SUPREME COURT OF INDIA

Pappayammal

Vs.

Palaniswamy

C.A.No.2719 of 2008

(S.B.Sinha and Lokeshwar Singh Panta JJ.)

09.04.2008

ORDER

1. Leave granted.

2. This appeal is directed against a judgment and order dated 29.4.2005 passed by a learned Single Judge of the High Court of Judicature at Madras in Second Appeal No. 1722/1993, dismissing the second appeal preferred by the appellant herein from a judgment and decree dated 17.9.1993 passed in A.S. No. 105/1993 by the Additional Subordinate Judge, Erode affirming the judgment and decree dated 28.2.1991 passed by the First Additional District Munsif, Erode in O.S. No.2784 of 1981.

3. The relationship between the parties is not in dispute. They are descendants of Ramanna Gounder. Kuppanna Gounder, who was his son, by reason of two deeds of sale dated 14.12.1932 (Ext. B.1) and 19.7.1934 (Ext. B.2), purchased the properties in suit which were described as Item Nos. 1 & 2 in the Schedule appended to the Plaint. Kuppanna Gounder had two wives, Muthammal and Sellammal. Duraisamy Gounder was born through his first wife Muthammal. The appellant herein (who was the plaintiff in the original suit) is the daughter-in-law of the said Muthammal, her husband being Duraisamy Gounder. The said Kuppanna Gounder died on 30.7.1939. Sellammal - the second wife of Kuppanna Gounder was the original defendant No.2. She died on 28.6.1995 leaving behind her son Palanisamy, who was arrayed as defendant No.1 in the suit and a daughter Rukmani. After the death of Sellammal, Rukmani, who was impleaded as respondent herein was claiming her right, title and interest in the suit property by

reason of a Will purported to have been executed by Sellammal in her favour on 10.6.1983.

4. Indisputably, on or about 30th July, 1956, a partition took place between Ramanna Gounder, grandfather of Duraisamy Gounder, and Palanisamy as also his paternal uncles. Sellammal was not a party to the said partition which took place on 30th July, 1956. The suit properties were not included in the said partition.

5. The contention of the respondents in the said suit was that the suit properties were given by way of a family settlement in favour of Sellammal by Kupanna Gounder for her maintenance during her life time as she was married at a very young age.

6. It is stated that although the purported settlement was made in the year 1939, the Patta was changed in the name of Sallammal only in the year 1971. Appellant filed a suit for partition claiming half share in the suit properties. Her admitted case is that the properties in suit were purchased by Kupanna Gounder and, thus, the same were his self-acquired properties. In view of rival contentions of the parties in the said suit, as noticed hereinbefore, issues were framed, which inter alia, were:

> 1. Whether the suit properties were given to the 2nd defendant as per family arrangement as maintenance?
>
> 2. Whether D-2 had made her rights over the suit properties fructify by adverse possession and removal of possession?

7. Both the aforementioned issues were decided in favour of the defendants both by the learned Trial Judge as also the First Appellate Court.

8. In the second appeal preferred by the appellant herein, the only substantial question of law which was raised reads as under:

> "Whether the finding of the Courts below, that the second respondent proved her hostile title coupled with exclusive possession and enjoyment to the knowledge of the appellant, is correct in law or not?

9. Appellant herein in the said second appeal filed an application for adduction of additional evidence in terms of Order 41 Rule 27 of the Code of Civil Procedure (CPC) for bringing on records four items of documents which are as under:

"1. Certified copy of the statement of Chellammal, the deceased, 2nd respondent herein, before the Land Acquisition Officer dated 29.3.1954.

2. Certified copy of Award No. 18/54 dated 29.3.1954 on the file of the special Deputy Collector, Land Acquisition, Lower Bhavani Project, Erode.

3. Certified copy of the Irrigation permit issued by the Executive Engineer, I.B.R. Canal Division, Erode, in permit N.A/2192 in respect of S.F. No. 707/A.

4. Certified copy of irrigation permitted issued by the Executive Engineer, I.B.R. Canal Division, Erode, in permit No. A/2193 in respect of S.F. No. 707 B.1."

10. Indisputably, the said application was resisted by the respondents herein. They filed their counter affidavit to the said application. By reason of the impugned judgment, the High Court although answered the substantial question of law formulated therein in favour of the appellant, it refused to allow the appellant herein to adduce additional evidence as prayed for in his application dated 10.9.1997.

