

Saradhambal and Others Vs. Ramakrishnan and Others

Saradhambal and Others Vs. Ramakrishnan and Others

SooperKanoon Citation : sooperkanoon.com/953767

Court : Chennai

Decided On : Dec-07-2012

Judge : T. Mathivanan

Appeal No. : C.R.P.(NPD) No. 3324 of 1994

Appellant : Saradhambal and Others

Respondent : Ramakrishnan and Others

Advocate for Pet/Ap. : For the Petitioners: V. Raghavachari, Advocate. For the Respondent: R1 & R2 – No Appearance, R3 to R6 - Dispensed.

Judgement :

(Prayer: Petition is filed under Section 115 of the Code of Civil Procedure, against the fair and decretal Order dated 23.02.1994 and made in C.M.A.No.32 of 1989, on the file of the learned Subordinate Judge, Villupuram, reversing the Order and decretal Order dated 24.11.1987 and made in I.A.No.2126 of 1986 in O.S.No.782 of 1969, on the file of the learned District Munsif, Villupuram.)

1. The memorandum of civil revision is directed against the fair and decretal Order dated 23.02.1994 and made in C.M.A.No.32 of 1989, on the file of the learned Subordinate Judge, Villupuram, reversing the Order and decretal Order dated 24.11.1987 and made in I.A.No.2126 of 1986 in O.S.No.782 of 1969, on the file of the learned District Munsif, Villupuram.

2.The facts, which are very much essential for the disposal of this revision petition are as under:

2.1. The respondents 1 and 2 herein, when they were minor had instituted a suit in O.S.No.782 of 1969, on the file of the District Munsif Court, Villupuram, informa pauperies, through their next friend one Mr.Narayanasamy Gounder against the first revision petitioner and others seeking the relief of declaration that the suit properties are belonged to joint family consisting of minor plaintiffs and the third defendant and also for declaration that the alienation made by the defendants 3 and 4 being their father and mother will not bind upon them and also for partition and possession of their 2/3rd share in the suit property. That suit was dismissed on 17.07.1972.

2.2. Challenging the Judgment of dismissal dated 17.07.1972, the respondents 1 and 2 herein had preferred an appeal in A.S.No.88 of 1973, before the learned Subordinate Court, Cuddalore.

2.3. After hearing both sides and on appreciation of the evidences available on record, the learned Subordinate Judge, Cuddalore had proceeded to allow the appeal on 12.11.1975, after setting aside the Judgment and Decree of the Trial Court. Ultimately, the suit was decreed with the following findings:

- i. Declaring that the suit properties are the joint family properties of the plaintiffs and the third defendant;
- ii. Declaring that the Sale Deeds under Exs.B1, B5 and the mortgage in favour of the eighth defendant are not valid and will not bind on the shares of the plaintiffs; and
- iii. Granting a preliminary decree for partition and separate possession of the plaintiffs' 2/3rd share in the suit properties except Item Nos.8 to 14, 24, 18 and 19 of the suit properties.

2.4. Being aggrieved by the Judgment and Decree of the first appellate Court dated 12.11.1975, the defendants 1 and 2 in the suit viz., the first revision petitioner and one Munuswamy Gounder, had preferred a second appeal in

S.A.No.887 of 1976 before this Court.

2.5. This Court, after hearing both sides and on analyzation of the evidences both oral and documentary, had allowed the second appeal on 24.04.1979 as far as Item Nos.1 to 4 are concerned. This Court had also made it clear that the properties that are available to the plaintiffs for partition and separate possession will be excluding Item Nos.1 to 4 covered by Ex.B1 and this will be in addition to the properties decreed in favour of the plaintiffs.

2.6. Thereafter, the respondents 1 and 2 herein, being the plaintiffs in the suit in O.S.No.782 of 1969, appear to have filed an interlocutory application in I.A.No.2126 of 1986, under Order XX Rule 12 of the Code of Civil Procedure, before the District Munsif Court, Villupuram, for mesne profits.

2.7. From the interlocutory application, it is revealed that in pursuant to the Judgment and Decree dated 12.11.1975 and made in A.S.No.88 of 1973, suit Item Nos.8 to 14, 18, 19 and 24 were excluded and in pursuant to the Judgment and Decree dated 24.04.1979 and made in S.A.No.887 of 1976 Item Nos.1 to 4 were also excluded and in respect of the remaining items a preliminary decree was passed in favour of the respondents 1 and 2, being the plaintiffs, in pursuant to the Judgment and Decree dated 24.04.1979 and made in S.A.No.887 of 1976. Subsequent to that, a final decree appears to have been passed in respect of the remaining properties in favour of the respondents 1 and 2 herein on 05.12.1983.

