SUPREME COURT OF INDIA

Kannan (Dead) By Lrs

Vs.

V.S. Pandurangam (Dead)

(Ashok K.mathur and Markandey Katju JJ.)

27.11.2007

ORDER

1. These appeals are directed against the impugned judgment of the Madras High Court dated 17.8.2000 in Second Appeal Nos. 1601-04/1986.

2. Heard learned counsel for the parties and perused the record.

3. The respondent in these appeals, Pandurangan filed a suit being Original Suit No. 807 of 1982 (OS No. 135 of 1982 at Cuddalore) which was decreed on 20.8.1984 by the trial court. In that suit the plaintiff alleged that he is the owner of the property in question, and he prayed for declaration of his title and for a decree of possession against the defendant.

4. Against the judgment and decree of the trial court the appellant herein filed an appeal which was allowed by the Additional Sub-ordinate Judge, Cuddalore on 30.12.1985. The First Appellate Court set aside the judgment of the trial court and allowed the appeal and dismissed the plaintiff's suit, holding that the defendant had acquired title by adverse possession over the property in dispute.

5. Against the aforesaid decision the plaintiff (respondent herein), filed a second appeal which was allowed by the High Court by the impugned judgment dated 17.8.2000.

6. The High Court relying on several decisions held that the ingredients of adverse possession (nec vi, nec clam, nec precario vide P. Lakshmi Reddy vs. L. Lakshmi Reddy AIR 1957 SC 314, Suraj Mal and Another vs. Ram Singh and Others AIR 1986 SC 1889, Achal Reddi vs. Ramakrishna Reddiar and Others AIR 1990 SC 553, etc.) have not been satisfied by the defendant and hence the plaintiff's suit deserves to be decreed, since admittedly the plaintiff was the owner of the property in dispute.

7. Learned counsel for the appellant has submitted that no substantial question of law was framed by the High Court as required by Section 100 (4) C.P.C. Hence he submitted that the impugned judgment of the High Court deserves to be set aside.

8. It is true that in this case no substantial question of law has been formulated by the High Court. However, in our opinion, merely because no substantial question of law has been formulated by the High Court that does not mean that the judgment of the High Court automatically becomes a nullity or that it must necessarily be set aside by this Court on that ground alone. The appellant before us must also show prejudice to him on this account.

9. Learned counsel for the appellant has shown us several decisions of this Court where the judgments of the High Court in Second Appeal were set aside on the ground that no substantial question of law had been framed by the High Court as required by Second 100 (4) C.P.C. In our opinion these decisions cannot be said to have laid down any absolute proposition of law that whenever a second appeal is decided by the High Court without formulating a substantial question of law that judgment must necessarily be set aside. In our opinion, the judgment of the High Court should not be set aside on this ground alone if no prejudice had been caused to the appellant before us on this account.

10. In the present case both the parties knew that the question involved was whether the defendant (appellant) in this case had been able to prove his title by adverse possession. Hence the non-framing of a substantial question of law in this case did not prejudice the appellant at all before the High Court.

11. By a series of decisions of this Court it has been settled that omission to frame an issue as required under Order XIV Rule 1 C.P.C. would not vitiate the trial in a suit where the parties went to trial fully knowing the rival case and led evidence in support of their respective contentions and to refute the contentions of the other side vide Nedunuri Kameswaramma vs. Sampati Subba Rao AIR 1963 SC 884.

12. In Sayeda Akhtar vs. Abdul Ahad AIR 2003 SC 2985 it was held by this Court that even if no specific issue has been framed but if the parties were aware of that issue and have led evidence on it, the Appellate Court should not interfere with the findings of the trial court. A similar view was taken in Kali Prasad Agarwalla and others vs. M/s Bharat Coking Coal Limited and others 1989 Supp (1) SCC 628 (vide paragraph 19) and in Shaikh Mahamad Umarsaheb vs. Kadalaskar Hasham Karimsab and others AIR 1970 SC 61(vide paragraph 9) as well as in several other decisions.

13. In the present case, the parties knew well that the question of adverse possession has been pleaded by the defendant appellant and evidence was led on this issue. Hence no prejudice has been caused to the appellant by non-framing of a substantial question of law by the High Court. In our opinion, the ratio of the decisions on Order XIV Rule 1 C.P.C. will also apply when a judgment of the High Court is challenged on the ground that a substantial question of law was not formulated by the High Court as required by Section 100 (4) C.P.C. In our opinion, this Court should not take an over technical view of the matter to declare that every judgment of the High Court in Second Appeal would be illegal and void, merely because no substantial question of law was formulated by the High Court. Such an over technical view would only result in remitting the matter to the High Court for a fresh decision, and thereafter the matter may again come up before us in appeal. The judiciary is already overburdened with heavy arrears, and we should not take a view which would

add to the arrears.

14. In our opinion, the judgment of the High Court should only be set aside on the ground of non compliance with Section 100(4) if some prejudice has been caused to the appellant before us by not formulating such a substantial question of law.

15. In the present case, we agree with the view taken by the High Court that the defendant appellant has not been able to establish that the ingredients of plea of adverse possession (nec vi, nec clam, nec precario) had been established by the defendant-appellant. Hence there is no force in these appeals which are accordingly dismissed. No costs.

16. Normally, we grant six months' time to the tenant to vacate the residential premises but looking to the fact that the appellants have been in possession of the suit premises for a long time, therefore, as a special case we grant to the appellants time till 31.12.2008 to vacate and hand over vacant physical possession of the suit premises subject to the appellants' filing the usual undertaking before this Court within a period of eight weeks from today.