SUPREME COURT OF INDIA

Venkataraja

Vs.

Vidyane Doureradjaperumal (D) Thr.Lrs.

C.A.Nos.7605-7606 of 2004

(Dr.B.S.Chauhan and Fakkir Mohamed Ibrahim Kalifulla JJ.)

10.04.2013

JUDGMENT

DR.B.S.CHAUHAN, J.

1. These appeals have been preferred against the impugned judgment and order dated 12.12.2003 passed by the High Court of Madras in Second Appeal Nos. 1536-1537 of 1991, by way of which the common judgment and decree passed by the First Additional District Judge in A.S. No. 198 of 1983 and A.S. No. 43 of 1988 were set aside, and the suit O.S. No. 58 of 1982, was dismissed, holding that the suit filed by the plaintiff, father of the appellant herein, is not maintainable.

2. Facts and circumstances giving rise to these appeals are that:

A. The suit property i.e. House No. 9/39, Savaripadayatchi Street, Nellithope, Pondicherry, originally belonged to the deceased appellant/great grandfather Vengadachala Naicker, son of Ayyamperumal Naicker. He donated the above-mentioned suit property on 13.12.1896 in favour of his minor grandsons Radja Row and Kichnadji Row, both sons of Ponnusamy Naicker, and the said donation deed was registered on 18.1.1897. In the deed, it was provided that the donees/grandsons would only have a life estate, and that after their death, only their male legal heirs shall be entitled to the suit property, with the right of alienation.

B. In view of the fact that the donees were minors at that time, their father Ponnusamy Naicker was appointed as the guardian, in the said deed.

C. The donee Kichandji Row died issueless and hence, the other donee Radja Row became the full usufructuary owner of the suit property. Radja Row also died leaving behind his wife Thayanayagy Ammalle and his son Kannussamy Row. The said Kannussamy Row died issueless leaving behind his mother Thayanayagy Ammalle and Kuppammal his wife. After the death of Kuppammal, Thayanayagy Ammalle became the sole inheritor of the property. Thayanayagy Ammalle subsequently executed a sale deed dated 16.7.1959 in favour of Vedavalliammalle, the first defendant.

D. As per the terms of the donation deed dated 13.12.1896, after the death of Kannusamy Row, the suit property could only devolve upon his male legal heirs. Since the deceased Radja Row did not have any issue, the suit property had to go to the sole male reversioner and surviving heir, i.e. Radja Row's cousin brother Ramaraja, being the grandson of the donor Vengadachala Naicker.

E. On the basis of the aforesaid plaints, the appellant/plaintiff filed a suit against the said first defendant Vedavalliammalle before the erstwhile French Court of the Tribunal of First instance, for a direction that the plaintiff was in fact, the heir of the deceased Radja Row, and also for a direction to the first defendant to not waste the suit property.

F. Immediately, after filing the said suit, the French Colony of Pondicherry was merged with the Union of India. The Hindu Succession Act, 1956 (hereinafter referred to as the 'Act 1956), had been extended to the Union Territory of Pondicherry w.e.f. 1.10.1963.

G. The suit filed by the appellant/plaintiff was decided vide judgment and decree dated 18.8.1965, wherein it was held that since Thayanayagy Ammalle was still alive, the claim of the appellant/plaintiff was premature. However, in the said suit, an observation was made that the appellant/plaintiff was the legal heir to the deceased Radja Row.

H. Aggrieved, Vedavalliammalle/first defendant preferred an appeal against the said judgment. However, Thayanayagy Ammalle did not press the appeal, with regard to the finding of the court as to whether the appellant/plaintiff was a legal heir to the deceased Radja Row, and contested only the appointment of the Commissioner, who had been appointed to determine whether any repairs were necessary, in respect of the suit property.

I. The appellate court allowed the appeal vide judgment dated 2.2.1970, only to the extent of holding that no repairs were necessary for the suit property. The said Thayanayagy Ammalle died on 30.5.1978. It was at this juncture, that the claim of the appellant over the suit property was not accepted by the opposite parties. The first defendant Vedavalliammalle and her husband, the second defendant, thereafter leased out the suit property in favour of the 3rd to 9th defendants on 30.5.1979, and were receiving rent for the same henceforth.

J. Defendant No.10 Jeyaraman, who was the husband and father of respondent nos. 4 and 5 respectively, purchased the suit property from defendant no.1 vide registered sale deed dated 26.4.1980.

