

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

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SECOND APPEAL No.113 of 1998

Date:28.04.2015

Between:

Kisina Sravanayya

... Appellant.

AND

Vasa Peda Verranna and others.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

-

SECOND APPEAL No.113 of 1998

JUDGMENT:

This appeal is preferred against judgment dated 22-08-1996 in A.S.No.85/1989 on the file of Subordinate Judge, Amalapuram (presently Senior Civil Judge, Amalapuram) whereunder judgment dated 20-04-1985 in O.S.No.8/1974 on the file of District Munisif, Kothapeta (presently Junior Civil Judge) is confirmed.

2. Brief facts leading to this appeal are as follows:-

Appellant herein is D3 in the above referred O.S.No.8/1974. Suit is filed for partition and cancellation of alienations made by D1 in favour of defendants 3 to 7 and husband of D2 in respect of 4/9th share of plaintiff. Suit is filed against seven defendants and D2 died during pendency of the suit and her L.R was impleaded as D8, which was contested by D3, D5, D6 & D8 and the other defendants remained exparte. The trial Court, on consideration of evidence of P.Ws.1 to 4, examined on behalf of plaintiff and documents Exs.A1 & A2 marked on behalf of plaintiff and evidence of D.Ws.1 to 8 examined on behalf of contesting defendants and Exs.B1 to B13 marked on behalf of defendants, decreed the suit in favour of plaintiff. Aggrieved by which, D3 preferred appeal to the Senior Civil Judge, Amalapuram and the learned Appellate Judge, on reappraisal of the entire oral and documentary evidence, confirmed the decree granted by trial Court. Now aggrieved by the same, D3 preferred present appeal.

3. This Court admitted the second appeal treating the following as substantial question of law:-

“Whether the Judgment and decree of the lower appellate Court, conforming the judgment and decree of the trial Court without adverting to the reasons or the basis on which the latter forwarded its judgment is legal and proper?

Whether the suit is not maintainable as the same is barred by limitation?

Whether the documents relied on by the appellant can not be marked as exhibits as contemplated under Evidence Act?"

4. Heard arguments.

5. Advocate for appellant submitted that the suit is not maintainable as it is barred by time, but both the Courts failed to properly appreciate the said legal aspect.

He submitted that the suit is not filed within three years of attaining majority by plaintiff, therefore, the judgments of the Courts below have to be set aside. On the other hand, Advocate for respondent/plaintiff submitted that this limitation aspect was raised before the trial Court and a specific issue is framed under Issue No.4 and the trial Court, after considering the entire evidence on record, held that the suit is filed in time i.e., within three years after attaining majority and the same is confirmed by the appellate Court and both the Courts have not committed any error in appreciating the material on record.

6. Now the point that would arise for my consideration in this appeal is whether substantial question of law urged by the appellant is tenable?

7. **Point**:- It is the contention of the appellant that plaintiff has not filed the suit within three years after attaining majority. As rightly pointed out by Advocate for plaintiff, a specific issue is framed by the trial Court on the point of limitation and the same was dealt, with reference to the evidence on record. Both trial Court and appellate Court held that plaintiff filed the suit within three years after attaining majority. As seen from the material, the appellant, except contending, has not

produced any evidence to support that the suit is not filed three years after the plaintiff attained majority. On the other hand, plaintiff produced first page of SSLC Register, according to which, his date of birth was 01-07-1951 and he attained majority on 01-07-1969 and the suit was filed on 28-06-1972 i.e., within three years from the date of attaining majority. This important evidence is not rebutted by the appellant. As rightly pointed out by Advocate for plaintiff, except contending that the suit is barred by limitation, no material is placed to show that the date of birth as recorded in the SSLC Register is incorrect. Both trial Court and appellate Court have thoroughly scanned the evidence and rightly discarded the objection of the appellant on the point of limitation. I do not find any wrong application of law or wrong appreciation of evidence with reference to limitation issue, therefore, the objection of the appellant on this score is not tenable.

8. The other grounds, which are treated as substantial question of law, are only on factual aspects. It is the contention of the appellant that he purchased the property believing the version of D1 and after making some enquiries with regard to the land. But both trial Court and appellate Court, after scanning the oral evidence, held that D1 sold the property not for legal necessities and on that ground held that the alienation in favour of this appellant is not binding on the plaintiff's share. When both the Courts concurrently held on facts, such a finding cannot be interfered by this Court in a second appeal, unless such findings are perverse in nature. It is not the case of appellant that both the Courts gave perverse findings.

On the other hand, it is his contention that the Courts below have not properly appreciated evidence. As already observed above, concurrent findings of facts cannot be interfered in a second appeal when such findings are based on evidence, therefore, as rightly pointed out by Advocate for plaintiff the other two grounds are only on factual aspects and no law is involved much less substantial question of law.

9. For these reasons, I am of the view that the Second Appeal is devoid of merits and that there are no grounds to interfere with the concurrent findings of the Courts below, therefore, appeal is dismissed, but under the circumstances without costs.

10. As a sequel, miscellaneous petitions, if any, pending in this Second Appeal, shall stand dismissed.

No costs.

JUSTICE S. RAVI KUMAR

Date:28.04.2015

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