Supreme Court of India
Ramanuja Naidu vs Kanniah Naidu & Anr on 12 March, 1996
Equivalent citations: 1996 SCC (3) 392, JT 1996 (3) 164
Author: K Paripoornan
Bench: Paripoornan, K.S.(J)

PETITIONER:
RAMANUJA NAIDU

Vs.

RESPONDENT:
KANNIAH NAIDU & ANR.

DATE OF JUDGMENT: 12/03/1996

BENCH:
PARIPOORNAN, K.S.(J)
BENCH:
PARIPOORNAN, K.S.(J)
PUNCHHI, M.M.

CITATION:
1996 SCC (3) 392 JT 1996 (3) 164
1996 SCALE (2)718

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T PARIPOORNAN,J.

The first defendant in O.S. 329 of 1967, Munsiff Court, Thirukoilur, has filed this appeal against the judgment of a learned single Judge of the Madras High Court rendered in S.A. No. 93 of 1974 dated 27.8.1976, after having obtained special leave in Special Leave Petition No. 4469 of 1977 by order dated 25.1.1978. The plaintiff and the 2nd defendant in the suit are the respondents herein.

2. The plaintiff filed the suit for declaration of his title to the suit property and for recovery of possession of the same. The suit property is the northern 33 cents of dry land out of 65 cents in survey No. 217/4 in Payyur village. It belonged to the second defendant and his minor sons. The second defendant executed Ext. B-l registered usufructuary mortgage dated 12.9 1966 to one Chellian, DW-3, for a sum of Rs.600/-. The case put forward by the plaintiff was that the suit property belonged to the second defendant, and he subsequently sold the suit property to him by

sale deed Ext. A-1 dated 5.6.1967 for Rs.1,100/-, with direction to redeem Ext. B-1, mortgage. The sale deed was registered on 7.6.1967. He further alleged that the second defendant executed a sale deed in favour of the 1st defendant on 5.5.1967, (Ex.B-2); that the first defendant and his father-in-law, who had a long standing enmity with the plaintiff, got the same executed by the second defendant dating the sale deed as one executed on 5.5.1967 and the same was registered on 8.6.1967 (Ex. B2). The plaintiff objected to registration, but it was futile. The plaintiff alleged that the sale deed executed in his favour is anterior to Ex.B-2, and so the first defendant has no title to the suit property. It was in these circumstances that the plaintiff laid the suit for declaration of his title and recovery of possession, impleading his vendor, the second defendant.

3. The first defendant contended that he purchased the property from the second defendant vide Ex.B-2, sale deed dated 5.5.1967 with a direction to redeem Ex. B-1, mortgage, that he redeemed Ex.B-1, Mortgage and discharged the liability of mortgagee, Chellian (DW-3) on 10.5.1967, took possession of property and cultivated the same. It is thereafter with the knowledge of the above facts, the plaintiff took the sale deed due to enmity, on 5.6.1967. The document in his favour dated 5.5.1967 is genuine and earlier in point of time and conveyed valid title to the suit property. Plaintiff has no valid or proper title as per Ex.A-1 and, so, the plaintiff's suit for title and possession is unsustainable. The second defendant contended that he executed the sale deed to the plaintiff as stated, and the subsequent execution of the document in favour of the first defendant is sham and ineffective. The learned Munsiff, by judgment dated 3.3.1969 found that the sale deed executed by the second defendant in favour of the first defendant (Ex.B-2) is earlier in point of time, to the sale deed executed by the second defendant in favour of the plaintiff, that Ex. B-2 is true and valid and, dismissed the suit. In the appeal filed by the plaintiff, the learned Subordinate Judge, Cuddalore, by judgment dated 26.3.1973, held on an analysis of the facts and circumstances, that the sale deed - Ex.B-2, was executed by the second defendant in favour of the first defendant on 5.5.1967, which is earlier in point of time to the sale deed executed by the second defendant in favour of the plaintiff on 5.6.1967, and that Ex.B-2 is valid and genuine. It was further held that on the date of the sale deed, Ex. A-1, in favour of the plaintiff, the second defendant had no subsisting title to the suit property and the plaintiff did not acquire valid title to the suit property. Ex. A-1 was held to be invalid in law. The judgment and decree of the trial court were affirmed.

