Arumugham (Dead) By Lrs. And Ors vs Sundarambal And Anr on 29 April, 1999

Equivalent citations: AIR 1999 SUPREME COURT 2216, 1999 AIR SCW 2244, (1999) 3 ALLMR 471 (SC), 1999 (3) ALL MR 471, 1999 (3) SCALE 533, 1999 (3) LRI 277, 1999 (4) SCC 350, 1999 SCFBRC 267, 1999 (6) SRJ 330, (1999) 4 JT 464 (SC), (1999) 3 MAD LJ 127, (1999) 2 MAD LW 588, (1999) 5 SUPREME 44, (1999) 3 ICC 637, (1999) 3 SCALE 533, (1999) 36 ALL LR 751, (1999) 2 ANDHWR 229, (1999) 3 CURCC 4, (1999) 4 CIVLJ 460

Bench: M. Jagannadha Rao, N. Santosh Hegde

CASE NO.:
Appeal (civil) 2709 of 1999

PETITIONER:
ARUMUGHAM (DEAD) BY LRS. AND ORS.

RESPONDENT:
SUNDARAMBAL AND ANR.

DATE OF JUDGMENT: 29/04/1999

BENCH:
M. JAGANNADHA RAO & N. SANTOSH HEGDE

JUDGMENT:

JUDGMENT 1999 (2) SCR 950 The following Judgment of the Court was delivered : Special leave granted.

This is an appeal filed by the legal representatives of the deceased plaintiff against the judgment of the High Court of Madras in Second Appeal No. 1946 of 1983 dated 30th September, 1997. By the said judgment, the High Court reversed the judgment of the lower appellate court dated 30.6.83 and restored the judgment of the Trial Court dated 12.5.82 in O.S. No. 187 of 1979.

The plaintiff filed a suit for declaration of title of the suit propertry and for permanent injunction claiming to be the son of Late Haritheertham and Mariyayee; According to him the said Haritheertham his father died 40 years earlier arid Mariyayee, his mother died 5 years before the suit. It was stated that the plaintiff was suffering from paralysis for over 25 years. It was also stated that several years earlier the first defendant and her mother were residing in the suit village and the second defendant was the husband of the first defendant. The 1st defendant was not the daughter of late Haritheertham and Mariyayee. The mother of the first defendant died 4 or 5 years before the suit and thereafter the first defendant got patta changed into her name and denied the right and

interest of plaintiff. The plaintiff stated that the defendants were seeking to interfere with plaintiff s possession and he therefore claimed declaration of title and permanent injunction.

The defendants denied Mariyayee's title. They contended that the plaintiff was an imposter and that he was not the son of late Haritheertham and late Mariyayee. They also claimed to be in possession.

The plaintiff produced oral arid documentary evidence in support of his case. Four witnesses PW-1 to PW-4 were examined in support of plaintiff s case and plaintiff filed sixteen documents. The defendants adduced evidence of 7 witnesses and filed seven documents in support of their case. On the basis of the oral and documentary evidence placed by the respective parties, the trial court came to the conclusion that the plaintiff had not established that he was the son of Late Haritheertham and Mariyayee, The trial court therefore gave a finding that the plaintiff had not proved his title to the property of his father and that the evidence also disclosed that the plaintiff was not in possession and therefore the plaintiff was not: entitled to a declaration of title not for permanent injunction. The trial court held that the first defendant was the only daughter of Haritheertham and Mariyayee. The suit was dismissed Against the said judgment, the plaintiff preferred an Appeal No. 138/82 before the learned Subordinate judge, Pudukottai. The appellate court discussed the oral and documentary evidence adduced by the plaintiff and accepted the same. It also relied upon the voter's list produced by the plaintiff for the purpose of proving the entry therein that he was the son of Haritheertham-The voter's list was accepted alongwith other documents. The appellate court rejected the oral evidence adduced by the defendant. It also considered the documentary evidence adduced by the defendant and came to the conclusion that the case set up by the defendant could not be accepted. It also gave the finding that the patta was changed in the name of first defendent without proper enquiry and by taking advantage of the weakness and illness of the first plaintiff. The defendant had manoeuvered the Revenue Department and got patta transferred. In the result the appellate Court reversed die judgment of the trial court and held that the plaintiff was the son of Haritheertham and Mariyayee and was entitled to the property of his father. The appellate court also reversed the finding of the trial court in relation to the possession of the property and held that plaintiff was in possession on the date of suit. In the result, declaration of title and permanent induction were granted by the lower appellate court.

In the second appeal, the learned Single Judge of the High Court initially framed the following point for consideration.

