

Ramachandran Vs. Vaidyanathan

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Court : Chennai

Decided On : Feb-21-2013

Judge : G.Rajasuria

Appellant : Ramachandran

Respondent : Vaidyanathan

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:21.02.2013
Coram: THE HONOURABLE MR.JUSTICE G.RAJASURIA S.A.No.949 of 2001
Ramachandran ... Appellant vs. 1.Vaidyanathan 2.Ramalingam 3.Kaliyaperumal ...
Respondents This second appeal is filed against the judgement and decree dated
27.3.2000 by the learned Additional Subordinate Judge, Mayiladuthurai, in
A.S.No.40 of 1999 confirming the judgement and decree dated passed by the
District Munsif, Sirkali, in O.S.No.433 of 1995. For Appellant : Mr.A.Muthukumar
For Respondents : Mr.S.Sounthar JUDGMENT This second appeal is focussed by
the plaintiff, inveighing the judgement and decree dated 27.3.2000 passed by the
learned Additional Subordinate Judge, Mayiladuthurai, in A.S.No.40 of 1999
confirming the judgement and decree dated passed by the District Munsif, Sirkali,
in O.S.No.433 of 1995, which is one for permanent injunction.

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

3. Compendiously and concisely the germane facts absolutely necessary for the disposal of this second appeal would run thus: (i) The appellant herein, as plaintiff, filed the suit for partition seeking the following reliefs: "a. To pass a decree for permanent injunction restraining the defendants and their men from in any way causing interference to the plaintiff's possession and enjoyment of the suit property, by way of causing obstruction or putting up superstructure for the plaintiff, having access through the AFEE' portion to the suit property, and also patta land situate further west of it, b. or alternatively, directing the defendant to surrender possession of the suit property, AEE'F portion removing the construction put up thereon, and future profits. c. to award costs." (extracted as such) indicating the following description of property: Description of property Mailaduthurai Registration District, Sirkali sub-Registry, Sirkali Taluk, Puthur Village. R.S.No.620/4 punja tharisu measuring 7 cents and shown as ABCD in the plan, and for which access is having through AFFEE' portion as shown in the plan." (ii) The defendants resisted the suit by filing the common written statement (iii)Whereupon issues were framed. Up went the trial, during which, the plaintiff examined himself as P.W.1 along with P.Ws.2 to 4 and Exs.A1 to A5 were marked on the plaintiffs' side. On the defendants' side, the first defendant was examined as D.W.1 along with D.Ws.2 to 4 and Exs.B1 and B2 were marked. Exs.C1 to C3 were marked as Court documents. (iv) Ultimately the trial Court dismissed the suit, as against which, the appeal was filed for nothing but to be dismissed by the first appellate Court confirming the judgement and decree of the trial Court.

4. Challenging and impugned the judgements and decrees of both the Courts below, the plaintiff has filed this second appeal on various grounds and also suggesting the substantial questions of law.

5. My learned predecessor formulated the following substantial questions of law: "(a) Whether the lower appellate Court erred in law in rejecting an application for reception of additional evidence viz., the judgement rendered in an earlier suit O.S.No.248/84 where the plaintiff and the father of the defendants were parties and the possession of the defendants father was rejected? (b)Whether the defendants are estopped from contending their plea of possession to the suit property as per the decision rendered in O.S.No.248/84? (c)Whether the lower

appellate Court not erred in law in dismissing the suit holding that the plaintiff was not in possession of the date of suit, over looking the fact that the suit is also for recovery of possession?" (extracted as such) 6. Heard both sides.

7. The learned counsel for the appellant/plaintiff would pyramid his arguments, which could succinctly and precisely be set out thus: (i)The Courts below failed to take into consideration that the suit property, namely, AE1EF portion abetting the road is the only access to his agricultural land situated to the West of the suit property. However, the defendants, without any manner of right, taking undue advantage of the fact that the said portion AE1EF happens to be the Government land, attempted to barge into the property and raise a structure, so as to prevent the plaintiff from having ingress and egress to his said agricultural land. (ii)It so happened that earlier the father of the defendants herein and four others filed the suit in O.S.No.248 of 1984 so as to injunct the plaintiff herein from using the same suit property and in that the plaintiffs therein lost the litigative battle and after meeting with their waterloo, they never agitated it before the higher forum, whereupon, the judgement of dismissal attained finality. (iii)Before the trial Court only, the decree copy in the said O.S.No.248 of 1984 was filed and not the certified copy of the judgement, whereupon, before the first appellate Court, the certified copy of the judgement was filed as additional evidence, but it was not allowed to be filed. (iv)The findings of both the Courts below that the plaintiff did not prove his case is neither here nor there and the Commissioner's report would show that there was 'sarpu' portion, which was open and in fact, the first Advocate Commissioner observed in his report that when he visited the suit property, he found a new thatch structure raised by the defendants. (v) Both the Courts were not justified in dismissing the suit on the ground that the plaintiff did not prove his possession as on the date of filing of the suit, ignoring the alternate prayer for recovery of possession. (vi) Other than the suit property, there is no other property available for passing and re-passing, so as to have ingress and egress to the plaintiff's property situated to the West of the suit property. Accordingly, the learned counsel for the plaintiff would pray for setting aside the judgement and decree of both the Courts below and for decreeing the original suit.