11. The High Court opined that the appellant had failed to show that due diligence was exercised by her to collect the relevant records even during the trial of the suit. It was noticed that the suit was filed in the year 1981. The Trial Court delivered its judgment in 1991. The First Appellate Court delivered its judgment in 1993 and the second appeal was filed in the same year. The High Court opined that no ground had been shown by the appellant for filing the said application under Order 41 Rule 27 of CPC only on or about 9.9.1997 i.e. after a period of four years. It was furthermore held that the Court could pronounce the judgment even without the said additional documents.

12. Mr. Balaji, learned counsel appearing on behalf of the appellant, in support of this appeal, would submit that Item No.1 of the application for adduction of additional evidence contains a statement of Sellammal (since deceased) that the properties in the suit were joint family properties and if that be so, the appellant and her husband Duraisamy Gounder had coparcernary interest therein. It was furthermore urged that the very fact that the first respondent as also the original defendant No.2 had raised the contention of acquiring the indefeasible title in the

suit property by prescription goes to show that the appellant had title in the suit property. Reliance in this behalf has been placed in P.T. Munichikkanna Reddy and Ors. vs. Revamma and Ors., [2007 (6) SCC 59].

13. Mr. Viswanatha Shetty, learned senior counsel appearing on behalf of the respondents, on the other hand, would submit that keeping in view the fact that the only substantial question of law formulated in the second appeal by the High Court related to question of adverse possession, no case has been made out for interference with the impugned judgment. It was furthermore submitted that the purported statement made by Sellammal, should have been brought on record during her life time so as to enable her to deny or explain the same. It was furthermore submitted that other documents mentioned in the said application for adduction of additional evidence were not relevant for the purpose of determination of the issues.

14. The High Court while exercising its power under Section 100 of CPC has a limited jurisdiction.

15. Before proceeding to hear out the second appeal, a substantial question of law must be formulated, subject to the exceptions contained in sub-section (5) of Section 100 of CPC. Determination of the second appeal must be kept confined to the question so formulated.

16. We have noticed hereinbefore that both the issues which were framed by the learned Trial Judge were decided against the appellant. Even if it was held that the original defendant No.2 was not entitled to claim any right, title and interest in the suit property by adverse possession or otherwise, she has been held to be entitled to claim her right, title and interest on the basis of the settlement and as a maintenance holder, which fructified in absolute ownership in terms of sub-section (1) of Section 14 of the Hindu Succession Act, 1956.

17. It is beyond any doubt or dispute that both the Courts below have arrived at a finding of fact that a family settlement by way of maintenance was arrived at by the aforementioned Kuppanna Gounder in favour of Sellammal, as far back as in 1939. The Courts below have also noticed the subsequent dealings of the said properties by Sellammal as also the fact that in the deed of partition dated 30.7.1956, the said properties had not been mentioned to arrive at the finding that the contentions raised by the said defendant was acceptable. The said finding of fact is a concurrent one.

18. Our attention has, furthermore, been drawn to the fact that even at a later stage, one of the properties had been sold by her exclusively, and in the said deed of sale Duraiswamy Gounder was an attesting witness. If that be so, indisputably she had a right to deal with the said properties as if she was the owner thereof. It was furthermore not the case of the appellant that the properties in suit were just family properties. According to the appellant herself, the same were self-acquired properties of late Kupanna Gounder.

19. Even while executing the deed dated 4.9.1962, Duraisamy Gounder had not settled the properties in suit in favour of his wife, the plaintiff-appellant herein, which also go to show that he never laid any claim over the said properties.

20. The concurrent finding of fact arrived at by the two Courts below were binding on the High Court. As a matter of fact, as noticed hereinbefore, the High Court had not formulated any substantial question of law so as to enable it to decide the second appeal on the first issue viz. the inherited right of the original defendant No.2 in the suit properties. Even then, assuming that the appellant's application for adduction of additional evidence under Order 41 Rule 21 of the CPC, should have been entertained by the High Court at the stage of second appeal, in our opinion, the same would have ended in futility as no substantial question of law was formulated by the High Court to interfere with the said findings of fact.

21. Furthermore, the High Court proceeded to determine the substantial question of law formulated in the second appeal in favour of the appellant on the premise that the original defendant No.2 herself having claimed the right, title and interest in the properties in terms of oral settlement by way of maintenance, which according to her, had fructified in an absolute ownership in terms of sub-section (1) of Section 14 of the Hindu Succession Act, 1956, could not have claimed prescriptive right over the said properties.

22. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly. However, in the facts and circumstances of this case, there shall be no order as to costs.