

Selvaraj Vs. Venkatraman

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Court : Chennai

Decided On : Apr-26-2013

Judge : G.Rajasuria

Appellant : Selvaraj

Respondent : Venkatraman

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

26. 04.2013 Coram: THE HONOURABLE MR.JUSTICE G. RAJASURIA
S.A.No.366 of 2003 Selvaraj .. Appellant Vs. Venkatraman .. Respondent This
Second Appeal is focussed as against the judgment and decree dated 12.10.2001
passed in A.S.No.53 of 2001 passed by the Principal Sub Court, Mayiladuthurai,
confirming the judgment and decree dated 22.03.2001 in O.S.No.833 of 1998
passed by the Principal District Munsif, Mayiladuthurai. For Appellant :
Mr.S.Sounthar For Respondent : Mr.R.Mohamed Hidayathullah JUDGMENT This
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12.10.2001 passed in A.S.No.53 of 2001 by the Principal Sub Court,
Mayiladuthurai, confirming the judgment and decree dated 22.03.2001 in
O.S.No.833 of 1998 passed by the Principal District Munsif, Mayiladuthurai.

2. The parties are referred to hereunder 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: (a) The plaintiff in his capacity as lessee of the house bearing Door No.27 filed the suit seeking the following reliefs as against the defendant: "(i) To restrain the defendant and his men from in any way obstructing the plaintiff and his men from using the suit lane peacefully till he vacates the house bearing Door No.27 and restraining him from altering or removing the cross wall of the plaintiff in the lane or other fittings; (ii) To direct the defendant by way of mandatory injunction to remove the block made by him at the entrance at point 'X' in the plan with bricks and mortar and also the cover made over running municipal pipe with bricks and mortar; (iii) For costs." (extracted as such) (b) The pith and marrow, the gist and kernel of the averments in the plaint would be to the effect that there is a common lane situated between the houses of the plaintiff and the defendant and the latter highhandedly prevented the former from having ingress and egress to his house through the said common lane. (c) Per contra, with an intention to torpedo and pulverise the averments as put forth in the plaint, the defendant filed the written statement, the warp and woof of the same would run thus: There is no lane much less common lane situated between the houses of the plaintiff and the defendant. In fact, the defendant is the owner of the entire area situated to the east of the house under the occupation of the plaintiff. In such a case, the claim of the plaintiff is a misconceived one. 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 plaintiff/Selvaraj examined himself as P.W.1 along with P.W.2/Jayakumar (Advocate Commissioner) and marked Exs.A1 and A2; and the defendant/Venkataraman examined himself as D.W.1 along with D.W.2/Vinayagamurthy. Exs.C1 and C2 were marked as court documents.

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 the courts below erred in not taking adverse inference from the failure of respondent to produce his title document relating to suit lane, when he specifically admitted in his cross examination that he was having title documents relating to suit lane? (2) Whether the point for consideration framed by Lower appellate court can be treated as proper points for consideration under Order 41 Rule 31 of CPC? (3) Whether the judgments of the courts below, dismissing the suit are not vitiated by perversity when the physical features of the suit land support exclusive user by appellant herein? (extracted as such) 8. My learned Predecessor formulated the following substantial questions of law: "(1) Whether the courts below erred in not taking adverse inference from the failure of respondent to produce his title document relating to suit land, when he specifically admitted in his cross examination that he was having title documents relating to suit lane? (2) Whether the point for consideration framed by Lower appellate court can be treated as proper points for consideration under Order 41 Rule 31 of CPC? (extracted as such) 9. A mere running of the eye over the judgments of both the Courts below and the available records, would exemplify and demonstrate, display and portray that both the parties have not chosen to produce documentary evidence relating to the disputed property. On the one hand, the plaintiff would contend that his lessor happened to be the common user of the said common lane and the plaintiff being the lessee who stepped into the shoes of his lessor, was entitled to enjoy the said common lane.

10. Whereas, the learned counsel for the plaintiff would try to explain and expound that his client being a lessee could not produce the original title deed as it must be with his lessor, who is not a party to the lis. Whereas, the learned Advocate for the defendant would try to project a case that at the relevant time of trial, the title deed of the defendant was with the Bank/mortgagee and hence he could not produce it. I am at a loss to understand and there is nalso no knowing of the fact as to what prevented the plaintiff from summoning the relevant documents from his lessor and produce it before the Court. While observing so, I would like to hold that nothing prevented the defendant to obtain the certified copy of the said document of his title deed and produce it before the Court. As such, each one is trying to blame the other relating to the non production of the relevant documents. Both the

Courts below also committed error in not giving any direction to either of the parties to produce the relevant documents.

11. The learned counsel for the plaintiff would put forth orally his client's present legal right to the effect that pendente lite the plaintiff acquired absolute ownership over the said house including his right to use the lane as a common user. No doubt pending litigation this Juridical act took place and that changed the status of the plaintiff from that of the lessee to that of the owner of the house.

12. I would like to observe that there is no prayer for declaration of title in the plaint, for which the learned counsel for the plaintiff would explain by pointing out that as a lessee he was not entitled to seek for declaration. I cannot countenance and uphold such a contention, for the simple reason that even a lessee could pray for declaration of his limited right as a lessee. Unless there is a prayer for declaration, there is no question of the Court probing into the respective rights of the rival parties.

13. As such, taking into account the pros and cons of the matter and to keep this judgment on an even keel, I am of the considered view that as such the suit filed by the plaintiff for bare injunction should be held to be one not maintainable, however, liberty as prayed by the learned counsel for the plaintiff could be given that the plaintiff if at all he really acquired ownership over the property in which he was previously the lessee, it is open for him as per law to file a suit for declaration and for consequential reliefs by producing appropriate documents and at that time, the Court is expected to deal with the matter untrammelled and uninfluenced by any of the observations made in this judgment or in the judgments of either of the lower Courts.

14. On balance, The substantial questions of law are answered to the effect that the suit filed by the plaintiff without a prayer for declaration of title was fatal to his case. However, liberty has to be given to the plaintiff to file a separate suit based on the new cause of action that he himself acquired title over the property in which he was previously occupying as a lessee. Accordingly, this second appeal is disposed of. No costs. To 1. The Principal Sub Court, Mayiladuthurai.

2. The Principal District Munsif, Mayiladuthurai gms

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