

Ponnusamy Vs. the District Collector, Erode District and Another

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Court : Chennai

Decided On : Sep-12-2012

Judge : G. Rajasuria

Appeal No. : S.A. No. 846 of 2005

Appellant : Ponnusamy

Respondent : The District Collector, Erode District and Another

Advocate for Pet/Ap. : For the Appellant: N. Manokaran, Advocate. For the Respondents: T. Jayaramaraj, G.A. (C.S.).

Judgement :

(Prayer: Second Appeal against the judgement and decree dated 29.7.2003 passed by the Additional District Court/Fast Track Court No.IV, Erode at Bhavani, allowing the judgement and decree dated 2.1.2002 passed by the Principal District Munsif, Bhavdani in O.S.No.555 of 1999.)

1. This second appeal is focussed by the plaintiff in the suit as against the judgement and decree dated 29.7.2003 passed by the Additional District Court/Fast Track Court No.IV, Erode at Bhavani, in A.S.No.58 of 2003 partly allowing the judgement and decree dated 2.1.2002 passed by the Principal District Munsif, Bhavdani in O.S.No.555 of 1999, which was one for permanent injunction.

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

3. A summation and summarisation of the relevant facts, which are absolutely necessary and germane for the disposal of these appeals, in a few broad strokes can be encapsulated thus:

(i) The second appellant, namely, Ponnusamy, filed the suit seeking the following reliefs:

"to pass a decree against the defendants:-

a) granting an order of permanent injunction restraining the defendants their men, agents and assignee etc., from interfering with the plaintiff's peaceful possession and enjoyment of the suit property as ever before by means of restraining the defendants, their men, either to form or to lay any kind of channel course or Koppu in the suit property.

b) Directing the defendants to pay the cost of the suit to the plaintiff." (extracted as such)

on the main ground that the defendants, namely, the District Collector and the Assistant Engineer-Public Works Department were attempting to trespass into the plaintiff's property and lay a channel, without adhering to the provisions of law.

(ii) The defendants resisted the suit by filing the written statement.

(iii) Whereupon issues were framed.

(iv) During enquiry, the plaintiff examined himself as P.W.1 and Exs.A1 to A3 were marked. No one was examined on the defendants' side and no document was marked.

(v) Ultimately, the trial Court dismissed the suit with cost.

(vi) Impugning and challenging the said judgement and decree of the trial Court, the first appeal was filed by the plaintiff; whereupon the first appellate Court, while

confirming the judgement and decree of the trial Court, set aside the awarding of cost payable by the plaintiff in favour of the defendants.

4. Being aggrieved by and dissatisfied with the said judgements and decrees of both the Courts below, the plaintiff preferred this second appeal on various grounds.

5. My learned predecessor formulated the following substantial question of law:

"When there is no dispute that the plaintiff is the lawful owner of the property in question, can the respondents/State attempt to lay a channel in the suit land without acquiring the land itself?"

(extracted as such)

6. On hearing both sides, I have formulated to their knowledge and notice, the following additional substantial questions of law.

"(i) Whether the Courts below were justified in construing the recitals in Ex.A2-the sale deed dated 18.10.1993, as though LBP Channel is found referred to therein as the one running across the land of the plaintiff?

(ii) Whether in the absence of the defendants having produced the relevant official/statutory records pertaining to the Tamil Nadu Field Bothies Act and Rule, 1959, both the Courts below were justified in believing the version of the defendants and negating the contention of the plaintiff?

(iii) Whether there is any perversity or illegality in the judgements and decrees of both the Courts below.

7. All the substantial questions of law are taken together for discussion as they are interwoven and interlinked, interconnected and entwined with one another.

8. The learned counsel for the appellant/plaintiff would put forth and set forth his arguments which could succinctly and precisely be set out thus:

(i) Both the Courts below failed to interpret in the proper perspective the recitals in Ex.A2-the sale deed dated 18.10.1993, in favour of the plaintiff.

