

Kaliammal Vs. Muthusamy

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Court : Chennai

Decided On : Apr-26-2013

Judge : G.Rajasuria

Appellant : Kaliammal

Respondent : Muthusamy

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

26. 04.2013 Coram: THE HONOURABLE MR.JUSTICE G. RAJASURIA
S.A.No.457 o

1. Kaliammal 2. Subbathal .. Appellants Vs.

1. Muthusamy 2. Krishnamurthy .. Respondents This Second Appeal is focussed as against the judgment and decree dated 11.11.2011 passed in A.S.No.18 of 2011 passed by the Additional District Judge, Fast Track Court No.4, Coimbatore, Tiruppur confirming the judgment and decree dated 06.07.2010 in O.S.No.21 of 2007 passed by the Principal Subordinate Court, Tirupur. For Appellants : Mr.Nellaiappan JUDGMENT This Second appeal is focussed animadverting upon the judgment and decree dated 11.11.2011 passed in A.S.No.18 of 2011 by the Additional District Judge, Fast Track Court No.4, Coimbatore, Tiruppur thereby confirming the judgment and decree dated 06.07.2010 in O.S.No.21 of 2007 passed by the Principal Subordinate Court, Tirupur.

2. The parties are referred to hereunder according to their litigative status and ranking before the trial Court.

3. In a few broad strokes, the germane facts relating to this case would run thus: (a) The plaintiffs, who are the appellants herein, filed the suit seeking partition of the immovable property found described in the suit, citing the respondents herein as defendants. (b) The gist and kernel of the plaint averments would be to the effect that the plaintiffs' father, namely Kaliyandi son of Ganapathiyandi, vide the sale deed dated 04.09.1953 purchased the suit property, so to say an extent of 9-1/2 acres in the larger extent of 11-1/2 acres of land situated in Cadastre No.235. The plaintiffs' brother, Ganesan died in an unmarried state. As such, after issuing pre suit notice to the defendants, this suit has been filed for partition, since the defendants did not come forward for amicable settlement. (c) Per contra, the defendants filed the written statement, the warp and woof of the same would run thus: The plaintiffs' father sold the property which he purchased as per the sale deed dated 20.06.1958 in favour of the defendants. Thereafter, the patta also got changed in the name of the defendants. Subsequently, the suit properties were settled in favour of the sons of the defendants, namely (1) Ravi, (2) Natarajan, (3) Jeevanandam who are the sons of Muthusamy (D1); and (4) Gunasekaran, son of D2 and the settlees in turn sold the suit properties on 30.11.2006 in favour of one Gunasekar and Ashok Kumar and in such a case, the suit itself was bad for non joinder of necessary parties. Accordingly, he prayed for the dismissal of the suit.

4. The trial Court framed the relevant issues.

5. Up went the trial, during which the first plaintiff/Kaliyammal examined herself as P.W.1 along with P.Ws.2 and 3 and marked Exs.A1 to A8; and the first defendant/Muthusamy examined himself as D.W.1 along with D.Ws.2 and 3 and Exs.B1 to B20 were marked.

6. Ultimately the trial Court dismissed the suit, as against which the appeal was filed for nothing but to be dismissed by the appellate court confirming the judgment and decree of the trial Court in dismissing the suit.