8. Per contra, in a bid to slap down the arguments as put forth on the side of the appellant/plaintiff, the learned counsel for the respondents/defendants would pyramid his arguments, which could tersely and briefly be set out thus: (i) There is no shard or shred, pint or molecular evidence to buttress and fortify the stand of the plaintiff that he had right of easement over the suit property in order to have ingress and egress to his agricultural land situated to the West of the suit property. In fact, the Commissioner's report would pellucidly and palpably, obviously and axiomatically give a picturesque description of the topography of the suit property and other adjacent shops. (ii) Undeniable as it is, the plaintiff is having his own shop portion on the Northern extreme of the said Government poramboke land and it is abetting the road as well as the agricultural property of the plaintiff. Once, undeniably a portion abetting the road and the plaintiff's agricultural land, is existing, the plaintiff cannot plead easement of necessity and both the Courts below, taking into consideration the pro et contra, appositely and appropriately, correctly and legally rejected the claim of the plaintiff, warranting no interference in second appeal. (iii) The earlier suit O.S.No.248 of 1984 was dismissed when the present defendants' father was no more, and no steps were taken to implead the LRs of the deceased in that suit. As such, the said judgement and decree cannot be pitted as against the defendants, who are the sons of one of the plaintiffs therein. Accordingly, the learned counsel for the respondents/defendants would pray for the dismissal of the second appeal.

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

10. At the outset itself I would like to advert to the proceedings that emerged in O.S.No.248 of 1984. Incontrovertibly and unassailably, unarguably and indubitably, the earlier suit O.S.No.248 of 1984 was filed by the father of the defendants herein and four other persons relating to the same property as against the defendant therein, who happened to be the plaintiff herein, so as to injunct him from interfering with the suit property. However, that suit was dismissed without any finding in favour of the defendant therein, so to say, the plaintiff herein. In such a case, I am of the considered view that, that cannot have any probative force of its own and the judgement in that suit also cannot be taken serious note of.

11. A mere running of the eye over the records would evince and evidence, display and buttress that two Advocate Commissioners were appointed. (i) Ex.C3 is the first Advocate Commissioner's report, which would read thus: "3.The suit property is on western side of the Chidambaram -Mayiladuthurai Main Road. Abutting the road on the Western side there are number of shops as shown in the plan. Behind the row of shops the suit property is situate and a part of the suit property is also situate on the Southern side, where I have seen the petitioner's firewood shop viz.,S1 in my plan. According to the respondent which is the only access to their punja Tharisu i.e. R.S.No.620/4 and patta land R.S.620/2. As per the version of the respondent there are 2 shops of his own in the row of shops. Both the shops have been let out for rent to two different parties. In one shop one hotel is running, as shown as S2. On the southern side of the old one, which is completely opened and it gives clear access to the suit property fields. The 'Sarpu' portion also belongs to the respondent. On the extreme north, the respondent owns another shop viz.S12.. . . (emphasis supplied) (ii)In Ex.C1-the second Advocate Commissioner's report, the following could be seen and it is extracted hereunder: "The petitioner's counsel asked me to see any access to his Nanja field in R.S.No.620/2 from 620/4. Ash on 10.8.95 there is no access to the field except through thatched Sarpu portion (open) which is between the shops S1 and S2. According to the petitioner's counsel that thatched portion is in dispute. But that portion is in use of the hotel people for cutting the banana leaves. The respondent's firewood shop S1 has no walls on four sides but supported only by bamboo poles." (emphasis supplied) 12.This Court called upon the advocates, who are all appearing on both sides in this second appeal, to explain and expound concerning the concurring notings and observations of both the Commissioners that there exists a 'Sarpu' portion, adjacent to one Jayaraman's hotel portion. The second Advocate Commissioner filed along with his report-Ex.C1 the authentic plan as well as the survey extract-Ex.C2 given by Taluk Sub-Inspector of Surveys, Sirkali, that would show that the said 'Sarpu' portion, which is vacant and having openings on either side, is bearing sub-division No.11 in Survey No.620/4 and it is having an extent of 490 sq.links also. As such, that fact remains unrebutted and unchallenged.

13. There is nothing to indicate and exemplify that the Courts below disbelieved such findings of the Commissioners in that aspect.

14. The core question arises as to how in such a case the plaintiff who had the facility of having ingress and egress through the 'sarpu' portion could veer round and take a plea that he was not having any ingress and egress to his agricultural land situated to the West of the suit property. As such, in my considered opinion, the claim of the plaintiff fails to carry conviction with this Court.

15. It is also clearly found spelt out from the records that over and above that 'Sarpu' portion available as per the aforesaid Commissioners' report and sketches, there is also one other shop portion situated on the Northern side of the row of shops, which is sandwiched by the road and the plaintiff's agricultural land. As such, in my considered opinion, the concept of easement of necessity cannot be pressed into service by the plaintiff and by and large the Courts below though fit not to entertain the suit and the appeal and accordingly dismissed the same, which warrants no interference in second appeal.

16. Accordingly, the substantial questions of law are answered as under: Substantial question of law (a) is answered to the effect that the lower appellate Court has not committed any error in law, in rejecting the application for reception of additional evidence viz., the judgement rendered in an earlier suit O.S.No.248/84. Substantial question of law (b) is answered to the effect that the decision rendered in O.S.No.248/84, is having no relevance to this case. Substantial question of law (c) is answered to the effect that the appellant is not entitled to a relief as prayed for in view of he having facility for ingress and egress to his agricultural land through the 'sarpu' portion and his shop portion, as observed supra.

17. In the result, the second appeal is dismissed. However, there is no order as to costs. Msk To 1. The learned Additional Subordinate Judge, Mayiladuthurai.

2. The District Munsif, Sirkali