

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2017

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.935 of 2012
and MP.No.1 2012

1.Viswanathan
2.Gopal Gounder
3.Vasuki

.. Appellants/Respondents 1,3 & 4/
Plaintiffs 1,3, & 4

Vs.

1.S.Rajagopal
2.S.Settu
3.S.Krishnan
4.Adhilakshmi Ammal
5.Rajeshwari
6.Yasodhammal
7.Pownammal
8.Saraswathi
9.Govanthi
10.Kaliammal
11.Kodiammal
12.Murugan
13.Udayakumar
14.Sathish Kumar

.. Respondents 1 to 14/
Respondents 2 to 4, 6 to 16/
Defendants 2 to 4,6 to 13,
others not parties

Prayer : Civil Miscellaneous Appeal preferred under Order 43 Rule 1(u) of Code of Civil Procedure, to set aside the order of remand dated 31.1.2012 rendered in A.S.No.32 of 2007 on the file of the Subordinate Judge, Tirupattur, Vellore District, by setting aside the decree and judgment dated 04.12.2006 rendered in O.S.No.814 of 1993 on the file of the District Munsif of Tirupattur, Vellore District.

For Appellant : M/s.Elizabeth Ravi
for Mr.P.Raja
For Respondents : Mr.D.Balachandran
[for RR1 to 7, 9 to 14]

JUDGMENT

This appeal is preferred challenging the order of remand made in A.S.No.32 of 2007 on the file of Sub Court, Tirupattur.

2.The materials facts that are relevant for the present purpose may be briefly stated :

The suit property and other property to its east originally belonged to one Kooni. She had two daughters namely Tirupathi Ammal and Lakshmi Ammal. The first defendant Kuppammal was stated to be her foster child. Be that as it may, on 22.07.1946, Kooni executed a Will bequeathing her properties to both her daughters as well as to the first defendant. Subsequently on 05.03.1946, Vide Ext.B1-Will, she revoked her earlier Will dated 22.07.1946 and executed another Will under which she bequeathed her property to only her two daughters namely Tirupathi Ammal and Lakshmi Ammal. The property to the West of suit property was bequeathed to Lakshmi Ammal and the suit property namely the one on the east was allotted to Tirupathi Ammal. Soon thereafter Kooni died and the Will came into effect. Lakshmi Ammal, to whom the western property was allotted executed a settlement deed dated 15.07.1957, as concerning the property in favour of her children. So far as the allottee of the eastern property namely the suit property is concerned, Tirupathi Ammal died issueless. Lakshmi Ammal being the sole heir of Tirupathi Ammal as a collateral heir, she claims right over the property which Tirupathi Ammal obtained under Ext.B-1, Will. This is objected to by the first defendant Kuppammal. She resisted Lakshmi Ammal's title to the property on two points:

(a) By relying on the first Will of Kooni dated 22.07.1946, whereunder a portion of the suit property was originally given to first defendant.

(b) by adverse possession.

3. After framing necessary issues, the trial court upheld the genuineness of Ext.B-1, Will and decreed the suit. It may be mentioned that during the pendency of the suit, the first defendant had died and her legal representatives were brought on record. Her son Rajagopal, who was already on record as the second defendant examined himself as D.W.1. While it has not framed a pointed issue on the claim of adverse possession, the trial court still decided that point and had observed that the first defendant had not been able to establish her claim of title by adverse possession nor did she produce any documents to establish the same.

4. Aggrieved by the decree of the trial court, the heirs of first defendant preferred an appeal suit in A.S.No.32 of 2007 before the first Appellate Court. The appellants/defendants filed I.A.No.15 of 2007 for receiving three additional documents, one of which is the copy of Ext.B-1 itself. The other two documents produced relate to some notices issued to Kuppammal. In the course of his judgment, the first appellate court has pointedly discussed the merit and reliability of each of the additional documents produced by the appellant and has entered a positive finding that the documents do not take the case of the appellants before it ashore. However, in the concluding portion, the same appellate court has received these additional documents and proceeded to set aside the entire judgment and remanded the matter for fresh consideration.

5. The learned counsel for the appellant raised two points in objection :

(a) When the first appellate court has already considered that the additional documents produced by the appellants before it and has also indicated the lack of evidentiary value that they possess, it ought to have proceeded to dispose the case on merits and should not have remanded the matter.

(b) At any rate, it is a case where the appellate court should have confined the remand only to the point of elucidating a finding on the aspect of adverse possession, since even before the first appellate court, the appellants herein were not able to tilt the findings of the trial court on the aspect of genuineness of Ext.B-1, Will.

She relied on the following authorities to support her contentions:

- Basayya I.Mathad vs.Rudrayya S.Mathad and others [(2008) 3 SCC 120]
- Bachahan Devi and another vs. Nagar Nigam, Gorakhpur and another [(2008) 12 SCC 372]
- S.Mani & Another vs. Cuddalore Municipality, rep. by its Commissioner, having office at Municipal Office, Cuddalore [2011 (1) CTC 239]
- Rajammal (Deceased) & another vs. Chinnathayee (died) & others [2017(4) CTC 243]

6. Per contra, the learned counsel for the respondents submit that inasmuch as the first appellate court has applied its mind and admitted the documents on record, it is only appropriate for the first appellate court to remand the matter to enable the plaintiffs/appellants to adduce contra-evidence in terms of Order 41 Rule 28 CPC.

7. The first appellate court even though has admitted the documents, has not indicated the ground for which they were so received. The case of the respondents/defendants rest on an alternate and inconsistent plea based on adverse possession. Inasmuch as the documents have already been admitted, which is not independently challenged, in case the appellants herein require to adduce any contra-evidence to negate the evidenciary value of the documents admitted by the first appellate court, the same opportunity can be granted by the first appellate court itself. Where no subsequent facts are required to be introduced in pleadings, or where no impleadment of parties is involved, what can be done by the appellate court may have to be done by it, and it should desist from mechanically remanding cases to the trial court as it is a great contribution of delay in dispensation of justice.

8. In the result, this appeal is allowed and the matter is remitted back to the first appellate court which shall endeavour to dispose of the matter in four weeks times from the date of receipt of a copy of material papers of this Court. The parties are directed to appear before the first appellate court on 1st September 2017. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

ds
To:

1. The Subordinate Judge,
Tirupattur.
2. The District Munsif,
Tirupattur.

+1 CC to Ms. Elizabeth Ravi, Advocate sr 54552.

+1 CC to Ms. D. Balachandran, Advocate sr 53932.

SP(10/08/2017)

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