K. The deceased-plaintiff i.e. father of the appellants, filed suit O.S. No. 58 of 1982, in the Civil Court of Pondicherry for declaration that he was the legal heir of the deceased Radja Row, and thus had a proper title to the suit property and for declaration that the sale deed dated 16.7.1959 executed by Thayanayagy Ammalle in favour of Vedavalliammal, was null and void as she had only a life estate and not an absolute title, to alienate the property.

L. The said suit was contested by respondents/defendants and it was decided on 7.10.1983, by the Civil Court, which held that:

a) Since Kannussamy Row had died before the introduction of the Hindu Succession Act, and considering the Hindu Law applicable in the French Territory of Pondicherry, after the death of the sole male heir to the suit property, the wife and the mother of the legal heir would have only usufructuary right over the suit property and not an absolute title.

b) As per the above customary Hindu Law applicable in 1959, the vendor Thayanayagy Ammalle had only a usufructuary right over the property, and not the absolute right to alienate the same.

c) Therefore, the reversionary male heir was entitled to inherit the property, being the sole heir of the original donor.

d) The defendants/respondents had not acquired the title by way of possession/prescription.

e) The suit was not barred by res-judicata.

Though the court decided the question of title in favour of the appellant/plaintiff, the trial court found that the appellant/plaintiff had filed the suit only for declaration of his right to the suit property, and since he had not asked for consequential relief of delivery of possession, the suit was held to be not maintainable and was dismissed.

M. Aggrieved, the appellant/plaintiff filed an appeal challenging the said judgment and order dated 7.10.1983, before the court of the District Judge, and the said appeal was allowed vide judgment and decree dated 13.4.1989, observing that the sale deed had been executed by Thayanayagy Ammalle in favour of defendant no. 1 on 16.7.1959, prior to the extension of the Hindu Succession Act to Pondicherry on 1.10.1963. The result of the same was that she had sold only her life estate in the suit property, as she was only a life estate holder and upon her death, the property devolved on the sole living reversionary. Further, it was held that, as the appellant/plaintiff had filed a suit for declaration in respect of the suit property in which there were tenants, it was not necessary for the appellant to claim any consequential relief for the reason that after obtaining such a declaration, appropriate relief could be claimed under Pondicherry Non- Agricutural Kudiyiruppudars (Stay of Eviction Proceedings) Act of 1980 (hereinafter referred to as the 'Act 1980'). There was thus, no need for a separate prayer for recovery of possession, as the same could be asked only under the Special Enactment.

N. Being aggrieved, the respondents/defendants filed second appeals before the High Court, and it was during the pendency of the said appeals, that Vedavalliammal sold the suit property to respondent nos. 1 to 3 on 31.3.1993. In view thereof, they were also impleaded in the appeal as respondents. The said appeals were decided by impugned judgment and order dated 12.12.2003, wherein the High Court had held, that Thayanayagy Ammalle had acquired the absolute title over the property. As the first defendant Vedavalliammal had purchased the suit property from the absolute owner Thayanayagy Ammalle vide sale deed dated 11.7.1959, she had become the rightful owner, and the said sale deed was not null and void. Also, in view of the fact that the said Vedavalliammal had been in possession of the suit property for over than 10 years, she had perfected the title to the suit property by prescription, under the provisions of French Civil

Code and as a consequence thereof, the suit for declaration was not maintainable without seeking the relief of possession.

Hence, these appeals.

3. Shri R. Venkataramani, learned senior counsel appearing for the appellants has submitted that the High Court had committed an error by holding that Thayanayagy Ammalle had acquired an absolute title over the suit property, and that by selling the suit property to Vedavalliammalle, who had purchased the suit property from her, vide sale deed dated 16.7.1959, Vedavalliammalle, had become the absolute owner of the suit property and that the sale deed (Ext. A-4) was not null and void.

The courts below have recorded a finding that Thayanayagy Ammalle was only a life estate holder and thus, had not acquired an absolute title. The High Court has not given any reason whatsoever, for reversing the said finding of fact. The said finding is perverse being based on no evidence. In case such a finding goes, the sale deed dated 16.7.1959 could not confer any title on the purchaser, Vedavalliammalle. More so, the High Court had not correctly framed the substantial question of law, rather it had framed entirely irrelevant issues, such as, the prescription and issue of limitation. The High Court had committed an error by holding that the suit for declaration was not maintainable without seeking any consequential relief, when the First Appellate Court has rightly held, that in a case where the property had been in the possession of the tenants, and where there were other means to recover the possession, there was no need for seeking any consequential relief in that aspect. Thus, the appeals deserve to be allowed.