7. Challenging and impugning the judgments and decrees of both the fora below, this Second Appeal has been focussed on various grounds and also suggesting the following substantial questions of law: "(1) Whether a partition suit can be dismissed simply because of the non joinder of necessary parties and whether opportunity should be given to parties concerned to implead necessary parties in view of the decision reported in 2009 (2) CTC page 760? (2) Whether Appellants should be given opportunity to add co sharers and implead all parties at any point of time even in appeal in the light of the decision reported in 1998 II CTC page 403? (extracted as such) 8. The learned counsel for the appellants/plaintiffs would pyramid his argument which could succinctly and precisely be set out thus: (a) The defendants mainly relied on Ex.B1-the sale deed, purportedly executed by the plaintiffs' vendor, but the name of the vendor in Ex.B1 does not tally with the name of the plaintiffs' father. (b) Over and above that Ex.A1 - the sale deed dated 04.09.1953, still is with the plaintiffs and they produced and marked it as Ex.A1, which would connote and denote that in stricto sensu there was no sale effected by the plaintiffs' father in favour of the defendants. Had there been any such sale as alleged by the defendants, then the original Ex.A1 could not have been with the plaintiffs. As such, both the Courts below committed serious error in not taking note of this legal position. (c) The identity of the vendor under Ex.B1 is very much disputed. Even then the Courts below have not taken note of the same. Accordingly the learned counsel for the plaintiff would pray for setting aside the judgments and decrees of both the Courts below by allowing this appeal.

9. At the outset, I would like to fumigate my mind with the recent decision of the Hon'ble Apex Court reported in 2012 (8) SCC 14.[Union of India v. Ibrahim Uddin and another].

10. A mere running of the eye over the above precedent would connote and denote, exemplify and demonstrate that unless there is any substantial question of law is involved, the question of upsetting the finding of the court below would not arise.

11. keeping the dictum as found embedded in the aforesaid precedent, I would like to analyse the materials before me.

12. Precisely it is the case of the plaintiffs that their father as per Ex.A1-the sale deed, purchased an undivided share of 9-1/2 acres in a vast extent of 11-1/2 acres of land. There is no iota or shred, shard or miniscule, jot or molecular extent of evidence to exemplify and demonstrate that after 1958, the plaintiff's father was ever in possession and enjoyment of the said property.

13. Indubitably and indisputably, admittedly and unarguably, the plaintiffs' father died in the year 1980. As such, if at all the plaintiffs had been in possession and enjoyment of the suit property, at least a part of it as claimed by the plaintiffs, then certainly there must be some revenue records speaking to that effect. The suit itself was filed during the year 2007, whereas, Ex.B1 emerged during the year 1958, so to say, half a century virtually after the plaintiffs' vendor having sold the suit property in favour of the defendants the plaintiffs' daughters did choose to file the suit without having any clinching evidence in their favour. Absolutely there is no explanation for the lacuna in their evidence. Even after the death of their father, there is nothing to show that the property was under the enjoyment of the plaintiffs' brother Ganesan or the plaintiffs. There is no joint patta also in their name and in the name of any other person. In such a case, both the courts below appropriately and appositely analysed the evidence and held that the suit filed by the plaintiffs, was a misconceived one.

14. The contention on the side of the plaintiffs is that the original Ex.A1 would enure to their benefit. Once the registered deed as contained in Ex.B1 is in prevalence, the question of ignoring it or belittling it does not arise, on the sole ground that the antecedent title deed is still with the plaintiffs. It is also found well established by marking Exs.B11 to B16, that the suit properties were transferred in favour of various other persons and as on the date of the filing of the suit, the defendants were not even the owners of the suit properties. As such, as per the available documentary evidence including the revenue records, the defendants clearly established that the plaintiffs as on the date of the filing of the suit had no right to assert themselves as owners of either a part of the suit property or the entire suit property.

15. Relating to identity of the vendor under Ex.B1 is concerned, an excerpt from the trial Court's judgment would run thus: VERNACULAR (TAMIL) PORTION DELETED 16 As such it is crystal clear that both the Courts below also had no evidence before them to doubt the identity of the vendor under Ex.B1. In such a case, I could see no question of law much less substantial question of law is involved in this second appeal to interfere with the judgments and decrees of the Courts below, who decided the lis au fait with law and au courant with facts. Accordingly, this second appeal cannot be entertained and the same stands dismissed. No costs. To 1. The Additional District Judge, Fast Track Court No.4, Coimbatore, Tiruppur.

2. The Principal Subordinate Court, Tirupur

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