> "Whether the entries in the electoral rolls can be regarded as conclusive evidence for purposes of establishing genealogy and hardship and, if so, what is its probative value?"

The learned Single Judge of the High Court, came to the conclusion that the voter's list wass not admissible. He then proceeded to discuss the oral and documentary evidence. The learned Judge was of the view that the appellate court had placed the burden of proof on the first defendant rather than on the plaintiff. The learned Judge discussed the evidence as if he was dealing with a first appeal and reversed the findings of fact and restored the judgment of the trial court.

Learned counsel for the appellant has contended before us that the High Court ought not to have interfered with the findings on questions of fact. The appellate court could not have considered the oral and documentary evidence on merits. Learned counsel also pointed out that the first defendent put forward a specific case that the plaintiff was an imposter and therefore the lower appellate court had rightly cast the burden of proof on the 1st defendant. The appellate court rightly came to the conclusion that the plaintiff was in possession of the property. Even assuming that the voter's list was not admissible, the other evidence oral and documentary which was adduced on behalf of the plaintiff was sufficient and was accepted by the lower appellate court. Therefore the judgment of the first appellate court should be restored.

On the other hand, learned counsel for the respondents-defendants contended that the lower appellate court had not adverted to the reasons given by the trial court and had hot come to grips with the said reasons. Counsel relied upon the decision of this Court in [1995] 4 SCC 15 S.V.R. Mudaliar v, Rajabu F. Buhari to contend that if the first appellate court had not adverted to all the reasons given by the trial court and not come into close quarters with the same, the second appellate court could interfere. The following passage was relied upon from the above judgment :

> "We, therefore, do not propose to decide this fact by drawing any adverse inference against the respondent; but would do so on the basis of evidence led by the plaintiff. As already stated, this evidence has received better treatment at the hand of trial Judge, who, while, holding that Kamal had acted as an agent of the defendants, referred to many circumstances also. Shri Parasaaran had submitted that though the appellate court is within its right to take a different view on a question of fact, that should be done after adverting to the reasons given by the trial judge in arriving at the finding in question. Indeed, according to Shri Parasaran an appellate court should interfere with the judgment under appeal not because it is not right, but when it is shown to be wrong, as observed by a three Judge Bench of this Court in Dollar Go. v. Collector of Madras. 1975 (2) SCC 730, As to this observation, the contention of Shri Vaidyananthan is that what was stated therein was meant to apply when this Court examines a matter under Article 136. We do not, however, think if this meaning can be ascribed to what was observed.
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> There is no need to pursue the legal principle, as we have no doubt in our mind that before reversing a finding of fact, the appellate court has to bear in mind the reasons ascribed by the trial court. This view of ours finds support from what was stated by the Privy Council in Rani Hemanta Kumari Debi v. Maharaja Jagadinra Nath Roy Bahadur, 10 CWN 630 (PC) C= 16 MLJ 272 wherein, while regarding the appellate judgment of the High Court of Judicature at Fort Willvam as "Careful and able" it was stated that it did not come to close quarters with the judgment which it reviews, and indeed never discusses or even alludes to the reasoning of the Subordinate Judge."

Learned counsel for the respondents accordingly contended that the lower appellate court had not considered all the reasons given by the trial court and therefore it was not permissible for the said court to reverse the findings of the trial court and in such a context, it would be permissible for the

High Court to set aside the judgment of the appellate court. Counsel pointed out that in the aforesaid judgment, this Court had relied upon the judgment by Privy Council in Rani Hemanta Kutnari Debi v. Maharaja Jagadindra Nath Roy Bahadur., 16 MLJ 272 (PC) where such a preposition was laid down.

The point for consideration is whether the High Court was right in interfering with the findings of fact arrived at by the lower appellate court on the ground that the appellate court has not adverted to the Various reasons given by the trail court?

A similar question arose before a bench of three judges of this Court in V. Ramachandra Ayyar and Anr. v. Ramalingam Chettir and Anr., AIR (1963) SC

302. A similar contention was raised by the learned counsel for the respondents in that case, by placing reliance upon the judgment of the Madras High Court in Mangamma v. Paidayya, AIR (1941) MAD 393. This court held that the second appellate court could not reverse the judgment of the first, appellate court on the ground that the first appellate court had not adverted to all the reasons given by the trial court or that it had not come to grips with the reasons given by the trial court. This court held as follows:

> "Mr. Chatterjee has then placed strong reliance on the decision of the Madras High Court in Mangamma v. Paidayya, 53 Mad L W 160 : AIR (1941) Mad
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> 393. In that case Pandrang Row J. has held that where the first appellate Court fails in its judgment reversing the finding of the trial court to come into close quarters with the evidence in the case or to meet the reasoning of the trial Court in support of its conclusions, the judgment of the appellate court must be deemed to be vitiated by an error in procedure and so can be interfered with in second appeal.These observations no doubt support Mr. Chatterjee in contending that the High Court was justified in reversing the finding of fact recorded by the lower appellate Court in this case. In our opinion, however the broad observations made in the judgment do not correctly represent the true legal posititon about the limits of the High Court's jurisdiction in dealing with second appeals under S.100, This decision shows that the learned Judge thought that the lower appellate Court was bound not to go against the opinion of the trial Judge who had an opportunity of having the witnesses before him in deciding upon the credibility of the oral evidence; and he has added that unless good reasons are given, any interference with the conclusion of the trial judge on matters of this kind must be deemed to be erroneous in law. It is plain that this statement of the law is inconsistent with the provisions of S.100.
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> In Rani Hemanta Kumari Debi v. Maharaja Jagadindra Nath ,Roy Bahadur, 16 Mad LJ 272 (PC), the Privy Council has no doubt observed that it is better that the appellate Court whenever it reverses the judgment of the lower Court, comes into close quarters with the judgment of the lower Court and meets the reasoning therein. These observations, however, do not assist us in determining the scope of the

provisions of Section 100. They were made in an appeal which went before the Privy Council against the decision of the High Court When the Appellate Bench was dealing with the first appeal filed against the decision of the Judge of the first instance. The High Court had reversed the decision of the first Court; and in considering the propriety or correctness of the said reversing judgment, the Privy Council observed that the appellate judgment did not come into close quarters with the judgment which it reversed. It would thus be seen that What the privy Council has said about the requirements of proper appellate judgment cannot assist Mr, Chatterjee in contending that if a proper judgment is hot written by the lower appellate court in dealing with questions of fact, its conclusions of fact can be challenged under Section 100. That question must be considered in the light of S.100 alone. From the aforesaid judgment of the three judges bench in Ramachandra Ayyar's case, it is clear that this Court held that second appellate court cannot interfere with the judgment of the first appellate court on the ground that the first appellate court had not come to close grips with the reasoning of the trial court. It is open to the first appellate court to consider the evidence adduced by the parties and give its own reasons for accepting the evidence on one side or rejecting the evidence on other side. It is not permissible for the second appellate court to interfere with such findings of the first appellate court only on the ground that the first appellate court had riot come to grips with reasoning given by the appellate trial court. The aforesaid judgment of this Court in Ramachandra Ayyer's case specifically distinguished Rani Hemanta Kumari Debi v. Maharaja Jagadindra Nath Ray Bahadur, 16 MLJ 272 (PC) rendered by the Privcy Council on the ground that that was a case wherein the High Court was dealing with a first appeal. The observations made by the Privy Council in that context would not be applicable to cases where the second appellate court was dealing with the correctness of the judgment of the first appellate court which reversed the trial court.

It is to be noted that in the case S. V.R. Mudaliar (dead) by Lrs. & Ors. v. Rajabu Buhari (dead) by Lrs. & Ors:, the two judges bench of the court took a contrary View without noticing the three judge bench decision of this Court in V. Ramachandra Ayyar's case where this Court had specifically referred to Rani Hemanta Kumari Debt's case and distinguished the same. The two Judge Bench could not have therefore relied upon the Privy Council Case of Rani Hemanta Kumari Debi. We therefore, prefer to follow the view of the judgment of the three judge bench of this Court in V, Ramachandra Ayyar `s case rather than the judgment of two judge bench in S.V.R Mudaliar's case.

On the question of burden of proof we are of the view that even assuming burden of proof is relevant in the context of the amended provision of Sec.100 C.P.C., the same would not be relevant when both sides had adduced evidence. It would be relevant only if a person on whom the burden of proof lay failed to adduce any evidence altogether. In the present case both sides had adduced oral as well as documentray evidence and therefore even assuming that it was erroneous for me lower appellate court to say that the burden of proof lay on the first defendant to prove that the

plaintiff was not the son of the Haritheertham, that would not, in our opinion, have any material bearing on the conclusion reached by the lower appellate court. The appellate court had considered the oral and documentary evidence adduced on both sides and preferred to accept the evidence adduced on the side of the plaintiff and it also rejected the evidence adduced on the side of the defendants. In fact, reading the judgment of the High Court, we are left with the impression that the High Court thought that it was dealing with the case if it was a first appeal. Therefore, for the reasons given above, the judgment of the High Court cannot be sustained and the same is accordingly set aside. The judgment of the lower appellate court is restored.

The appeal is allowed accordingly. There will be no order as to costs.