2.8. Based on the final decree, the respondents 1 and 2 had taken out an execution petition in E.P.No.218 of 1985 and it is also revealed that on 18.03.1985 the revision petitioners and other respondents had admitted the final decree and therefore the execution petition in E.P.No.218 of 1985 was allowed.

2.9. In the above interlocutory application in I.A.No.2126 of 1986, the respondents 1 and 2 had claimed mesne profits from 01.01.1969 till the date of acceptance of final decree i.e., till 18.03.1985. This interlocutory application was dismissed on 24.11.1987 by the learned District Munsif, Villupuram.

2.10. Challenging the Order of dismissal dated 24.11.1987 and made in I.A.No.2126 of 1986, the respondents 1 and 2 herein had preferred a civil miscellaneous appeal in C.M.A.No.32 of 1989 on the file of the learned Sub-Judge, Villupuram.

2.11. The learned Sub-Judge, Villupuram had allowed the civil miscellaneous appeal, on 23.02.1994, after setting aside the order and decretal order dated 24.11.1987 and made in I.A.No.2126 of 1986 and allowing the application in I.A.No.2126 of 1986 and thereby the learned Subordinate Judge had ordered to appoint an Advocate Commissioner to determine the mesne profits.

3. Being aggrieved by the Judgment and Decretal Order dated 23.02.1994 and made in C.M.A.No.32 of 1989, the present memorandum of civil revision is preferred.

4. When the revision petition came up for hearing, Mr.V.Raghavachari, learned counsel appearing for the revision petitioners has filed a memorandum stating that the respondents 3 to 6 remained ex parte and thereafter they had also passed away and hence the steps in order to bring their legal heirs might be dispensed with. Accordingly, the memo was recorded and the steps in respect of the deceased respondents 3 to 6 is dispensed with. However, there is no representation on behalf of the respondents 1 and 2.

5. Mr.V.Raghavachari, learned counsel appearing for the revision petitioners, has mainly argued that the interlocutory application in I.A.No.2126 of 1986 seeking the relief of mesne profits was not at all maintainable, because the respondents 1 and 2 herein, who are the plaintiffs 1 and 2 and the petitioners in the above said interlocutory application had never asked the relief of mesne profits either in the suit or in the first appeal.

6. He has also added that when no relief was asked with regard to the mesne profits, after passing of final decree, they were not entitled to file an application under Order XX Rule 12 of the Code of Civil Procedure to seek the relief of mesne profits.

7. He would further submit that till the final decree was passed, the Court was empowered to grant the relief of mesne profits. Once the final decree was passed, thereafter it was not open to the Court to grant the relief of mesne profits, for the simple reason that the final decree was the one which was to be executed and that the executing Court could not go beyond the scope of the final decree.

8. In support of his contention, he has placed reliance upon the Full Bench decision of this Court headed by His Lordship Hon'ble Mr.JUSTICE N.K.JAIN, Acting Chief Justice, as he then was, in Gnanaprakasa Mudaliar and others vs. B.Anandathandavan and others, reported in (1999) 2 MLJ 398.

9. As observed in Paragraph No.2.9, the respondents herein had claimed mesne profits from 01.01.1969 till the date of acceptance of the prayer of the execution petition in E.P.No.218 of 1985.

10. In the above cited decision, a similar circumstance was arisen. When the matter came up before the learned single Judge of this Court, it was argued on behalf of the appellants therein that the Trial Court did not provide for the mesne profits and therefore the respondents would not be entitled to claim profits. Even otherwise, at the time when the final decree was passed, the application for mesne profits had not been made and in as much as there could not be more than one final decree.

11. In support of the contention made on behalf of the appellants, a decision in Mohamed Habibullah vs. Rahimath Beevi, reported in (1980) 1 MLJ 436 was quoted.

12. A rival contention was made on behalf of the respondents that the respondents had claimed only future mesne profits and as such subsequent to the final decree it was open to them to seek for such relief on the basis of the decision of the Supreme Court in R.S.Maddanappa (deceased) by L.Rs vs. V.Chandramma and another, reported in A.I.R.1965 S.C. 1812 : (1964) 2 SCJ 310.

13. After hearing both sides, the learned single Judge of this Court has entertained a doubt as to whether subsequent to the passing of the final decree, the mesne

profits could be asked for and the learned Judge has therefore referred the following question to the Hon'ble Chief Justice to be decided by the Full Bench:

"Whether in a partition action, the lis got terminated for all purposes even with regard to future profits, not provided for in the final decree in the absence of any indication therein that something more remained to be done."

