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C.A.No. 5679 OF 1998
ITEM NO. 107
COURT No.1

SECTION XII

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. 5679/1998

R Ramamoorthy And Anr.

Appellant(s)

Versus

G Pachiappan

Respondent(s)

(with office report)

DATE : 23/03/2004

This/These matter/matters was/were
called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU

HON'BLE MR. JUSTICE G.P. MATHUR

For Appellant(s) Mr. S Nanda Kumar, Adv.

Mr. M Yogash Kanna, Adv.

Mr. R Suresh, adv.

Mr. s Venketesh Perumal, Adv.

Mr. L.K. Pandey, Adv.

For Respondent(s)

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

The appeal is allowed in terms of the signed order.

[Charanjeet Kaur]
Court Master

[Om Prakash]
Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5679 OF 1998

R. Ramamoorthy And Anr.

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Appellant(s)

Versus

G. Pachiappan

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Respondent(s)

O R D E R

A Suit was brought by the plaintiff G. Pachiappan on the basis that certain property described in the plaint belonged to Ellammal which she had purchased under sale deed dated 30th March, 1932 and she had been in possession, enjoying the same; that by a deed dated 17th June, 1975, she settled the said property on the plaintiff and put him in possession of the same; that the defendants, who are appellants before us, have no manner of any right in the property in question and as they are interfering with his possession, he sought for a relief of injunction.

In the written statement filed on behalf of the defendants, it is contended that the property in question did not belong to Ellammal; that She was the mother of the plaintiff and the second defendant in the suit; that she was not in possession and enjoyment at any time; that the property was in possession of the second defendant and the father of the plaintiff as joint family property; that the sale deed dated 30th March, 1932 was a benami transaction and it was purchased in the name of Ellammal on behalf of Govindasami Naicker, that the settlement deed dated 17th June, 1975 was not

2

genuine; that it was executed in duress in Madras while the property was located in Tiruvallur. Therefore, they sought for dismissal of the suit.

On these pleadings, the following issues were raised :

(i) Whether the sale deed dated 13.3.1932 (SIC) is taken benami in the name of Ellammal for Govinda Naicker ?

(ii) Whether the settlement deed dated 17.6.1975 is true and valid ?

(iii) Whether the suit property belong to the family consisting of the defendant, the plaintiff and their father ?

(iv) Is the plaintiff entitled for injunction?

(v) To what other relief are the parties entitled to ?

The trial Court on inquiry found that the sale deed dated 30th March, 1932 was taken benami by Ellammal on behalf of Govindaswamy Naicker; that the settlement deed dated 17th June, 1975 was void as the same had been executed in duress, and that the suit property belonged to the family consisting of the defendant, plaintiff and their father. Therefore, the trial Court came to the conclusion that the plaintiff in the suit is not entitled to any injunction and, there by, dismissed the suit.

On appeal, the said findings were affirmed and the appeal was dismissed. On second appeal, the High Court

3

formulated following two questions for its consideration :

(1) Having framed the issue correctly casting the burden on the defendant to prove the benami transaction, have not the courts below gone wrong by casting the burden of proof on the plaintiff while discussing the evidence ?

(2) Are not the defendants who claim through Govindaswamy Naicker precluded from claiming the properties in view of EX. A-21, executed by Govindaswamy Naicker admitting the property to be that of Ellammal ?

We have carefully gone through the judgment of the High Court. We find that the High Court has re-appreciated the evidence that had been led before the trial Court and has come to a different conclusion on each one of the findings recorded in respect of issues raised before the trial Court, which was not permissible at all. All material evidence arising in the case were looked into by the courts below and findings as noted earlier were recorded. In such a case, scope for interference in a second appeal by the High Court is very limited. The High Court could not have re-appreciated the evidence while allowing the appeal, setting aside the judgments of the courts below and decreeing the suit. We, therefore, set aside the judgment made by the High Court and restore that of the trial Court as affirmed by the first appellate Court. The appeal is allowed accordingly.

.....J[S. RAJENDRA BABU]

.....J [G.P. MATHUR]

NEW DELHI,
MARCH 23, 2004.