



S.A. No.627 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 26.03.2024

Pronounced on: 05.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.627 of 2018

1.K.Subramaniya Naidu

2.K.Thirumalai Naidu

...Appellants

Vs.

1.Dhanalakshmi

2.Munusamy

3.Malliga

4.Natarajan

...Respondents

PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 26.03.2018 passed in A.S. No.45 of 2010 on the file of the Subordinate Court at Tiruttani, reversing the judgment and decree passed in O.S. No.394 of 1996 dated 11.07.2003 on the file of the District Munsif Court, Tiruttani.

For Appellants : Mr.G.RM.Palaniappan

For Respondents : Mr.A.R.Suresh

JUDGMENT

The unsuccessful plaintiffs in a suit for declaration and possession in the properties are the appellants.



2. The Trial Court had partly decreed the suit, granting the relief of declaration and possession, turning down the relief of mesne profits. The First Appeal preferred by the defendants was allowed and thereby, the present Second Appeal has been preferred by the plaintiffs, challenging the disallowance of the relief of the declaration and possession.

3. The Second Appeal was admitted by me on 26.03.2024, on the following two substantial questions of law:-

“ a. Whether the Lower Appellate Court is correct in interpreting the period of limitation as per the provisions of the Limitation Act?

b. Whether the First Appellate Court is correct in dismissing the suit filed by the appellants herein inspite of a declaratory relief granted by the competent Court regarding the ownership over the suit schedule property in an earlier round of litigation in O.S. No.97 of 1973?”

4. I have heard Mr.G.RM.Palaniappan, learned counsel for the appellants and Mr.A.R.Suresh, learned counsel for the respondents.

5. Both the learned counsel for the appellants and respondents would make their submissions revolving around the substantial questions of law, especially, the interpretation given by the First Appellate Court in deciding the suit being barred by limitation.



6. The learned counsel for the appellants would state that the First Appellate Court, erred in dismissing the suit, ignoring the fact that in the earlier round of litigation in O.S. No.97 of 1973, the competent Court has granted declaration in favour of the plaintiffs. Per contra, the learned counsel for the respondents would submit that no interference is warranted with the findings of the First Appellate Court, especially under Section 100 of the Code of Civil Procedure, 1908, when there is no perversity or material irregularity in the findings arrived at by the First Appellate Court.

7. I find that the plaintiffs had filed a suit in O.S. No.97 of 1973 for the relief of declaration and possession against the defendants. The said suit was decreed on 30.09.1975, on contest. However, admittedly no steps were taken by the plaintiffs to execute the decree in O.S. No.97 of 1973 in their favour. The plaintiffs in O.S. No.97 of 1973, are the appellants in the present Second Appeal.

8. It is the case of the plaintiffs that their father, K.Govindappa Naidu, died on 15.02.1995 and the fact that the father was having life interest did not permit the plaintiffs to execute the decree and fresh cause of



action arose for the plaintiffs, only after the death of their father, Govindappa Naidu on 15.02.1995 and therefore, the suit was in time.

9. It is the specific case of the defendants that the defendants purchased the suit property in the year 1962 and when the plaintiffs had succeeded in O.S. No.97 of 1973, they ought to have executed the decree in their favour. Without doing so, they are not entitled to file a fresh suit on an imaginary cause of action that their right to the suit property fructified only on the demise of their father, Govindappa Naidu on 15.02.1995.

10. The short question that needs to be addressed in the Second Appeal is as to whether the plaintiffs can ignore the earlier decree in their favour and seek same relief by filing a fresh suit, by merely including relief of the mesne profits. Admittedly, the plaintiffs had a vested remainder interest in the suit property under the settlement deed dated 29.07.1954, their father Govindappa Naidu and uncle K.Rama Naidu having been given a life estate to enjoy the suit property, without any right of alienation.

11. Admittedly, Rama Naidu was not blessed with any issues and



being the legal heirs of K.Govindappa Naidu, the plaintiffs were entitled to the suit property, on the demise of their father and uncle. However, conscious of their rights, the plaintiffs filed O.S. No.97 of 1973 for declaration and recovery of possession and also succeeded in getting a decree in their favour. The father of the plaintiffs, K.Govindappa Naidu has sold the property to the defendants by a registered sale deed dated 17.09.1962 and rightly questioning the authority of their father, the plaintiffs had already approached the competent civil Court and filed O.S. No.97 of 1973. However, despite a decree in their favour, the plaintiffs did not choose to execute the same for close to two decades and thereafter, alleging a fresh cause of action has arisen for them, the plaintiffs have filed the present suit.

12. The First Appellate Court has rightly found that earlier decree in O.S. No.97 of 1973 was not executed within 12 years and the plaintiffs were not entitled to file another suit for the same reliefs. The First Appellate Court, on proper appreciation of facts and law reversed the findings of the Trial Court and dismissed the suit, I do not find any illegality or perversity in the findings arrived at by the First Appellate Court, warranting



S.A. No.627 of 2018

interference under Section 100 of the Code of Civil Procedure, 1908 and the substantial questions of law are answered against the appellants.

Accordingly, the Second Appeal is dismissed. There shall be no order as to costs.

05.04.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No.
Speaking order/Non-speaking order
rkp
To

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



WEB COPY



S.A. No.627 of 2018

P.B.BALAJI, J.

rkp

Pre-delivery Judgment in

S.A.No.627 of 2018

05.04.2024