4. The plaintiff filed a second appeal before the Madras High Court as S.A. No 93 of 1974. A learned single Judge of the Madras High Court, on reappreciating the entire evidence held, that the sale deed executed by the second defendant in favour of the plaintiff (Ex.A-1) is a document executed earlier, there is no collusion between the plaintiff and the second defendant and it is "not probable" that the first defendant obtained the sale deed on 5.5.1967. Characterizing the judgments and decrees of the courts below as perverse, the learned Single Judge reversed the concurrent judgments of the courts below, allowed the appeal filed by the plaintiff and ordered that there will be a decree for declaration of the plaintiff's title to suit property and for recovery of possession. The plaintiff was directed to deposit a sum of Rs.600/- for payment to the first defendant. It is thereafter, the first defendant in the suit having obtained special leave, has filed this appeal.

5. We heard counsel for the appellant, Mr. A.T.M. Sampath and counsel for the first respondent, Mr. K Ram Kumar. The second respondent (second defendant), though served, was not represented

before us. The plaintiff's definite case is that the sale deed executed in his favour by the second defendant Ex.A-1, dated 5.6.1967 is earlier in point of time and that Ex. B-2 dated 5.5.1967 was not obtained on that date by the first defendant from the second defendant. In these circumstances, first defendant has no title. First defendant obtained Ex.B-2 document in collusion with the second defendant. The trial court and the first appellate court scanned the entire documentary and oral evidence including the different dates on which the stamp papers were purchased by the parties, and entered the following findings. According to the plaintiff, two stamp papers were purchased on 3.6.1967 and the third paper was obtained on 27.5.1967 and that the document Ex.A-1, Sale Deed was executed on 5.6.1967 by the second defendant. PW-2 is the scribe of Ex.A-1. There are three attesters to the said document. None of them were examined. There are patent contradictions in the evidence of the plaintiff as PW-1 and PW-2 scribe regarding payment of consideration for Ex.A-1. A reference to the suit notice sent by the plaintiff - Ex.A-4, and other circumstances show collusion between the plaintiff and the second defendant. On the other hand, the evidence of 1st defendant as DW-6, the mortgagee under Ex. B-1, DW-3 and DW- 4 one Naidu and DW-5 (scribe) independent witnesses, positively point out that liability as per Ex.B-1, usufructuary mortgage was discharged on 10.5.1967, the first defendant took possession of the property and thereafter cultivated the same. The specific plea of the plaintiff that the discharge of the mortgage, Ex.B-1, was after the sale deed, Ex. B-2, was registered on 8.6.1967, was held to be unfounded. The trial court as well as the lower appellate court believed the evidence of the defendant and his witnesses DW--3 to DW-6 and held that the Ex.B-1, mortgage was discharged on 10.5.1967 and the facts and circumstances pointed out that Ex.B-2, sale deed was genuine and was executed by the second defendant in favour of the first defendant on 5.5.1967 which is earlier in point of time. So, the sale deed executed by the second defendant in favour of the plaintiff later, on 5.6.1967 is invalid and that Ex.B-2 is valid and legal. On the above findings, it was concluded that on the date of Ex.A-1, the vendor (second defendant) had no subsisting title to suit property and the plaintiff did not acquire any good or valid title.

6. In second appeal on reappreciating the entire evidence in the case, the learned single Judge of the High Court faulted the judgments of the courts below to the following effect. The sale deed Ex.B-2, is dated 5.5.1967 but was registered later, only on 8.6.1967. In view of the above delay, it is "probable" that the document was not executed on 5.5.1967. Reappreciating the circumstance leading to the purchase of stamp papers end other evidence, it was held that it is not "probable" that on 10.5.1567, Ex.B-l, usufructuary mortgage would have been discharged and the first defendant would not have got possession of the property, the reason being that there was standing ground nut crop in the property on that date and DW-3 may not have parted with possession. Holding that the judgments of the courts below are perverse, the learned single Judge, on appreciation of the facts, held that the plaintiff's document Ex.A-1 was earlier, that he obtained title to the suit property and so entitled to a decree of declaration of title and possession of the property.