4. Per contra, Shri R. Balasubramaniam, learned senior counsel appearing for the respondents, has opposed the appeals contending that seeking consequential relief was necessary in order to maintain the suit for declaration as per the proviso to Section 34 of the Special Relief Act, 1963 (hereinafter referred to as the 'Act 1963'). The pleadings taken by the parties suggest, that the respondents had been in physical possession of the property alongwith their tenants. They were in exclusive possession of the same. Therefore, as no consequential relief had been sought, the suit was not maintainable. More so, the question of limitation was very relevant and has rightly been dealt with by the High Court. The appeals lack merit, and are liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

6. Ramaraja claiming himself to be the reversioner, had filed a suit against the purchaser Vedavalliammalle, which was decided in 1965, and the issue of nature of title, with respect to whether the interest of Thayanayagy Ammalle was merely usufructuary or absolute, was considered. The court had then come to the conclusion vide judgment and decree dated 29.11.1965, that the same was pre-mature, as the suit could not have been filed during the life time of Thayanayagy Ammalle. In the suit O.S. No. 58 of 1982, undoubtedly, the contesting respondents had also been shown as the residents of the suit property, and relief had been claimed only for declaration that the plaintiff was the legal heir of the deceased Kannussamy Row, the great grandson of Venkatachala Naicker, having title to the suit property, and further, for declaration that the sale deed dated 16.7.1959 was null and void.

> In para 4 of the written statement, it has been mentioned that the respondents/defendants were living in the suit property alongwith defendant Nos. 3 to 9, their tenants. In view of the pleadings taken by the parties, a large number of issues were framed by the trial court, including whether the plaintiff was the legal heir of the deceased Kannussamy Row; whether the sale deed dated 16.7.1959 was null and void; and whether the plaintiff was entitled for the declaration, as prayed for.

7. The trial court held, that Thayanayagy Ammalle had not acquired absolute right and that the plaintiff therein was thus, the reversioner. The sale deed dated 16.7.1959 was void. However, as the property was in the possession of the respondents/defendants, and consequential relief of delivery of possession was not asked for, the suit was not maintainable.

8. Being aggrieved, the parties filed cross appeal suit Nos. 198/83, 21/88 and 43/88. All the aforesaid appeal suits were disposed by a common judgment of the First Appellate Court, and the said court held, that Vedavalliammalle was not residing in the suit property as she was residing somewhere, and had rented the house to three different tenants, with a total strength of about 26 members. Therefore, defendant no.1 was not in possession of the suit property even as early as 1969, and therefore, defendant no.10 also did not have possession of the suit property.

In view of the fact that the tenants could have been evicted subsequently by the appellant/plaintiff, resorting to the provisions of the Act 1980, which had been extended upto 31.3.1990, the suit was maintainable, and the trial court ought not to have dismissed the said suit on the ground that appellant/plaintiff had not sought consequential relief of recovery of possession.

9. The High Court having considered various points involved therein held, that as per Article 2265 of the French Civil Code 1908, a person who had acquired an immovable property in good faith, and under an instrument which was on the face of it capable of conferring a title, would perfect his title by prescription to the land in ten years, in the district of the Court of Appeal, when the owner lives in the same district as that in which the land lies, and in twenty years if the true owner lives outside such district.

Admittedly, the first defendant Vedavalliammalle had purchased the suit property from the absolute owner Thayanayagy Ammalle, as per sale deed dated 16.7.1959. Thus, she had become the rightful owner, said sale deed being not null and void.

10. These appeals have raised the questions regarding the interpretation of French Hindu Law, as to whether a Hindu widow having only a life estate, can be considered the absolute owner of a property, thus competent to transfer the said property; and secondly whether the suit was maintainable as the appellant/plaintiff had not sought any consequential relief.

11. So far as the issue no.1 is concerned, undoubtedly, the Act 1956 was extended to the Union Territory of Pondicherry only, at a much later stage. Various judgments of the French courts and the Madras High Court dealing with the issue have been cited before us, but in view of the fact that Shri R. Bala Subramaniam, learned senior counsel appearing on behalf of the respondents, has fairly conceded that such a Hindu widow could not acquire the absolute title, there is no occasion for us to enter into that controversy. Even otherwise, the finding recorded by the High Court is not based on any evidence, and no reason has been given by it to reverse the findings recorded by the trial court as well as the First Appellate Court that Thayanayagy Ammalle was only the life estate holder. We hold that the High Court has erred in recording such a finding.