14. With regard to this reference, the Full Bench of this Court has observed in Paragraph No.7 that in view of the fact that the question referred had already been discussed by a Full Bench of this court in Babburu Basavayya vs. Babburu Guruvayya, reported in I.L.R. 1952 Mad. 173 as well as by the Supreme Court in the Judgment in R.S.Maddanappa (deceased by L.Rs. vs. Chandramma and another, reported in A.I.R. 1965 S.C. 1812.

15. In Babburu Basavayya vs. Babburu Guruvayya, reported in I.L.R. 1952 Mad. 173, the Full Bench of this Court has held that whether the plaintiff contained or not a claim for future profits the court has the power to grant them when the legislature has expressly empowered the court to grant the relief for future mesne profits, that is to say, in respect of a cause of action arising subsequent to the suit, there is no reason to circumscribe this power by importing a qualification that there must have been a specific prayer in the plaintiff for the recovery of such unascertainable and unpredictable profits and as such future mesne profits could be awarded as part of general relief. Having said so, the learned Judges further entered into the discussion on the question as to whether this power to direct an enquiry into future mesne profits can be exercised only at the stage when a preliminary decree for possession is passed or at a later stage of the suit.

16. After referring a catena of cases, the Full Bench of this Court has observed in Paragraph No.11 as follows:

"11. From the above discussion, it is very clear that either the preliminary decree should contain the relief of mesne profits; even if it is not so, it is open to the parties to ask for the enquiry with regard to the mesne profits during the pendency of the suit, which is till the passing of the final decree. This is very clear from the finding of the learned Judges that where a decree awarded possession is silent

with regard to an enquiry into future mesne profits and the decree has not completely disposed "of the suit, which, for one reason or another continues to be pending. A preliminary decree is the general declaration of the rights of the parties and throtical allotments which have to be worked out with due regard to the regularization of the profits and drawing by the parties subsequent to the institution of the suit till the passing of the final decree. This aspect is also clear from the following passage of the Full Bench judgment in Babburu Basavayya vs. Babburu Guruvayya, reported in A.I.R. 1951 Mad. 938.

"If Order 20, Rule 12, or the analogy of that rule is to be applied to suits for partition, as was done in Ghulusam Bivi vs. Ahamadsa Rowther, I.L.R. (1918) 42 Mad. 296 a direction for an enquiry into profits, past or future, can be given only at the time when a decree for possession of the property is passed, that is to say, at the time of the passing of a final decree for partition of the properties, when alone the shares would be entitled to get possession of their respective allotments. On the completion of such enquiry a further final decree in respect of profits will have to be passed. This was the view taken by Oldfield J., in Mahalakshamma v. Rajamma, 1917 (43) I.C. 458. We might mention that the conclusion of the learned Judge was affirmed in Letters Patent Appeals Nos. 116 and 58 of 1917."In Paragraph No.14, it has been observed that:

"14. Hence we are very clear from the above said Full Bench judgment that even though the preliminary decree do not contain any relief with regard to the mesne profits, it is open to the court to grant the same, however, that should be incorporated in the final decree, which means, in the absence, of any relief in the final decree, then it is not open to the parties to claim the same."

17. Based on the decision of the Full Bench of this Court in Babburu Basavayya vs. Babburu Guruvayya, reported in A.I.R. 1951 Mad. 938, the Full Bench of this Court has held that till the final decree is passed, the court is empowered to grant the relief of mesne profits. Once the final decree is passed, thereafter it is not open to the court to grant the relief of mesne profits. The simple reason being that the final decree is the one which is to be executed. It is well known fact that the executing court cannot go beyond the decree.

18. On coming to the instant case on hand, it is apparent from the records that the respondents 1 and 2 had not claimed any mesne profit either future or past in the plaint schedule and even in their first appeal also they had not claimed mesne profits both past and future and it is also manifested that a final decree appears to have been passed on 05.12.1983 and even in the final decree also no reference is available with regard to the claiming of mesne profits.

19. Under this circumstance, after passing of final decree, this Court is also in harmonious with the decision of the Full Bench of this Court in Gnanaprakasa Mudaliar and others vs. B.Anandathandavan and others, reported in (1999) 2 MLJ 398 that once a final decree is passed, thereafter it is not open to the Court to grant the relief of mesne profits and the respondents 1 and 2 are also not competent to claim mesne profits.

20. With these above observations, this Court is inclined to allow the civil revision petition.

21. In the result, this civil revision petition is allowed. The Judgment and decretal Order dated 23.02.1994 and made in C.M.A.No.32 of 1989, on the file of the learned Subordinate Judge, Villupuram is set aside, confirming the fair and decretal Order dated 24.11.1987 and made in I.A.No.2126 of 1986 in O.S.No.782 of 1969, on the file of the learned District Munsif, Villupuram. Consequently, connected miscellaneous petition is closed. No costs.

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