

Supreme Court of India

O.T.M.O.M. Meyyappa Chettiar vs O.T.M.S.M. Kasi Viswanathan ... on 24 August, 1993

Equivalent citations: 1993 (3) ALT 63 SC, JT 1993 (4) SC 642, (1994) 1 MLJ 28 SC, 1993 (3) SCALE 540, 1993 Supp (4) SCC 1

Author: S Bharucha

Bench: K Singh, M Punchhi, S Bharucha

JUDGMENT S.P. Bharucha, J.

1. This appeal by special leave is directed against the judgment and order of the High Court at Madras dated 15th March, 1977, whereby, in a second appeal the concurrent findings of fact of the trial court and the first appellate court were reversed.

2. The plaintiff claimed possession of the properties described in Schedule A to the plaint and joint possession of properties described in Schedules B and C to the plaint. There was no dispute before the High Court and there is no dispute before us as to the properties described in Schedule A to the plaint, so that no further reference in that regard is required. The claim in respect of the Schedule B & C properties was that they were trust properties and consequential reliefs in respect of a one-fourth share in Schedule B properties and a one-half share in Schedule C properties was made. The defendants denied the case in the plaint and averred that the Schedule B and C properties were joint family properties that had been purchased must after the date of the deed of settlement and there had been no endowment of any share in those properties in favour of the trust. The trial court found that a one fourth share in the Schedule B properties and a one-half share in the Schedule C properties were trust properties and decreed the suit accordingly. The trial court's judgment was confirmed in appeal by the learned Additional District Judge. The defendant preferred a second appeal to the High Court. Upon a re-appraisal of the evidence on record the High Court came to the conclusion that the plaintiff had not proved that a one-fourth share in the Schedule B properties and a one-half share in the Schedule C properties were trust properties and that "the finding of the courts below that they are trust properties is perverse". Accordingly, the second appeal was allowed regarding the Schedule B and C properties.

3. We have no doubt that the High Court in hearing and deciding the second appeal was not justified in re-appraising the evidence on record nor could it justify its conduct in doing so by merely stating that the finding of the courts below was perverse. Learned counsel for the respondents submitted before us that Section 100 of the CPC, as it stood before it was amended by the Amendment Act, 1976, applied and that the High Court was, therefore, justified in re-evaluating the oral evidence. It is so well settled that this is not the law that no citation of precedents in this behalf is called for.

4. The appeal is allowed. The judgment and order under appeal is set aside and the judgment and order of the the first appellate court is restored.

5. There shall be no order as to costs.