7. The scope of Section 100 of Civil Procedure Code even before the amendment of the Section in 1976 has been neatly summarised in Mulla's Code of Civil Procedure (15th Edn. vol. I) at page 703. It is stated therein as follows:

> "The section even as it stood before its recent amendment allowed a second appeal only on the grounds set out in clauses (a), (b) or (c). Therefore, whereas a Court of

> first appeal is competent to enter into questions of fact and decide for itself whether the findings of fact by the lower Court are or are not erroneous, a Court of Second appeal was not and is not competent to entertain the question as to the soundness of a finding of fact by the Court below. A second appeal, accordingly, could lie only on one or the other grounds specified in the section.
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> ....." "As held in Durga Chowdhrani v. Jawahar Singh by the Privy Council, there is no jurisdiction to entertain a second appeal on the ground of erroneous finding of facts, however gross in error they may seem to be. The same view has been expressed also by the Supreme Court. No doubt, a second appeal lay where there was a substantial error or defect in procedure under clause (c), but an erroneous finding of fact is distinct from an error or defect in procedure. Accordingly, where there was no error or defect in procedure, the finding of the first appellate Court upon a question of fact had to be regarded as final, if that Court had before it evidence proper for its consideration in support of the finding, ... The mere fact that the High Court would have upon document and evidence placed before the Court of first appeal come to a different conclusion is no ground for a second appeal."

In Madamanchi Ramappa & Anr. v. Muthalur Bojjappa, 1964 (2) S.C.R. p. 673, speaking for a three Member Bench, Gajendragadkar, J. summarised the law thus:

> "The question about the limits of the powers conferred on the High Court in dealing with second appeals has been considered by High Courts in India and by the Privy Council on several occasions. One of the earliest pronouncements of the Privy Council on this point is to be found in the case of Mst. Durga Choudhrain. In the case of Deity Pattabhiramaswami v. S.
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> Hanymayya, this Court had occasion to refer to the decision of the Privy Council and it was constrained to observe that "notwithstanding such clear and authoritative pronouncements on the scope of the provisions of s. 100, C.P.C., some learned Judges of the High Courts are disposing of second appeals as if they were first appeals. This introduces, apart from the fact that the High Court assumes and exercises a jurisdiction which it does not possess, a gambling element in litigation and confusion in the mind of the litigant public." On this ground, this Court set aside the second appellate decision which had been brought before it by the appellants.
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> In R. Ramachandra Ayyar v. Ramalingam Chettiar, this Court had occasion to revert to the same subject once again. The true legal position in regard to the powers of the second appellate Court under s. 100 was once more examined and it was pointed out that the learned Judges of the High Courts should bear in mind the caution and warning pronounced by the Privy Council in the case of Mst. Durga Chowdhrain and should not interfere with findings of fact.

It appears that the decision of this Court in Deity Pattabhiramaswamy, was in fact cited before the learned single Judge, but he was inclined to take the view that some aspects of the provisions contained in s. 100 of the Code had not been duly considered by this Court and so, he thought that it was open to him to interfere with the conclusions of the courts below in the present appeal. According to the learned Judge, it is open to the second appellate Court to interfere with the conclusions of fact recorded by the District Judge not only where the said conclusions are based on no evidence, but also where the said conclusions are based on evidence which the High Court considers insufficient to support them. In other words, the learned Judge seems to think that the adequacy or sufficiency of evidence to sustain a conclusion of fact is a matter of law which can be effectively raised in a second appeal. In our opinion, this is clearly a misconception of the true legal position. The admissibility of evidence is no doubt a point of law, but once it is shown that the evidence on which courts of fact have acted was admissible and relevant, it is not open to a party feeling aggrieved by the findings recorded by the courts of fact to contend before the High Court in second appeal that the said evidence is not sufficient to justify the findings of fact in question. It has been always recognized that the sufficiency or adequacy of evidence to support a finding of fact is a matter for decision of the court of facts and cannot be agitated in a second appeal. Sometimes, this position is expressed by saying that like all questions of fact, sufficiency or adequacy of evidence in support of a case is also left to the jury for its verdict. This position has always been accepted without dissent and it can be stated without any doubt that it enunciates what can be properly characterized as an elementary proposition. Therefore, whenever this Court is satisfied that in dealing with a second appeal, the High Court has, either unwittingly and in a casual manner, or deliberately as in this case, contravened the limits proscribed by s.100, it becomes the duty of this Court to intervene and give effect to the said provisions. It may be that in some cases, the High Court dealing with the second appeal is inclined to take the view that what it regards to be justice or equity of the case has not been served by the findings of fact recorded by courts of fact; but on such occasions it is necessary to remember that what is administered in courts is justice according to law and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law. If in reaching its decisions in second appeals, the High Court contravenes the express provisions of section 100, it would inevitably introduce in such decisions an element of disconcerting unpredictability which is usually associated with gambling; and that is a reproach which judicial process must constantly and scrupulously endeavor to avoid."

(pages 683-685) In Dudh Nath Pandey (Dead) BY L. R's. v. Suresh Chandra Bhattasali (Dead) by L.R's., 1986 (3) S.C.C. 360, a Bench of this Court held that "High Court cannot set aside findings of fact of first appellate court and come to a different conclusion on reappraisal of evidence."

