

Smt. Annapoorani Ammal

Vs

G. Thangapalam

Civil Appeal No. 2635 of 1989

(G. L. Oza, K. Jagannatha Shetty JJ)

05.01.1989

JUDGMENT

OZA, J. –

1. Leave granted. Heard learned counsel for the parties.
2. Facts necessary for this appeal are, that the petitioner appellant-original defendant purchased the suit property by registered sale deed dated December 27, 1950 executed by Asirvada Nadar, Ponnammal and Devadasan in favour of the present petitioner appellant for a consideration of Rs. 7000. On January 4, 1951 the present respondent executed a rent agreement in favour of the present appellant for the building acknowledging her as her landlady @ Rs. 80 per month.
3. In 1963 the mother of the appellant by name of Ramalakshmi Ammal died. In 1974 the respondent filed the suit from which the present appeal arises viz. Suit No. 79 of 1974 against the petitioner appellant for conveyance of the property by the petitioner in favour of the respondent on the ground of a 'Yadast' which was for the first time produced with the suit and is alleged to have been written by the mother of the petitioner on December 24, 1950 which is marked as Ex. A-11, in favour of the respondent. This document provided that respondent could get conveyance of the property in the suit from the petitioner after paying the sale price of Rs. 7000 and Rs. 1000 for registration expenses. This 'Yadast' (so-called agreement) was on a plain piece of paper which is neither stamped nor registered nor attested. It is also significant that although this document is alleged to have been written on December 24, 1950 even before the sale deed of the property itself was executed in favour of the appellant but this document was not even mentioned in the notice which was served by the respondent on the present appellant before this suit nor there is any reference anywhere in any earlier correspondence nor there is a mention of this document in the sale deed dated December 27, 1950 which apparently is of a date subsequent to December 24, 1950 nor there is any mention of it in the rent agreement dated January 4, 1951 to which the present respondent himself is a party.
4. By judgment dated November 8, 1978 the trial court (Sub-Judge) relying on this 'Yadast' decreed the suit filed by the respondent.
5. On appeal the Additional District Judge after detailed examination of all the facts and evidence came to the findings of fact that the present petitioner acquired title to the property on the basis of the sale deed which is a registered document in her favour and this property was leased out to the respondent under a rent agreement. It also held that as the mother of the petitioner was not a party to the sale deed she had no right to agree to convey the property or to ask the daughter to convey the

suit property in favour of the respondent.

6. The plaintiff respondent was not a party to the sale deed (transferor) but is only a stranger who became a tenant under the rent agreement. In fact the sale deed was executed by some other person and therefore this 'Yadast' could not be said to be an agreement to reconvey the property as apparently both the parties to the 'Yadast' one making the commitment to recovery and another in whose favour the commitment is made, are not parties at all to the original transaction of sale. The learned Additional District Judge also came to the conclusion that this document was not genuine and is a forged document which is invalid and was just got up for the purposes of this suit and it has seen the light of the day for the first time after 23 years after the date on which it purports to have been executed and for all these 23 years it was never referred to also. The learned appellate court also felt that the suit for specific performance was barred as it was filed more than 20 years after the alleged 'Yadast' (agreement).

7. The learned Judge of the High Court in second appeal by the impugned judgment interfered with the findings of fact arrived at by the lower appellate court which was the final court of facts and went on at length to reassess the evidence and not only to reassess but unfortunately the circumstances have even been imagined to suggest the connection between the 'Yadast' and the sale deed when in fact there is no mention of this kind of document in the sale deed although it bears a date even earlier to the sale deed and it is on this ground that the special leave petition is filed.

8. The learned counsel appearing for the appellant contended that the suit for specific performance of the contract could only be decreed against the executant of the contract provided the executant had a right to dispose of the property about which the suits is filed Admittedly the mother of the present appellant who is alleged to have executed the 'Yadast' is not the owner of the property and the sale deed which is in favour of the present appellant does not disclose that the present appellant purchased the property either as benami on behalf of the mother or as a nominee of the mother. It appears therefore that a theory of some loan and repayment was invented but the learned Judge of the High Court failed to notice that even if this agreement was genuine it could only be enforced against the executant and not against the present appellant.

