of Civil Procedure Code properly? (c) Whether the Judgment and Decree of the courts below are vitiated for not considering the Exhibits C1 and C2?

(d) Whether the Judgement and Decree of the Lower Appellate Court below are vitiated for failing to considering the Additional evidence produced before it, though it found it is relevant to the suit property? (e) Is in law the plaintiff can rely on the defendant's, to prove his case?

(f) Whether a self serving document will support the case of a party, when the person relies on it has failed to prove it?" (Extracted as such)

9. I would like to fumigate my mind with the following principles as found enunciated and enshrined in the following decisions of the Honourable Apex Court:

(i) Hero Vinoth (Minor) v. Seshammal reported in (2006) 5 Supreme Court Cases 545.

(ii) Kashmir Singh v. Harnam Singh and another reported in 2008 (4) SCALE 300.

(iii) State Bank of India and others v. S.N.Goya reported in 2009-1-L.W.1.

10. A bare poring over and perusal of the said decisions would unambiguously and unequivocally highlight and spotlight the fact that unless any substantial question of law is involved, the question of entertaining a Second Appeal would not arise. Accordingly, I proceed to find out whether there is any substantial question of law is involved in this Second appeal.

11. The learned counsel for the appellants/ defendants would put forth and set forth his arguments thusly:

Both the Courts below failed to take note of the fact that the suit property has been used by the villagers including the defendants as path way, which fact was not taken note of by the Courts below. They failed to consider the entire evidence available on record. Exs.C1 and C2 were ignored by the Courts below. The first appellate Court failed to entertain additional evidence under Order 41 Rule 27 of the Code of Civil Procedure. Accordingly, the learned counsel for the appellants would pray for setting aside the judgment and decree of both the Courts below and for dismissing the original suit.

12. In a bid to mince meat, and torpedo and pulverise the arguments as put forth and set forth on the side of the defendants, the learned Counsel for the plaintiffs would advance his arguments, which could pithily and precisely be set out thus:

Both the Courts below appropriately and appositely, correctly and convincingly after going through the oral and documentary evidence gave findings based on facts to the effect that the defendants themselves did not claim any right over the suit property, however, they claimed mere right of easement, in other words a right to use the suit property as a pathway by themselves and by the villagers and according to them such usage had been in force for a pretty long time. The additional documents sought to be filed are in no way necessary to decide the lis as they do not evidence that there is any public pathway in the suit property; the plaintiffs documents would unambiguously and unequivocally establish and prove that the plaintiffs are the owners of the suit property and the plaintiffs father viz., Arumuganainar Nadar @ Arulprakasam Nadar owned it and after his death, his sons viz., the plaintiffs enjoyed it as absolute owners and got it partition among themselves.

13. At the outset, it has to be found out as to whether there is any substantial question of law is involved. Both the Courts below placed reliance on Ex.A1 - the partition deed dated 16.03.1981, which emerged among the three plaintiffs and found that the suit property is included in it as their absolute property. Ex.A2 is a gift deed dated 28.08.1934 executed by Gnanamuthu Nadar in favour of Tirunelveli Diocese Trust Association and that property is situated to the North of the suit property and there is no indication about any pathway to the South of that property. No representative suit has also been filed by any one claiming pathway right over the suit property. Both the Courts below taking into consideration the Commissioner's Report and sketch and also the relevant documents gave a clear finding that absolutely there is no evidence to show that there is a path way in the suit property.

14. Exs.C1 and C2 were dealt with by both the Courts below and found that the observation of the Commissioner are against the defendants' claim. I could see no perversity or illegality in the findings given. It has not been highlighted as to how

the additional documents viz., the field map and the Natham Land Tax Scheme adangal extract would in any way prove the case of the defendants. The first appellate Court clearly in para No.11 of its judgment pointed out that the defendants candidly stated that they were having no revenue records or documents or any other public document to establish any path way existing in the suit property. The first appellate Court also observed that those additional documents were even though available with the plaintiffs, they had not chosen to file them in trial Court. Both the Courts below have also held indubitably and indisputably that the defendants admitted candidly and categorically that they do not have title over the suit property. Hence, considering all these facts, I am of the view that there is no perversity or illegality in the judgment and decree of the Courts below.

15. On balance, I do not see any question of law, much less any substantial question of law is involved in this matter and the Second Appeal deserves to be dismissed.

16. In the result, the Second Appeal is dismissed. No costs.

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