

Nagarajan Vs. Vijaya

Nagarajan Vs. Vijaya

SooperKanoon Citation : sooperkanoon.com/965345

Court : Chennai

Decided On : Mar-01-2013

Judge : G.Rajasuria

Appellant : Nagarajan

Respondent : Vijaya

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:01.03.2013
Coram: THE HONOURABLE MR.JUSTICE G.RAJASURIA S.A.No.101 of 2009
Nagarajan ... Appellant vs. Vijaya ... Respondent This second appeal is filed against the judgment and decree dated 14.02.2006 passed by the learned District Judge, Nagapattinam in A.S.No.39 of 2005 in confirming the judgment and decree dated 28.07.2004 passed by the learned Subordinate Judge, Thiruvarur in O.S.No.143 of 2002. For Appellant : Mr.V.Bharathidasan For Respondent : Mr.S.Sathiamurthi JUDGMENT This second appeal is focussed by the defendant inveighing the judgement and decree dated 14.02.2006 passed by the learned District Judge, Nagapattinam in A.S.No.39 of 2005 in confirming the judgment and decree dated 28.07.2004 passed by the learned Subordinate Judge, Thiruvarur in O.S.No.143 of 2002.

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

4. Heard both sides.

5. A summation and summarisation of the germane facts absolutely necessary for the disposal of this second appeal would run thus: [a] The respondent/plaintiff filed the suit for partition of the suit properties mainly based on the Will executed by the original owner of the suit property, namely, Rathinambal, who is none other than the plaintiff's mother's sister and defendant's father's sister. [b] The defendant resisted the suit, however, admitting the 'Will', but raising certain contentions concerning movable properties, so to say, cash and jewels, having been allegedly taken away by the plaintiff-Vijaya. [c] Whereupon issues were framed. [d] Up went the trial, during which, the plaintiff examined herself as PW1 and marked Exs.A1 to A3. The defendant examined himself as DW1 and no document was marked. [e] Ultimately, the trial court, ordered partition between the plaintiff and the defendant on the strength of the Will. [f] Being aggrieved by and dissatisfied with the same, the defendant preferred the appeal for nothing but to be dismissed by the first appellate Court confirming the judgement and decree of the trial Court. [g] The same defendant filed this second appeal on various grounds suggesting the following substantial questions of law. a) Whether the judgment and decree passed by the court below are bad for not including the entire properties in the suit? b) Whether the partial partition granted by the courts below is right? c) Whether the courts below not erred in disbelieving the case of the appellant/defendant? d) Whether the first appellate court right in disposing the appeal without framing necessary issues and give finding for the same? [extracted as such] 6. The learned counsel for the appellant/defendant would pyramid his arguments which could succinctly and precisely be set out thus: (i)Both the Courts below failed to take note of the fact that the deceased Rathinambal died leaving behind her, cash and jewels, but the same were taken away by Vijaya-the plaintiff and there was a panchayat and in that there was some understanding for sharing the cash and jewels, but without adding those cash and jewels as part of the suit properties, the suit was filed for partial partition, which is not tenable. (ii) The Courts have not delved deep into the evidence and rendered the judgement. Accordingly, the learned counsel for the appellant/defendant would pray for allowing the second appeal.

7. Whereas, the learned counsel for the respondent/plaintiff would advance his arguments, the warp and woof of the same would run thus: (i) Absolutely there is

no shard or shred, molecular or jot of evidence in support of the contention of the defendant that the plaintiff took away the cash and jewels of Rathinambal and that the suit is one for partial partition. (ii) Both the Courts analysed the evidence and gave a finding that there is nothing to buttress and fortify the contentions of the defendant. (iii) Insofar as the 'Will' is concerned, it is an admitted one. Accordingly partition was ordered correctly by the courts below, warranting no interference in this second appeal.

