SUPREME COURT OF INDIA

Deity Pattabhiramaswamy

Vs.

S. Hanymayya

C.A.No.80 of 1954

(P. B. Gajendragadkar, A. K. Sarkar and K. Subba Rao JJ.)

19.05.1958

JUDGEMENT

K. SUBUA RAO, J.: This is an appeal by Special Leave against the Judgment and Decree of the High Court of Madras in Second Appeal No. 592 of 1948 setting aside the Judgment and Decree of the District Judge, Guntur, in A. S. No. 189 of 1947, which confirmed the Judgment and Decree of the Subordinate Judge, Guntur, in O. S. No. 112 of 1945.

2. The question that arises in the appeal is whether the High Court had jurisdiction to interfere with the findings of the learned District Judge in exercise of its power under S. 100, Civil Procedure Code.

3. The case is a simple one : The plaintiff-appellant is the deity Sri Pattabhiramaswami of Narasaraopet, represented by Dharmakartha Nagasarapu Subbarayudu. The plaintiff's case is that property to the extent of 12 acres and 30 cents, bearing survey number 1032/B was dedicated to the deity in 1868 by the members of the Behara family, that the land has ever since been in the enjoyment of the deity, that at some time -not exactly known when - the then trustees entered into a convenient arrangement with the pipers, whereunder in lieu of wages for services rendered to the temple, the said property was to be in their possession, that defendants 6 to 23 are the representatives of the Bhajantries to whom the lands were given - of these defendants, defendants 6 to 14 are Hindus (Mangalis) and defendants 15 to 23 are Muslims (Dedekulas) -, that defendants 1 to 5 took two sale deeds from the other defendants one sale deed was executed in favour of defendants 1to 3 and the other in favour of defendants 4 and 5 - and that on the basis of the said sale deeds, the said alienees were setting up title of their own against the deity. On these allegations, the suit was filed for possession and for recovery of profits.

4. Defendants 1, 2, 4 and 5 filed a written-statement denying the title of the deity and its possession of the suit property. They did not set up any specific title in defendants. 6 to 23, but asserted that they were bona fide purchasers from defendants 6 to 23 who were in possession of the land.

5. On the aforesaid pleas, the following issues were framed :

(1) Has plaintiff title to the suit land by grant or prescription?

(2) Had plaintiff been in possession within 12 years prior to suit?

(3) To what future profits, if any, is plaintiff entitled?

(4) To what relief?

6. On Issue 1, the learned Subordinate Judge, having considered the entire evidence, came to the following conclusion:

"There is abundant evidence in the case documentary, oral and circumstantial to render it probable that the suit land was gifted or dedicated by the members of the Behara family to the plaintiff-deity and was in the possession and enjoyment of the Bhajantris, Mangalis and Dedekulas, only as remuneration for the service being rendered by them and as servants of the Plaintiff-deity and as land belonging to the deity and in the right of the deity and not in their own right."

7. On the basis of the appreciation of the evidence, the learned Subordinate Judge held that the plaintiff had title to the suit land. On issue 2, he held that defendants 6 to 23 were in possession on behalf of the deity and therefore the plaintiff was in possession within 12 years prior to the date of the suit. On issue 3, he found that the plaintiff was entitled to future mesne profits and according to that finding, he directed an enquiry to be held in respect of the future mesne profits under Order XX, Rule 12, Civil Procedure Code. On issue 4, he found that the plaintiff was entitled to relief as prayed for.

8. On appeal the learned District Judge, after considering the evidence afresh came to the same conclusion as arrived at by the learned Subordinate Judge. In paragraph 5 of the judgment, the learned Judge observes:

"The plaintiff, although he failed to adduce satisfactory direct evidence of grant to the deity, has placed before Court ample material for coming to the conclusion that the suit property belonged to the deity and was not the private property of the Bhajantries".

In paragraph 10, after considering three pieces of evidence, the learned Judge concluded:

"In fine, I am satisfied that the plaintiff has placed sufficient material before Court for coming to the conclusion that the suit property is that of the deity. Hence possession by the pipers attached to the temple in lieu of service rendered by them must be deemed to be on behalf of the deity".

On the basis of that finding the appeal was dismissed.

9. The defendants preferred a second appeal to the High Court of Judicature at Madras. The learned Judge of the High Court in an elaborate judgment considered the entire evidence as he would do in a first appeal and arrived at a finding of fact to the effect that the plaintiff has failed to prove the title of the deity. On that finding the suit was dismissed with costs throughout.

10. The learned Counsel for the appellant contends that the High Court has exceeded its jurisdiction under S. 100, Civil Procedure Code, in reversing the finding of fact arrived at by the learned District Judge on an appreciation of the documentary, oral and circumstantial evidence in the case. The learned Counsel for the respondents, on the other hand, seeks to support the judgment of the High Court on the ground that the learned Judge based his judgment on the interpretation of the recitals in the document, which have been wrongly construed by the learned Subordinate Judge, and therefore the question raised in the second appeal was not one of fact but of law.

