Ramaswamy Kalingaryar vs Mathayan Padayachi on 30 August, 1991

Equivalent citations: AIR1992SC115, (1992)1MLJ19(SC), 1992SUPP(1)SCC712, AIR 1992 SUPREME COURT 115, 1991 AIR SCW 2802, 1992 (1) SCC(SUPP) 712, 1992 SCC (SUPP) 1 712, (1992) 1 MAD LJ 19, (1992) 1 RRR 330

Bench: Madan Mohan Punchhi, K. Ramaswamy

JUDGMENT

1.This appeal by special leave is against the judgment and decree dated 27th October, 1977 passed by the Madras High Court in Second Appeal No. 363 of 1975.

2. The litigating parties are two brothers. We would refer to them by short names as Ramasamy and Muthiah. Their father Rangasami Kalingaraya, besides holding vast freehold properties held leasehold rights in two small parcels of land, whereon there was a hut obtained from Dharmapuram Adhee-nam, since many years prior to his death on 1-4-1962. After his death, dispute over the leasehold properties arose between the brothers. According to Ramasamy, ever since 1962, he was in possession of the leased properties in his own right as a lessee. On the other hand Muthiah claimed that these properties had been bequeathed to him by his father under a Will. This led file a suit for permanent injunction against Muthiah to preserve his possession. The suit was resisted by Muthiah asserting that he was in possession of the suit property on the basis of the Will as well as by allotment in his favour. On the pleadings of the parties, the trial Court raised the following issues on the subject :

1. Whether the plaintiff was in possession of the suit properties?

2. Whether the Will and allotment pleaded by the defendant were true?

3. Whether the plaintiff is entitled to injunction?

Ramaswamy-plaintiff succeeded in the trial Court as well as in the first Appellate Court on the first issue that he was in sole possession of the suit properties. Muthiah defendant failed on the second issue as he could neither prove the Will to be true and genuine nor any allotment in his favour. On the findings on issues Nos. 1 and 2, issue No. 3 logically was decided in favour of the Ramaswamy-plaintiff up till the level of the first Appellate Court. The High Court of Madras, however, on second appeal by Muthiah-defendant upset the finding of fact by introducing three inferences into consideration. The first was that since the estate of Rangaswamy Kalingaraya fell equally on both the brothers, it was logical to infer that both brothers would be in possession of the suit land. Secondly when the leasehold rights were with the father Rangaswamy the Adheenam's

authorities could not without going into the details of the rights grant straightway leasehold rights to Ramasamy trampling the rights of Muthiah. The third factor which weighed with the High Court was that in presence of joint ownership of the leasehold rights, how could an injunction issue in favour of one of the brothers against the other. Having raised such inference to doubts, the High Court yet concluded with the following paragraph :

> I have entered my decision on the point only on the basis of the rival contentions of the parties without going into them and on the basis of the shortcomings in the findings of the Courts below without recording my own findings. I should think that the question of title to the leasehold properties as between the parties must be regarded as still at large to be settled either in an action at law or in other appropriate proceedings.

It is plain that the High Court itself demolished what it built by concluding in the manner above stated. Suggested shortcomings in the findings of fact recorded by the Courts below would not alter the situation that those were findings of facts, unquestionable, under the provisions of Section 100, C.P.C. which defines the contours of the power of the High Court in second appeal. Significantly, no question of title or an issue thereon was raised by the parties before the Courts below. Though the High Court points out that question of title was raised as an alternative ground in the written statement but no argument on that account was raised by the defendant before the first appellate Court. Rather title and possession on the land in dispute was asserted by Muthiah only on the basis of Will in his favour which plea of his miserably failed and has remained failed throughout. The only issue before the Courts below, on the strength of which the fate of the case rested was whether Ramasamy was in sole possession of the suit property. That finding was in his favour. The High Court itself has left the question of title open to be decided in appropriate proceedings. It was for the protection of possession of Ramasamy that the grant of injunction became necessary and having regard to the facts and circumstances, the plaintiff-Ramasamy was given relief on the basis of the case set up by him and supported by evidence. The High Court had thus no jurisdiction either to reassess the evidence or without reassessing as such find any infirmity in it. The measure of proof is within the domain of the two Courts of fact in the hierarchy. Sufficiency of proof can be no ground for the High Court to interfere in a finding of fact. Thus we are of the considered view that the High Court fell in a legal error in this case reversing the judgments and decrees of the Courts below and dismissing the suit of Ramasamy. Accordingly, this appeal is allowed and the judgment and the decree of the trial Court is restored. There shall be no order, however, as to costs in this Court.