(ii) Both the Courts below misunderstood the contents of Ex.A1-the Advocate notice sent by the plaintiff's advocate to the defendants, as though the plaintiff admitted that LBP channel was running across his land and that the waters from the upper land bearing old No.390-A was flowing through the said LBP channel allegedly situated in the lower land situated in Old S.No.390B.

9. Per contra, the learned Government Advocate would support the decisions of the Courts below.

10. A mere running of the eye over the judgement of the trial Court would exemplify and demonstrate that the trial Court extracted the very reply given by the Government officials as under:

"7. . . We decide not to have any idea or necessity to form channel or koppu in your client's land"

11. In the written statement also, the Government took up the same stand as though they did not try to interfere with the plaintiff's land and attempt to lay LBP channel, but both the Courts below failed to take note of the crucial fact that the defendant very carefully refrained from taking a specific stand that LBP channel is running across the land of the plaintiff.

12. Ex.A3-is the FMB plan, which would not refer to any LBP channel running across the land of the plaintiff. Simply because the plaintiff might be having his own arrangement for irrigating his land by having channel, that it does not mean that, that should be construed as the LBP channel.

13. If really there exists any LBP channel in the land of the plaintiff, there is no knowing of the fact as to why the Government has not produced the relevant records demonstrating and displaying such alleged existence of LBP channel in the plaintiff's land. However, in the written statement, the defendants would vaguely try to point out as though the plaintiff cannot try to thwart the attempt of the officials to clear the LBP channel and maintain the irrigation system.

14. When there is nothing to indicate and exemplify that there exists any LBP channel in the land of the plaintiff, the question of the public officials maintaining the same would not arise.

15. The learned counsel for the appellant/plaintiff in all fairness would submit that as per the Tamil Nadu Field Bothies Act and Rules, 1959, the Government has got the power to lay channels adhering to the law, but so far they have not done so in the plaintiff's land.

16. Both the Courts have not taken into account those crucial facts. The plaintiff being the dominuslitis averred the facts and also understanding the burden of proof on him exhibited Ex.A1-the notice sent by his advocate to the defendants, Ex.A2-the sale deed dated 18.10.1993 in his favour and also Ex.A3-the sketch. Those documents cumulatively would project and portray, display and demonstrate that there is no LBP channel running across the land of the plaintiff.

17. However, the learned Government Pleader, by inviting the attention of this Court to the following recital in Ex.A2-the Sale deed dated 18.10.1993:

“TAMIL”

woulddevelop his argument as though the aforesaid version refers to LBP channel.

18. The learned counsel for the plaintiff would torpedo and pulverise such argument appropriately and appositely and that too legally by pointing out that such version is only in recognition of the plaintiff's right to draw water from LBP channel and that it does not mean that LBP channel itself is running across the land of the plaintiff.

19. I would like to recollect and call up similar recitals in various registered documents. It is not uncommon on the part of the document writers and also the parties concerned to have in their sale deeds, recitals to the effect that the purchaser shall be entitled to utilise water from public tanks, public channel etc., and that it does not mean that those tanks and channel are running across the land sold to the buyer.

20. It is one thing to reiterate and regiminate in the sale deed that the plaintiff is having a right to draw water from LBP channel and yet it is another thing to say that LBP channel itself is running across the land concerned. If at all the LBP channel as laid by the Government is running as of now across the land of the plaintiff, the defendants could have very well produced the records concerned in that regard, but they did not choose to do so.

21. Precisely that was the reason as to why the Government officials very carefully have not chosen to plead in the written statement itself that the LBP channel itself is running across the land of the plaintiff. What they would try to project is that the plaintiff is trying to bamboozle and confuse and also intimidate the public officials not to undertake the irrigation work and maintain the irrigation net work in that vicinity.

22. I could dispel such apprehension in the mind of the officials that the plaintiff cannot go against the Law and he cannot prevent the public officials from maintaining the water bodies as well as bothies existing in the vicinity or avail the facility of the bothies by the people concerned. The public officials have not chosen to figure themselves as witnesses; whereas, the plaintiff figured as P.W.1 and subjected himself to cross-examination. Even during cross-examination there is not even a suggestion put to him that LBP channel is running across the land of the plaintiff. In such a case, both the courts below committed gross error in misunderstanding the entire gamut scope of the case and simply threw the baby along the bathe water.