9. In fact the theory of loan which was suggested and a case was sought to be made out that the sale deed was not an out and out sale but only as a guarantee for the loan and therefore this 'Yadast' was in substance a document of reconveyance. The learned Judge of the High Court failed to notice that the respondent is not the person who executed the sale deed in favour of the appellant. In fact both the parties to the 'Yadast' are strangers to the sale deed and the sale deed does not refer to any one of them nor there is anything in the sale deed to indicate that it was not an out and out sale.

10. Unfortunately, the learned Judge of the High Court has not even discussed the reasons on the basis of which the learned first appellate court had come to a finding of fact that this document is a forgery and could not be said to be a genuine document.

11. The learned first appellate court came to this conclusion on the basis of the circumstances which could not be denied-although this document bears a date earlier than the sale deed and the rent agreement to which the respondent himself is a party but there is no mention of this document in any one of those two documents. There is no reference about this document for all these years i.e. from 1950 to 1974 even in the suit notice. It is also a circumstance relied on by the lower appellate court that it is on ordinary piece of paper not a stamped paper. It is not registered and it is not attested and in view of these circumstances and especially of the fact that during the lifetime of

Ramalakshmi Ammal, mother who is alleged to be the executant this document did not see the light of the day nor was referred to at any stage. The lower appellate court came to a finding of fact and the High Court unfortunately has not given reasons as to why these circumstances should not be considered. The learned Judge has chosen to interfere with the finding of fact solely on the basis of one ground that the evidence of the scribe of this document 'Yadast' was not discussed by the lower appellate court but the evidence of the scribe who has chosen to write such a document is worthless and the lower appellate court therefore was right in not relying on this evidence.

12. Section 100 of the Code of Civil Procedure provides as under :

100. Second appeal. - (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may be lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.

A perusal of this section clearly indicates that the High Court had the jurisdiction to interfere only when a substantial question of law is involved and even then it is expected that such a question shall be so framed although the court is not bound by that question as the proviso indicates. There may be some other substantial questions of law which may need decision and which can be so decided.

13. After going through the judgment of the High Court in this appeal we find that there is no substantial question of law and much less a question of law on the basis of which the learned Judge exercised jurisdiction under Section 100 and interfered with the findings of fact.

14. The only reason on the basis of which the High Court exercised jurisdiction under Section 100 is what has been said by the learned Judge himself :

As already stated, its failure to consider the evidence of PW 2 as well as its wrong surmise that Ex. B-16 series contained the signatures of Ramalakshmi Ammal, has affected the validity of the finding rendered by it.

15. It is well known that PW 2 is the scribe of a document which has been found to be forged by the lower appellate court and therefore a person who can go to the extent of manufacturing a document to suit one of the parties to the litigation, in our opinion, cannot be said to be an independent witness

and the lower appellate court was right in discarding his testimony. Unfortunately the High Court felt that he was an independent witness.

16. The learned Judge felt that the signatures on Ex. B-16 of Ramalakshmi Ammal is a mere surmise but this inference itself appears to be nothing but imagination as the signatures prove the receipt by Ramalakshmi Ammal of a notice from Tuticorin Municipality for the collection of house tax.

17. This all in the opinion of the learned Judge was a substantial question of law which called for interference and it is clear that on such questions which have no substance and which could not be said to be even question of law, the interference by the High Court in second appeal could not be justified. At best the two questions on which the High Court chose to interfere quoted above could be said to be questions of appreciation of evidence.

18. In our opinion therefore the High Court was not right in interfering with the findings of fact arrived at by the learned lower appellate court. The appeal is therefore allowed, the judgment of the High Court is set aside and that passed by the lower appellate court is restored. The appellate shall be entitled to costs of this appeal. Costs quantified at Rs. 3000.

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