12. So far as the issue of adverse possession is concerned, in our humble opinion, the High Court had no occasion to deal with the same, in view of the earlier

judgment of the trial court, wherein in 1965, it had been held that the suit filed by the appellant/plaintiff was pre-mature, as he could not file the same during the life time of Thayanayagy Ammalle.

13. Thus, the only relevant issue on which the judgment hinges upon is, whether the suit was maintainable without seeking any consequential relief.

> In Deo Kuer Anr. v. Sheo Prasad Singh Ors. AIR 1966 SC 359, this Court dealt with a similar issue, and considered the provisions of Section 42 of the Specific Relief Act 1877, (analogous to Section 34 of the Act 1963), and held, that where the defendant was not in physical possession, and not in a position to deliver possession to the plaintiff, it was not necessary for the plaintiff in a suit for declaration of title to property, to claim the possession. While laying down such a proposition, this Court placed reliance upon the judgments of Privy Council in Sunder Singh Mallah Singh Sanatan Dharam High School Trust v. Managing Committee, Sunder Singh Mullah Singh Rajput High School, AIR 1938 PC 73; and Humayun Begam v. Shah Mohammad Khan, AIR 1943 PC 94.

14. In Vinay Krishna v. Keshav Chandra Anr., AIR 1993 SC 957, this Court while dealing with a similar issue held: "……It is also now evident that she was not in exclusive possession because admittedly Keshav Chandra and Jagdish Chandra were in possession. There were also other tenants in occupation. In such an event the relief of possession ought to have been asked for. The failure to do so undoubtedly bars the discretion of the Court in granting the decree for declaration." (emphasis added)

15. The facts in the case of Deo Kuer (Supra) are quite distinguishable from the facts of this case, as in that case, the tenants were not before the court as parties. In the instant case, respondent nos. 3 to 10 are tenants, residing in the suit property. The said respondents were definitely in a position to deliver the possession. Therefore, to say that the appellants would be entitled to file an independent proceedings for their eviction under a different statute, would amount to defeating the provisions of Order II Rule 2 CPC as well as the proviso to Section 34 of the Act 1963. Thus, the First Appellate Court, as well as the High Court failed to consider this question of paramount importance.

16. The very purpose of the proviso to Section 34 of the Act 1963, is to avoid the multiplicity of the proceedings, and also the loss of revenue of court fees. When the Specific Relief Act, 1877 was in force, the 9th Report of the Law Commission

of India, 1958, had suggested certain amendments in the proviso, according to which, the plaintiff could seek declaratory relief without seeking any consequential relief, if he sought permission of the court to make his subsequent claim in another suit/proceedings. However, such an amendment was not accepted. There is no provision analogous to such suggestion in the Act 1963.

17. A mere declaratory decree remains non-executable in most cases generally. However, there is no prohibition upon a party from seeking an amendment in the plaint to include the unsought relief, provided that it is saved by limitation. However, it is obligatory on the part of the defendants to raise the issue at the earliest. (Vide: Parkash Chand Khurana etc. v. Harnam Singh Ors., AIR 1973 SC 2065; and State of M.P. v. Mangilal Sharma, AIR 1998 SC 743). In Muni Lal v. The Oriental Fire General Insurance Co. Ltd. Anr., AIR 1996 SC 642, this Court dealt with declaratory decree, and observed that "mere declaration without consequential relief does not provide the needed relief in the suit; it would be for the plaintiff to seek both reliefs. The omission thereof mandates the court to refuse the grant of declaratory relief."

> In Shakuntla Devi v. Kamla Ors., (2005) 5 SCC 390, this Court while dealing with the issue held:
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> "……a declaratory decree simpliciter does not attain finality if it has to be used for obtaining any future decree like possession. In such cases, if suit for possession based on an earlier declaratory decree is filed, it is open to the defendant to establish that the declaratory decree on which the suit is based is not a lawful decree."

18. In view of the above, it is evident that the suit filed by the appellants/plaintiffs was not maintainable, as they did not claim consequential relief. The respondent nos. 3 and 10 being admittedly in possession of the suit property, the appellants/plaintiffs had to necessarily claim the consequential relief of possession of the property. Such a plea was taken by the respondents/defendants while filing the written statement. The appellants/plaintiffs did not make any attempt to amend the plaint at this stage, or even at a later stage. The declaration sought by the appellants/plaintiffs was not in the nature of a relief. A worshipper may seek that a decree between the two parties is not binding on the deity, as mere declaration can protect the interest of the deity. The relief sought herein, was for the benefit of the appellants/plaintiffs themselves. As a consequence, the appeals lack merit and, are accordingly dismissed. There is no order as to costs.