

Sundra Naicka Vadiyar (dead) by LRs. and another

Vs

Ramaswami Ayyar (dead) by his LRs.

Civil Appeals Nos. 1572 and 1573 of 1980

(J. S. Verma K. Jayachandra Reddy JJ)

07.01.1992

## JUDGMENT

1. These two appeals now prosecuted by the legal representatives of Sundra Naicka Vadiyar arise out of two suits for permanent injunction based on possession claimed by the plaintiff in each suit. In O.S. No. 239/69 the plaintiff was S. N. Vadiyar while he was the defendant in O.S. No. 315/ 73 filed by Ramaswami Ayyar. The said R. Ayyar was the defendant in O.S. No.239/69. Both these suits related to different parcels of agricultural land of which the plaintiff claimed to be in possession and on that basis sought injunction restraining the defendant from interfering with his possession. The Trial Court decreed O.S. No. 239/ 69 filed by S.N. Vadiyar and dismissed O.S. No.315/73 filed by R. Ayyar against S.N. Vadiyar. R. Ayyar then preferred two first appeals, both of which were dismissed. That lead to two second appeals in the High Court by R. Ayyar both of which have been allowed by a common judgment which is challenged in these appeals. The result of the High Court's decision is that R. Ayyar's suit O.S. No.315/73 has been decreed while O.S. No. 239/69 filed by S. N. Vadiyar against R. Ayyar stands dismissed.

2. Learned counsel for the appellants strenuously urged that the main controversy in the suit being in respect of the fact of possession, the finding on this question of fact recorded by the First Appellate Court in favour of S.N. Vadiyar could not have been disturbed by the High Court in second appeal. Alternatively, learned counsel contended that even if it was permissible to do so, the High Court erred in re-appreciation of evidence and, therefore, interference with the finding recorded by the First Appellate Court is unjustified. We are unable to accept these contentions.

3. A perusal of the impugned judgment of the High Court shows that there were good reasons for treating the finding on the question of possession recorded by the first two Courts to be vitiated. Apart from the reasons given by the High Court, it appears to us that ignoring some of the documents which were vital for deciding the question of possession also vitiated the finding on the question of possession recorded by the Trial Court as well as the First Appellate Court. Apart from the documents evidencing the compromise, Exhibits B-19 and A-1, containing the recital of surrender of possession of the land by S.N. Vadiyar to R. Ayyar, the other documents material for the purpose were the orders exhibits B-4 and A-2 made in the eviction proceedings by the Revenue Court when the matters were taken up by the Revenue Court on 25-6-1962 and dismissed on the basis of the compromise accepted by the parties who were present. Ignoring these orders Exhibits B-4 and A-2 and overlooking the logical effect thereof and basing the conclusion on the question of possession only on the oral evidence adduced by S.N. Vadiyar did cause an infirmity in the finding of fact which justified interference in second appeal. We have been taken through the discussion of

the evidence made by the High Court and we are satisfied that there is no infirmity therein to permit any interference in these appeals.

4. Consequently, these appeals fail and are dismissed. Since none appeared for the respondents, there will be no order as to costs. Appeals dismissed.

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