23. The trial Court in fact went to the extent of construing as though the plaint is fraught with falsities and it is nothing but a load of baloney and accordingly it simply dismissed the suit with cost.

24. The appellate Court instead of correcting the mistake committed by the trial Court had put its seal of approval. Wherefore the judgements of both the Courts below are nothing but the ones based on perversity or illegality.

25. At this juncture, I would like to fumigate my mind with the following principles as found enunciated and enshrined in the decisions of the Hon'ble Apex Court:

(i) (2006) 5 Supreme Court Cases 545 - HERO VINOTH (MINOR) VS. SESHAMMAL.

24. . . .

(iii) The general rule is that High Court will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the Courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

(ii)(2011) 1 SCC 673 [Vijay Kumar Talwar v. Commissioner of Income Tax, Delhi], certain excerpts from it would run thus:

"19. It is manifest from a bare reading of the section that an appeal to the High Court from a decision of the Tribunal lies only when a substantial question of law is involved, and where the High Court comes to the conclusion that a substantial question of law arises from the said order, it is mandatory that such question(s) must be formulated. The expression "substantial question of law" is not defined in the act. Nevertheless, it has acquired a definite connotation through various judicial pronouncements.

23. A finding of fact may give rise to a substantial question of law, inter alia, in the event the findings are based on no evidence and/or while arriving at the said finding, relevant admissible evidence has not been taken into consideration or inadmissible evidence has been taken into consideration or legal principles have not been applied in appreciating the evidence, or when the evidence has been misread."

(iii) 2008(4) SCALE 300 - KASHMIR SINGH VS. HARNAM SINGH and ANOTHER.

(iv) 2009-1-L.W.1 - STATE BANK OF INDIA and OTHERS vs. S.N.GOYAL

A mere running of the eye over those decisions before getting down to the facts, would unambiguously and unequivocally exemplify and demonstrate that the court, which is seized of the second appeal would be reluctant to re-appreciate the facts. However, it has been pellucidly and palpably highlighted by the Hon'ble Apex Court that when there is perversity or illegality in the findings of both the courts below, the High Court would be justified in re-appreciating the evidence and arrive at a just conclusion.

26. Scarcely could it be stated that this is not a fit case wherein the interference of this Court is not warranted even though there is concurrent finding of facts by both the Courts below. Those concurrent finding of facts by the lower Courts are based on total misconception, misreading and misunderstanding of the documents placed before the Court as highlighted supra. Hence, the judgements and decrees of both the Courts below are set aside.

27. Accordingly, the substantial questions of law are answered as under:

Additional Substantial question of law (i) is answered to the effect that the Courts below were not justified in construing the recitals in Ex.A2-the sale deed dated 18.10.1993, as though LBP Channel is found referred to therein as the one running across the land of the plaintiff.

Additional Substantial question of law (ii) is answered to the effect that the Courts below were not justified in believing the version of the defendants and negating the contention of the plaintiff, in the absence of the defendants having produced the relevant official/statutory records pertaining to the Tamil Nadu Field Bothies Act and Rules, 1959.

28. In view of the ratiocination adhered to above in deciding the above additional substantial questions of law, the substantial question of law is answered to the effect that the officials of the Government were not justified in trying to lay channel in the suit property, without adhering to law.

29. On balance, the judgement and decree of both the Courts below are set aside and the original suit is decreed to the effect that the Government officials are prevented from laying any channel over the plaintiff's suit property without adhering to the Tamil Nadu Field Bothies Act and Rules, 1959. In order to disambiguate the ambiguity if any, I would like to clarify that this injunction will not be a bar for the officials to take fresh action, if they choose to do so to lay fresh LBP channel, adhering to the law.

30. The second appeal is disposed of accordingly. However, there is no order as to costs.

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