

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6575 OF 2000

R. KESAVAN

..... APPELLANT

(S)

:VERSUS:

G. KESAVAN

..... RESPONDENT

(S)

O R D E R

This appeal is directed against the judgment and order dated 8.3.2000 passed by the High Court of Judicature at Madras in Second Appeal No. 27/2000, whereby and whereunder the appeals preferred by the respondent herein were allowed.

The basic fact of the matter is not in dispute.

The property in suit, pertaining to Survey No.97/3, was acquired by one Venkatarama Reddiar in the year 1923. After his

death, the said property devolved upon his two sons, Ananthakirshna Reddiar and Govinda Reddiar in equal share. The said property was, allegedly, sub-divided into two plots - 97/3A & 97/3B. It is stated that

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the area of Survey No. 97/3A was 1 acre 4 cents whereas the area of Survey No.97/3B was 1 acre 3 cents. Appellant filed a suit for declaration of his title in respect of Survey No.97/3B purported to have been derived in terms of a deed of sale executed by the said Ananthakirshna Reddiar in favour of their father on 2.9.1957.

A partition took place amongst the heirs and legal representatives of Govinda Reddiar and Survey No.93/3A fell into the share of Venkataraman by way of a partition, who in turn settled the same in favour of her daughter Usha Rani. Respondent herein claims his right, title and interest in respect of the said land by a deed of sale executed by the said Usha Rani in the year 1992.

Respondent herein filed a suit for declaration of his title having purchased the said land from Venkataraman, his wife and daughter

Usha Rani. It is alleged that Usha Rani sold the property to the appellant in 1992 in respect of Survey No.97/3B, stating that Ananthakirshna Reddiar and Govinda Reddiar had wrongly given the sub division numbers as well as on the basis of the said purported deed of sale executed by Venkatarama Reddiar and others. Appellant had also filed a suit for title in respect of the said property, inter alia, on the basis of the deed of sale executed by his father on 2.9.1957.

Whereas the respondent's suit was decreed the suit of appellant

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was dismissed by the learned Trial Judge by a judgment and decree dated 21.1.1999. However, on appeals preferred thereagainst the said judgments and decrees were reversed. Respondent herein filed two second appeals before the High Court questioning the said judgment and decrees dated 22.9.1999. By reason of the impugned judgment, the said appeals have been allowed by the High Court.

We may at this stage notice that the appellant herein has filed

this appeal by special leave against the judgment and decree passed in

Second Appeal No.27/2000 only. However, in view of the peculiar facts

and circumstances of the case, we are inclined to allow the oral

prayer/application of Mr. Swami, learned counsel appearing on behalf

of the appellant, to question the connected matter arising out of the

other appeal also as the same had not been done by mistake. Thus, in

the memo of appeal he is permitted to add the number of other second

appeal, being Second Appeal No.28/2000, also. Although, ordinarily,

we would not have allowed such an oral prayer/application but we

have heard the matter on merit and have noticed that the second

appeals filed by the respondent herein had been allowed at the

admission stage by the High Court without formulating any substantial

question of law and as we intend to set aside the judgment and order

passed by the High Court and remit the matter back to it, we, in

exercise of our jurisdiction under Article 142 of the Constitution of

India, permit the appellant to amend his memo of appeal subject to his

depositing appropriate court fee within four weeks from date.

Coming to the merit of the matter, it appears that although as many as five substantial questions of law were raised in the second appeals, the learned Judge did not formulate any substantial question of law himself, as is required under sub-section (4) of Section 100 of the C.P.C.

As noticed hereinbefore, the counsels were heard at the stage of admission only. Learned counsel appearing on behalf of the parties could not throw any light as to whether the records were called for and whether the learned Judge as also the learned counsel for the parties had any access thereto.

Further, the High Court, in our opinion should have considered that its jurisdiction under Section 100 CPC is limited. The High Court can interfere with a finding of fact only when a substantial question of law arises for its consideration. Ordinarily, a finding of fact would be binding on the High Court in a second appeal. We, therefore, are of the opinion that the impugned judgments are liable to be set aside and it is

directed accordingly.

The appeal is allowed and the matter is remitted to the High Court for its consideration afresh. The High Court itself may formulate

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the substantial question of law and proceed to determine the matter on

merit, if it is found that the substantial question of law is involved

therein.

.....J

(S.B. SINHA)

.....J

(MARKANDEY KATJU)

NEW DELHI,

JANUARY 24, 2007.

ITEM NO.106

COURT NO.7

SECTION XII

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

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RECORD OF PROCEEDINGS

R. KESAVAN

Appellant (s)

VERSUS

G. KESAVAN

Respondent(s)

(With office report)

Date: 24/01/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s)

Mr. K. Swami, Adv.

Mrs. Prabha Swami, Adv.

For Respondent(s)

Mr. K.K. Mani, Adv.

Mr. Mayur R. Shah, Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard the learned counsel for the parties.

The appeal is allowed and the matter is remitted to the

signed High Court for its consideration afresh in terms of the

order.

(A.S. BISHT)

(PUSHAP LATA

BHARDWAJ)

COURT MASTER

COURT MASTER

(Signed order is placed on the file)