

G.Devaraji Vs. Selvarajan

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Court : Chennai

Decided On : Feb-07-2013

Judge : G.Rajasuria

Appellant : G.Devaraji

Respondent : Selvarajan

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:07.02.2013
Coram: THE HONOURABLE MR.JUSTICE G.RAJASURIA S.A.No.23 of 2013 and
M.P.No.1 of 2013 G.Devaraji ... Appellant vs.

1. Selvarajan 2. K.G.Yuvaraji 3. Jayavel 4. Sundaravadivel ... Respondents This second appeal is filed against the judgement and decree dated 14.03.2012 passed by the learned Subordinate Judge, Tirupathur, Vellore District in A.S.No.25 of 2010 in reversing the judgment and decree dated 19.03.2010 passed by the learned District Munsif, Tirupattur in O.S.No.93 of 2004. For Appellant : Mr.G.Rajan JUDGMENT This second appeal is focussed by the plaintiff, inveighing the judgement and decree dated 14.03.2012 passed by the learned Subordinate Judge, Tirupathur, Vellore District in A.S.No.25 of 2010 in reversing the judgment and decree dated 19.03.2010 passed by the learned District Munsif, Tirupattur in O.S.No.93 of 2004.

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. A summation and summarisation of the germane facts, absolutely necessary for the disposal of this second appeal would run thus: a] The plaintiff filed the suit seeking the following reliefs: - to pass the judgment and decree as against the defendants - granting permanent injunction as against the defendants, their men, agents restraining them from interfering with the peaceful possession and enjoyment of the suit properties. - to order the defendants to pay the costs of the suit. (extracted as such) in respect of the immovable property on the main ground that he perfected his title by adverse possession. b] The defendants 3 and 4 resisted the suit by filing written statement. c] Whereupon issues were framed by the trial court. d] Up went the trial, during which, the plaintiff examined himself as PW1 along with P.Ws.2 and 3 and marked Exs.A1 to A21. On the side of the defendants, the third defendant examined himself as DW1 and marked Exs.B1 and B2. e] Ultimately, the trial court decreed the suit by granting injunction. As against which, appeal was filed. Whereupon, the first appellate court reversed the judgment and decree of the trial court and dismissed the suit. f] Challenging and impugning the judgment and decree of the first appellate court, the plaintiff has preferred this second appeal on various grounds and also suggesting the following substantial questions of law: A. Is not the first appellate court wrong by refusing the relief of injunction contrary to the ratio laid down in AIR 200.SC P.No.4609 when the plaintiff is in the exclusive and enjoyment of the suit mentioned property? B. Whether the first appellate court is correct in dismissing the suit by overlooking the admission on the side of the defendant in regard to the possession of the suit property by the appellant/plaintiff? C. Is not the appellate court wrong in permitting the first respondent to approbate the transaction by which the suit mentioned property has been allotted to the plaintiff and later to repudiate the same? D. Is not the decree and judgment of the first appellate court is against the oral and documentary evidence? [extracted as such] 4. Heard the learned counsel appearing for the appellant/plaintiff.

5. The learned counsel for the appellant/plaintiff would pyramid his argument, which could succinctly and precisely be set out thus:

1. The first appellate court failed to take into consideration the fact that the plaintiff is admittedly in possession of the suit property and in such a case, there could

have been no embargo for granting the relief of injunction to protect the possession and that too on coming to know of the fact that the plaintiff is admittedly in possession.

2. The court was enjoined to grant injunction; but the first appellate court failed to consider the said law point.

3. The suit property originally belonged to the grand father of the parties and there was oral partition and in that agricultural properties were divided and so far as the house property, viz., the suit property is concerned, the defendants were paid quid pro quo for releasing their share in favour of the plaintiff and thereby the plaintiff has started exclusively enjoying the property over a period of 30 years and considering that fact, the trial court legally decreed the suit. Whereas the first appellate court misdirected itself and dismissed the suit after setting aside the judgment and decree of the trial court. Accordingly, he would pray for allowing the second appeal by setting aside the judgment and decree of the first appellate court.

6. At the outset itself, 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) 7. In the same precedent, the following decisions are found referred to concerning the entertaining of second appeals. (1) AIR 196.SC 331.[Chunilal V. Mehta & Sons Ltd. v. Century Spg. and Mfg. 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] 8. A mere running of the eye over those precedents would connote and denote, exemplify and demonstrate that the second appeal cannot be entertained as a matter of course unless any substantial question of law is involved.

9. I would also like to recollect and call up the maxim *judicis est judicare secundum allegata et probata* -It is the duty of the judge to decide according to facts alleged and proved. Accordingly, if viewed, it is pellucidly and palpably clear that the plaint is silent as silence could be relating to the theory of the plaintiff having parted with *quid pro quo* in favour of the defendants in allegedly getting release from them in his favour in respect of the suit property.

10. I am at a loss to understand as to how the trial court went to the extent of placing reliance on Ex.A12 as well as the oral evidence in giving a finding that the plaintiff perfected his title by adverse possession.

11. Here, the plaint averments are to the effect that the plaintiff perfected his title by adverse possession. Wherefore, he ought to have prayed for declaration of his title and for injunction; but the plaint was not drafted in that way. Over and above that in the plaint, there is no reference to any release obtained by the plaintiff from the defendants.

12. As such, ex facie and prima facie it is clear that the plaint is a good example for a bad one and it ought not to have been numbered at all. However, the first appellate court au fait with law and au courant with facts, correctly reversed the judgment and decree of the trial court and dismissed the suit, warranting no interference in the second appeal as there is no question of law much less substantial question of law is involved in this case.

13. Accordingly, this second appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. vj2 07.02.2013 Index : Yes Internet : Yes G.RAJASURIA,J.

vj2 To 1. The Subordinate Judge, Tirupathur, Vellore District 2. The District Munsif, Tirupattur S.A.No.23 o

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