

Supreme Court of India

Ellangallur & Ors. vs Gopalan & Ors. on 10 January, 2000

Equivalent citations: AIR 2000 SC 533, (2000) 3 CALLT 28 SC, JT 2000 (1) SC 74, (2000) 124 PLR 760, 2000 (1) SCALE 67, (2000) 2 SCC 11

Author: R Lahoti

Bench: A Anand, R Lahoti

ORDER R.C. Lahoti, J.

1. Leave granted.

2. The appellants filed a suit for recovery of possession based on title of an immovable property. The Trial Court found the title of the appellants proved but at the same time also held the respondents to have perfected their title by adverse possession over the property and hence directed the suit to be dismissed. The first Appellate Court in an appeal preferred by the appellants, while upholding the finding of the Trial Court regarding the title of the appellants, reversed the finding of the Trial Court on the defendants' plea of adverse possession and hence decreed in suit. The defendants preferred the second appeal before the High Court. The High Court has set aside the judgment in first appeal and restored the judgment and decree of the Trial Court. A perusal of the judgment of the High Court shows the High Court having re-appreciated the evidence and recorded its own findings. The High Court has not framed any substantial question of law arising for decision in the appeal as contemplated by Sub-sections (4) & (5) of Section 100 of the C.P.C. (as amended by Act No. 104 of 1976).

3. The learned Counsel for the Appellants has submitted placing reliance on two decisions of this Court, namely, Ninge Gowda v. Linge Gowda and Ors. and Kshitish Chandra Purkait v. Santosh Kumar Purkait and Ors. that non-compliance by the High Court with the provisions of Section 100 of the C.P.C. is fatal and the judgment of the High Court, more so when it is a judgment of reversal, is liable to be set aside on this short ground alone. It was submitted that unless and until the High Court recorded its satisfaction that a substantial question of law was involved in the case and formulated that question, the High Court did not acquire jurisdiction to hear and dispose of the second appeal on merits and interfere with the judgment of the Court below. A single bench decision of the High Court of Kerala in C.P. Madhavan Nair v. Cheruvot Thazham Nilam Mulleri Parambath Kuttimalu and Ors. AIR 1982 Kerala 298 was referred to wherein a local amendment has been noticed which empowered the High Court to interfere with the judgment under appeal even on a question of fact. The High Court has then held that the local amendment had ceased to have applicability to such appeals as were admitted for hearing on or after 1.2.1977 the date on which Section 100 C.P.C. as substituted by Act No. 104 of 1976 came into operation.

4. The learned Counsel for the Respondents submitted that the decision of Kerala High Court in C.P. Madhavan Nair's case (supra) does not lay down the correct law and also does not take notice of a Full Bench decision by the High Court of Punjab & Haryana in Ganpat v. Smt. Ram Devi and Ors. AIR 1978 Punjab & Haryana 137 taking the view that in spite of amendment in Section 100 of the C.P.C., the local law containing a provision inconsistent with Section 100 of the C.P.C. shall continue to remain in operation.

5. In our opinion, the plea which is sought to be raised on behalf of the respondents before us was not raised before the High Court and, therefore, it will be appropriate if the matter is remitted back to the High Court leaving it open to the parties to raise their respective contentions before the High Court and the High Court forming and expressing its opinion on the effect of amendment in Section 100 of the C.P.C. introduced by CPC (Amendment) Act, 1976 (104 of 1976) on the pre-existing Section 100(1)(d) as applicable in the State of Kerala in view of local amendment

6. Accordingly, the appeal is allowed. The judgment of the High Court is set aside. The Second Appeal shall stand restored on the file of Kerala High Court. The High Court shall hear and decide the appeal afresh affording the parties an opportunity of raising all their pleas including the plea as to the maintainability of the appeal in view of Section 100 of the C.P.C. (as amended by Act No. 104 of 1976). No order as to the costs.

7. Parties through their respective Counsel are directed to appear before the High Court on 15th February, 2000.