

P. Veerappan Vs. Mariammal

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Court : Chennai

Decided On : Oct-30-2012

Reported in : 2013(1)MWN(Civil)111; 2013(1)LW356

Judge : P.R. Shivakumar

Appeal No. : S.A. No. 102 of 2012 & M.P.No. 1 of 2012

Appellant : P. Veerappan

Respondent : Mariammal

Advocate for Pet/Ap. : For the Appellant: M. Christopher, Advocate. For the Respondent: T.P. Manohar, Advocate.

Judgement :

(Prayer: Second Appeal filed under Section 100 of Civil Procedure Code to set aside the Judgment and decree of the Additional District Judge, Pondicherry at Karaikal dated 29.09.2008 made in A.S.No.6 of 2008 reversing the judgment and decree of the Principal District Munsif at Karaikal dated 11.12.2007 made in O.S.No.268 of 2005.)

1. The defendant in the original suit is the appellant in the second appeal. The respondent Mariammal as plaintiff, filed O.S.No.268/2005 on the file of Principal District Munsif at Karaikal praying for the relief of prohibitory injunction as against the defendant from in any manner interfering with her peaceful possession and

enjoyment of the suit property and for other reliefs. The suit was dismissed by the said court. As against the same, the respondent herein/plaintiff preferred an appeal in A.S.No.4 of 2008 on the file of the Additional District Judge at Karaikal. The appellant herein/defendant has also preferred an appeal in A.S.No.6 of 2008 praying to set aside the judgment in O.S.No.268 of 2005 in so far as issue No.1 and additional issue were concerned. Both the appeals were taken up together and were disposed of by a common judgment and decree dated 29.09.2008. A.S.No.4 of 2008 filed by the respondent herein/plaintiff was allowed and the suit was decreed as prayed for without cost. A.S.No.6 of 2008 filed by the appellant herein/defendant was dismissed without cost. As against the dismissal of the first appeal A.S.No.6 of 2008 by the Additional District Judge at Karaikal, the appellant herein/defendant has filed the present second appeal.

2. In a suit for permanent injunction a decree was passed by the trial court dismissing the suit, as against which the unsuccessful plaintiff filed an appeal before the lower appellate court. No part of the decree was against the defendant. As such the defendant could not have filed any appeal or even a cross-objection, because Order XLI provides for appeals against original decrees and not against mere findings. Rule 22 of Order XLI enables a respondent in an appeal, while supporting the decree to contend any finding against him recorded by the court below in respect of any issue, ought to have been made in his favour. The rule provides further that the respondent in an appeal may take any cross-objection to any part of the decree, which could have been taken by way of appeal, provided he has filed such objection in the appellate court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal or within such further time as the appellate court may see fit to allow.

3. A consideration of the provisions relating to the appeals from original decrees and the defence plea that can be taken by the respondents in the appeal, will show that no appeal shall lie against a finding, if the said finding does not form the basis of the decree. Appeals are filed against a decree and not against the findings. Some of the issues might have been found in favour of the decree-holder and some of the issues might have been found in favour of the judgment-debtor. The ultimate result would be the decree granted in favour of the decree-holder. It

does not mean that the judgment-debtor can file an appeal against the findings of some of the issues on which the decree is not based. On the other hand, the judgment-debtor can urge before the appellate court while supporting the decree appealed against, that the other issues which were decided against him by the lower court, should also have been decided in his favour. Such a right recognised under Sub Rule (1) of Rule 22 of Order XLI does not mean that an appeal or cross-objection shall lie against a mere finding. It has been repeatedly held that no appeal shall lie against a mere finding, when the decree is not based on such finding. Therefore, the appeal filed by the defendant before the lower appellate court against the finding that the suit property was in possession of the plaintiff was incompetent and the appeal should have been rejected *in limini*. However, the lower appellate court has chosen to entertain the appeal filed by the defendant as A.S.No.6/2008 and dispose of the same on merit. The net result was the dismissal of the appeal. This court is of the considered view that the appeal itself was not competent and the same should have been dismissed *in limini* holding it to be not maintainable. The present second appeal challenging the decree of the appellate court dismissing the said appeal deserves to be dismissed in limini.

4. Accordingly, the second appeal is dismissed *in limini*. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

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