8. A mere running of the eye over the available records, including the judgements of both the Courts below would exemplify and demonstrate that the defendant having admitted the Will, the plaintiff and the defendant are entitled to half share each in the suit property, nonetheless he would proceed to contend that the deceased Rathinambal left behind cash and jewels. It is therefore crystal clear that the onus of proof was on the defendant to prove it; but he failed to discharge his burden. On the defendant's side, he examined himself as DW1 and no document was exhibited on his side. Absolutely his contentions in the written statement turned out to be only his ipse dixit. Whereupon the first appellate court, being the last court of facts confirmed the judgment and decree of the trial court holding that absolutely there was no merit in the first appeal.

9. At this juncture, I would like to fumigate my mind with the following recent decision of the Hon'ble Apex Court reported in 2012(8) SCC 14.[Union of India v. Ibrahim Uddin and another]; an excerpt from it would run thus: "59. Section 100 CPC provides for a second appeal only on the substantial question of law. Generally, a second appeal does not lie on question of facts or of law. In SBI v. S.N.Goyal (2008) 8 SCC 92.this Court explained the terms "substantial question of law" and observed as under: (SCC p.103, para

13) "13.....The word "substantial" prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the partiesany question of law

which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing on the final outcome, will not be a substantial question of law.....There cannot, therefore, be a straitjacket definition as to when a substantial question of law arises in a case." (emphasis added) 10. In the same precedent, the following decisions are found referred to: (1) AIR 196.SC 331.[Chunilal V. Mehta & Sons Ltd. v. Century Spg. and Mgf. Co. Ltd.] (2) (2011) 1 SCC 67.[Vijay Kumar Talwar v. CIT] (3) AIR 194.PC 1.[Bibhabati Devi v. Kumar Ramendra Narayan Roy] (4) (1949) 17 ITR 26.(Nag) [Suwalal Chhogalal v. CIT] (5) AIR 195.SC 85.[Oriental Investment Co. Ltd. v. CIT] (6) AIR 19.SC 160.[Jagdish Singh v. Natthu Singh] (7) (1996) 5 SCC 35.[Parativa Devi v. T.V.Krishnan] (8) (1998) 6 SCC 42.[Satya Gupta v. Brijesh Kumar] (9) AIR 200.SC 53.[Ragavendra Kumar v. Firm Prem Machinery & Co.] (10) AIR 200.SC 126.[Molar Mal v. Kay Iron Works (P) Ltd.] (11) (2010) 11 SCC 48.[Bharatha Matha v. R.Vijaya Renganathan] (12) (2010) 12 SCC 74.[Dinesh Kumar v. Yusuf Ali] (13) (2002) 3 SCC 63.[Jai Singh v. Shakuntala] (14) (2008) 12 SCC 79.[Kashmir Singh v. Harnam Singh] 11. A mere poring over and perusal of it would connote and denote, exemplify and demonstrate that unless there is any substantial question of law is involved, the question of upsetting the findings of the courts below would not arise.

12. Accordingly, I could see no substantial question of law involved in this matter for consideration.

13. However, the learned counsel for the appellant/defendant would make an extempore submission that the plaintiff being a lady, who is living in her husband's house, is virtually not in need of any residential portion in the suit house; whereat, the defendant has been in possession and enjoyment of the house for over four decades and if that is partitioned, certainly he would be prejudiced.

14. At this juncture, the learned counsel for the plaintiff would submit that the plaintiff is in joint possession of the suit house.

15. However, I would like to observe that the provisions of the Partition Act, if attracted towards the plea of the defendant, it is open for him to approach the court, wherein the final decree application is pending and workout his remedy.

16. With this observation, this second appeal is dismissed. However, there shall be no order as to costs. Vj2 01.03.2013 Index : Yes Internet: Yes To 1. The District Judge, Nagapattinam 2. The Subordinate Judge, Thiruvarur G.RAJASURIA,J.

vj2 S.A.No.101 o

01. 03.2013

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