

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 3686 OF 1999

SELVARAJ (D) THROUGH LRS. & ORS.

Appellant(s)

VERSUS

NAGARAJAN

Respondent(s)

(With office report)

Date: 16/12/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE A.K.MATHUR

For Appellant(s)Mr. K.V. Viswanathan, Adv.
Mr. K.V. Venkataraman,Adv.
Mr. Ragunath, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

The Civil Appeal is dismissed with no order as to costs in terms of the signed order.

(Parveen Kr. Chawla) (Kanwal Singh)
Court Master Court Master
[Signed Order is placed on the File]

1

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3686 OF 1999

Selvaraj (D) through Lrs. & Others..APPELLANT(S)

VERSUS

Nagarajan..RESPONDENT(S)

O R D E R

This appeal by grant of leave is directed against the order passed by the Single Judge of the High Court of Madras in C.R.P. No.70 of 1993. The High Court by the impugned judgment has set aside the order passed by the Executing Court and remitted the case back to the Executing Court to proceed with the execution proceedings in accordance with law in the light of observations made in the order.

One Kallati Nattar and Mannarasami Nattar filed a suit against Govindan, predecessors-in-interest of the appellants being O.S. No. 88 of 1966 on the file of Sub-Court, Cuddalore for declaration of title and possession of the suit property. The said suit was dismissed on 31.10.1970. The order of the

2

trial court was affirmed in first appeal and thereafter in the second appeal.

Respondent-Nagarajan being vendee from Kallati Nattar and Mannarasami Nattar filed O.S. No. 125 of 1984 on the file of the Sub-Judge, Villupuram for declaration that the decree passed in O.S. No.88 of 1966 was not binding on him. He prayed for setting aside of the decree passed in O.S. No. 88 of 1966 and for possession of the suit property. In spite of service, the appellants did not appear and an ex-parte decree was passed against them on 3.2.1987. Appellants filed an Interlocutory Application No. 121 of 1987 to set aside the ex-parte decree. The said application was dismissed on 14.4.1988. The appeal filed before the first appellate court met the same fate. The order passed by the first appellate court was affirmed by the High Court. The Special Leave Petition filed in this Court was also dismissed.

Pursuant to the decree passed in O.S. No.125 of 1984 the respondent filed Execution Petition No. 33 of 1991 to execute the decree. The appellants filed a miscellaneous application No. 33 of 1992 under Section 47 of the Code of Civil Procedure taking an objection that the respondent in his suit O.S. No. 125 of 1984 had prayed for setting aside the decree passed by the trial court in O.S.No.88 of 1966 which decree had merged in the decree passed by the first

3

appellate court and the High Court. Since the respondent did not challenge the decree passed by the first appellate court and the High Court, setting aside of the decree passed by the trial court in O.S. No.88 of 1966 is of no consequence. According to them, the decree passed in O.S. No. 88 of 1966 having merged in the order passed by the first appellate court and the High Court the decree passed by the trial court could not be executed as it was no longer in existence. The Executing Court found substance in this submission and dismissed the Execution Petition No. 33 of 1991.

Aggrieved against the order passed by the Executing Court, the respondent filed C.R.P. No. 70 of 1993 in the High Court which has been allowed. The High Court while setting aside the order passed by the Executing Court has remitted the case back to the Executing Court to proceed with the execution petition.

Heard the counsel for the appellants. Respondent in spite of service has not put in appearance.

Sub-Judge, Villupuram in suit No. O.S.125 of 1984 granted a decree, as prayed for, in the following terms:

'1.xxxx xxxxxxxxxxxxxx

4

2.xxxxxxxxxxxxxxxxxxxx

3.that the decree in O.S. No.88/66 on the file of the Sub-Court, Cuddalore be set aside;

4.xxxxxxxxxxxxxxxxxxxx

5.xxxxxxxxxxxxxxxxxxxx.

The High Court came to the conclusion that since the decree in O.S. No. 88 of 1966 was set aside, the setting aside of the decree would include the orders passed by the first appellate court as well as by the High Court in the regular second appeal. We agree with this view.

We do not agree with the counsel for the appellants that the decree passed in O.S. No. 88 of 1966 by the trial court stood superseded by the subsequent orders passed by the first appellate court and the High Court. The first appellate court as well as the High Court had affirmed the decree passed by the trial Court. The decree passed by the trial court and that of the first appellate court and the High Court were not at variance. It was a decree of affirmation.

Since the decree passed in O.S. No. 88 of 1966 was set aside the same would include the decree passed by the first appellate court as well as the High Court. Contention of the appellants that the decree passed in O.S.

5

No. 88/66 had become infructuous and inexecutable cannot be accepted.

We agree with the view taken by the High Court. The same does not call for interference.

The Civil Appeal is dismissed with no order as to costs.

.....J.
[ASHOK BHAN]

NEW DELHI;.....J.
DECEMBER 16, 2004.[A.K. MATHUR]