11. The learned Judge of the High Court set aside the findings of the learned District Judge on the following grounds: (1) the property remained with the Behara family even as late as 1906; (2) it is unsafe to rely upon the contents of Exhibits P-13 to P-17, the cowles executed by defendants 6 to 23 in respect of the suit and, whereunder, in clear terms, the suit land was described as 'Bhajantri Inam' of Sri Pattabhiramaswami Garu; (3) the mere fact that the property is called Bhajantri Inam of Sri Pattabhiramaswami Garu does not prove that the property was the property of the Swami Garu; (5) the evidence of P. W. 2 is not of much evidential value. The learned Judge concluded his judgment with the following remarks:

"This case not having been proved by any direct or acceptable evidence and the documents relied upon by the Courts below in order to spin out a title in the deity and the so-called grant in favour of the Bhajantries being wholly unreliable, I must hold, even following the principle laid down in Wali Muhammad v. Muhammad Baksh ILR 11 Lah 199: (AIR 1930 PC 91) that the legal effect of the proved fact, viz., that the defendants 6 to 23 are in absolute possession of the property in their own right and not in the right of the temple, or on its behalf, should be considered essentially to be a question of law and in this view, the decree of the Courts below is unsustainable and the same has to be set aside."

12. It will be seen from the aforesaid narration of facts that the High Court interfered with the finding of fact given by the District Judge on the question of title by taking a different view of the evidence accepted by the learned District Judge. While the Subordinate Judge and on appeal the District Judge held, on a consideration of the relevant evidence, that the Behara family ceased to have any interest in the suit property, at any rate by the year 1886, the learned Judge of the High Court on a consideration of the same evidence came to the conclusion that the suit property continued to be the property of the Behara family till the year 1906, Whereas the genuineness of Exhibits P-13 to P-17 was not questioned in the Courts below and indeed both the Courts proceeded on the basis of the said documents, the learned Judge of the High Court, for the first time, in the second appeal, questioned the genuineness of the documents and found that their execution was not conclusively established. When the recitals in the documents Exhibits P-13 to P-17 executed by defendants 6 to 23 contain a clear and unambiguous admission that the property was Bhajantri Inam of Sri Pattabhiramaswami Garu, the learned Judge, ignored those recitals with the observation that the description would not prove anything in favour of the plaintiff. The evidence of P. W. 2 was also brushed aside with the observation that it was not of much value. It is therefore clear that the learned Judge in effect and in substance considered the entire evidence - oral and documentary-and came to the conclusion different from that arrived at by the learned District Judge.

13. The finding on the title was arrived at by the learned District Judge not on the basis of any document of title but on a consideration of relevant documentary and oral evidence adduced by the parties. The learned Judge therefore, in our opinion, clearly exceeded his jurisdiction in setting aside the said finding. The provisions of Section 100 are clear and unambiguous. As early as 1891, the Judicial Committee in Durga Chowdhrani v. Jawahir Sigh, 17 Ind. App 122 (PC), stated thus:

"There is no jurisdiction to entertain a second appeal on the ground of erroneous finding of act, however gross the error may seem to be".

The principle laid down in this decision has been followed in innumerable cases by the Privy Council as well as by different High Courts in this country. Again the Judicial Committee in Midnapur Zamindari Co. Ltd. v. Uma Charan, 29 Cal WN 131: (AIR 1923 PC 187), further elucidated the principle by pointing out:

"If the question to be decided is one of fact it does not involve an issue of law merely because documents which are not instruments of title or otherwise the direct foundation of rights but are merely historical documents, have to be construed."

Nor does the fact that the finding of the first appellate Court is based upon some documentary evidence make it any the less a finding of fact (See ILR 11 Lah 199: (AIR1930 PC 91). But, notwithstanding such clear and authoritative pronouncements on the scope of the provisions of Section 100, Civil Procedure Code, some learned Judges of the High Courts are disposing of Second Appeals as if they were first appeals. This introduces, apart from the fact that the High Court assumes and exercises a jurisdiction which it does not possess, a gambling element in the litigation and confusion in the mind of the litigant public. This case affords a typical illustration of such interference by a Judge of the High Court in excess of his jurisdiction under S. 100, Civil Procedure Code.We have, therefore, no alternative but to set aside the decree of the High Court on the simple ground that the learned Judge of the High Court had no jurisdiction to interfere in second appeal with the findings of fact given by the first appellate Court based upon an appreciation of the relevant evidence. In the result, the decree of the High Court is set aside and the appeal is allowed with costs throughout.

Appeal allowed.

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