There are innumerable subsequent decisions of this Court which have held that concurrent findings of fact of trial court and first appellate court cannot be interfered with by the High Court in exercise

of its jurisdiction under Section 100 of Civil Procedure Code. (See: Smt. Kamala Devi Budhia & Ors. v. Hem Prabha Ganguli & Ors., 1989 (3) S.C.C. 145; Smt. Jahejo Devi & Ors. v. Moharam Ali, 1988 (1) S.C.C 372; P.Velayudhan & Ors. v. Kurungot Imbichia Moidu's son Ayammad and Ors., 1990 Supp. S.C.C. 9; etc.

8. We are of the view, that in interfering with the concurrent findings of facts of the lower courts, the learned single Judge of the High Court acted in excess of the jurisdiction vested in him under Section 100 of Civil Procedure Code. The learned Judge totally erred in his approach to the entire question, and in reappraising and reappreciating the entire evidence, and in considering the probabilities of the case, to hold that the judgments of the courts below are "perverse and that the plaintiff is entitled to the declaration of title to suit property and recovery of possession. It is evident that the courts below found, on the basis of oral and documentary evidence, that Ex.B-2 sale deed obtained by the first defendant on 5.5.1967 is genuine and valid, and that first defendant discharged the mortgage, Ex. B-1, on 10.5.1967, took possession of the suit property and thereafter cultivated the same. The courts below were of opinion that Ex.A-1 cannot be accepted in view of the contradictions in the evidence of PW-1 and PW-2 regarding the payment of consideration, and none of the attestors to Ex. A-1 were examined. Laying stress on Ex.A-4, suit notice, sent by the plaintiff to the first defendant and other circumstances, the courts also found that there is collusion between the plaintiff and the second defendant and so, Ex.A-1 purported to have been executed by the second defendant in favour of the plaintiff is not valid in law. These concurrent findings of facts of the courts below, were based on oral and documentary evidence. The learned Single Judge on reappreciating the evidence took the view that it was "not probable" that the document Ex.B-1-, "would have' been executed on 5.6.1967 in view of the delay in the registration of the document. In second appeal, the learned single Judge of the High Court totally erred in making such an approach. Besides, the learned single Judge totally ignored the concurrent findings of the courts below that the first defendant discharged the mortgage, Ex.B-1 on 10.5.1967, took possession of the property and cultivated the same and the said finding was based on the oral evidence of DW-3, the mortgagee and independent witnesses, DW-4 and DW-5 scribe, besides the defendant, DW-6. There was no evidence contra. The concurrent findings of the court courts below that Ex.B-2, sale deed in favour of the first defendant is earlier in point of time and was genuine and valid is a finding of fact. Such a finding was not open to any challenge in Second Appeal. The learned single Judge of the High Court totally misconceived his jurisdiction in deciding the second appeal under Section 100 of the Code of Civil Procedure in the way he did. No question of law arose for consideration before the learned single Judge. The sole question that arose for consideration was, whether Ex.B2, sale deed, in favour of the first defendant dated 5.5.1967, which is admittedly earlier in point of time to Ex.A-1 dated 5.6.1967, in favour of the plaintiff is genuine and valid. Both the trial court as well as the appellate Court, rightly, in our opinion, started with dated 5.5.1967, was made on that day which is earlier to Ex.A1 dated 5.6.1967, and that there was no evidence to off set or rebut the said presumption, to hold that Ex.B-2 was not executed on 5.5.1967 as pleaded by the plaintiff. On the other hand, according to the courts below, the evidence available in the case reinforced the aforesaid presumption and positively pointed out that Ex.B-2 was, in fact, executed, long before Ex.A-1. The High Court ignored such crucial aspects and surmised that it was "not probable" that Ex.B-2 dated 5.5.1967 would have been executed on that day in view of "the delay" in registration. The approach so made and the resultant conclusion, are totally unjustified and unsustainable in law.

9. We, therefore, set aside the judgment of the High Court and allow this appeal. The judgments and decrees passed by the learned Munsiff in OS No.329 of 1967 dated 3.2.1969 as affirmed by the learned Subordinate Judge of South Arcot in A.S. No. 109 of 1969 dated 26.3.1973 will stand restored. The appellant shall be entitled to the costs in this appeal from the respondents, inclusive of Advocates' fee which is quantified at Rs.5,000/-. The appeal is allowed with costs.