Supreme Court of India
Madamanchi Ramappa & Anr vs Muthalur Bojjappa on 29 March, 1963
Equivalent citations: 1963 AIR 1633, 1964 SCR (2) 673
Author: P Gajendragadkar
Bench: Gajendragadkar, P.B.

PETITIONER:
MADAMANCHI RAMAPPA & ANR.

Vs.

RESPONDENT:
MUTHALUR BOJJAPPA

DATE OF JUDGMENT:
29/03/1963

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.
GUPTA, K.C. DAS

CITATION:
1963 AIR 1633 1964 SCR (2) 673
CITATOR INFO :
R 1976 SC2547 (25)

ACT:
Civil Procedure-Concurrent findings of fact-powers of second appellate court-insufficiency of evidence, if a ground for interference--Equity, if must yield to express provisions of law-Single Judge's decision-Grant of Special Leave-Constitution of India (1950), Art, 133 (3)- Code of Civil Procedure, 1908 (Act V of 1908), s. 100.

HEADNOTE:
The appellants' father bought 35 years before the date of the suit 40 acres of land from one Krishnappa out of his land measuring 166 acres. After the purchase the appellants'
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father obtained possession and continued in possession during his life time. On his death tire appellant's mother as their guardian remained in possession until 1947. The respondent obtained a mortgage decree against Krishnappa and in pursuance of the decree brought tire property to sale and at the court sale the respondent himself ])ought the property in 1943. In 1947 he managed to enter upon the land

in suit -unlawfully. Thereupon the appellants filed the present suit. The appellants' case was that the mortgage did not affect the appellants' title to the property which had already been purchased by their father and therefore the decree passed in the mortgage suit and the auction sale held thereunder did not bind them. They claimed a declaration of their title and asked for a decree for possession and mesne profits. The respondent denied that the appellants' father purchased the property from Krishnappa and asserted that they were cultivating the land as Krishnappa's tenants and therefore the mortgage, the mortgage decree and the auction sale were binding against them.

The trial Court on air examination of the documentary as well as the oral evidence gave a finding in favour of the appellants both in resPect of their title and their possession. Thereupon the respondent appealed to the District judge who concurred with the trial Judge in his findings of fact and found that the appellants had proved both their title and their possession within 12 years before the date of the suit. Neither in the trial Court nor in the first appellate court any question of construction of any document or any question of drawing an inference of law arose. The questions which arose were simple questions of fact.

Tire respondent appealed to the High Court and the appeal was heard by a single judge. Under the misconception that a judge is entitled in second appeal, to interfere with even concurrent findings of fact of the courts below 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 , the learned single judge examined the whole evidence and upset the concurrent findings of fact given by tire courts below. The appeal was allowed and the present appeal is by way of special leave granted by this Court' The main question raised in the appeal was whether the High Court has transgressed the limits prescribed by s. 100 Code of Civil Procedure in interfering in the concurrent findings of fact given by the two courts below.

Held that it has always been recognised that the sufficiency or adequacy of evidence to support a finding of fact is a

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matter for decision of the courts of facts and cannot be agitated in second appeal.

There is no jurisdiction to entertain a second appeal on the ground of erroneous findings of fact however gross or in-excusable the error may seem to be. Whenever this Court is satisfied that in dealing with a second appeal the High Court has, contravened the limits prescribed by s. 100 Code of Civil Procedure it becomes the duty of this Court to intervene and give effect to the said provisions.

The High Court cannot interfere with the concurrent findings of fact on grounds of equity and justice because 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.
Mussummal Durga Choudrain v. Jawahir Singh Choudhri, (1890) L. R. 17 1. A. 122, Deity Pattabhiramasiqwamy v. S. Hanymayya, A. I R. 1959 S. C. 57, and R. Ramachandra Ayyar v. Ramalingam [1963] 3 S. C. R. 604 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 376 of 1961.

Appeal by special leave from the judgment and decree dated March 5, 1959, of the Andhra Pradesh High Court, in Second Appeal No. 545 of 1955.

M. Rajagopal and K. R. Chaudhuri, for the appellants. A. V. Viswanatha Sastri and B. K. B. Nadu, for the respondent.

1963. March 29. The judgment of the Court was delivered by GAJENDRAGADKAR J.-This appeal by special leave is directed against the decision of a learned single judge of the High Court of Andhra Pradesh in a second appeal preferred before it by the respondent. There is no doubt that under Art.133(3) of the Constitution, no appeal lies to this court from the judgment, decree, or final order of one Judge of a High Court, and it has been the consistent practice of this Court not to encourage applications for special leave against the decisions of the High Courts rendered in second appeals; but in cases where the petitioners for special leave against the second appellate judgments delivered by a single judge of the High Court are able to satisfy this Court that in allowing a second appeal, the High Court has interfered with questions of fact and has thus contravened the limits prescribed by section 100 of the Code of Civil Procedure, it is not easy to reject their claim for special leave. As early as 1890 in the case of Mussummat Durga Choudhrain v. Jawahir Singh Choudhri, (1), the Privy Council emphatically declared that under s.584 of the earlier Code, which corresponds to s.100 of the present Code, there is no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact, however gross or inexcusable the error may seem to be; and they added a note of warning that no Court in India has power to add to, or enlarge, the grounds specified in s.100. The appellants' contention in the present appeal is that this warning has been patently disregarded and in allowing the respondent's appeal against them, the second appellate Court has interfered with concurrent findings of fact. That is the sole ground on which leave has been granted to the appellants and on which we propose to allow this appeal.

The facts leading to the present appeal are not many and they lie within a very narrow compass. Survey No.440-B situated in Rakatla village originally belonged to one Boya Krishnappa and it measured 166 acres. In the suit filed by the appellants in the Court of Subordinate Judge, Anantapur in 1951 (0. S. No. 72 of 1953), the appellants alleged that 40 acres out of the said land had been purchased by their father, Chinna Venkataramanappa from Boya Krishnappa about 35 years before

the date of the suit for consideration. (1) (1890) L. R. 17 1. A. 122.

After the sale took place, the appellants' father obtained possession of the property and continued in possession during his lifetime. On his death, the appellants' mother acting as their guardian remained in possession and management of the said property until 1947. The appellants' family had been paying the assessment for the land all the time and had been in its possession in an open and peaceful manner until 1947.

It appears that the respondent had obtained a mortgage decree in 0. S. No. 94/1940 against Boya Krishnappa in respect of the entire SurveyNo.440-B and in pursuance of the said mortgagedecree, brought the mortgaged property to sale.At the court sale, the respondent purchased the property himself in about 1943, and thereafter liebegan to obstruct the possession of the appellants.In 1947,the respondent managed to enter upon theland in suit unlawfully and that gave rise to the present suit. The cause of action for the suit is thus the wrongful dispossession of the appellants by the respondent by about 1947. The appellants pleaded that though Boya Krishnappa may have included the suit property in the mortgage deed executed by him in favour of the respondent on July 31, 1929, the said mortgage did not affect the 'appellants' title -to the property which had already been purchased by their father from the said Krishnappa, and so, the decree passed in the mortgage suit, and the auction sale held thereunder did not bind them. It is on these allegations that the appellant claimed a declaration of their title to the suit property and asked for a decree for possession as well as mesne profits, past and future.

This claim was resisted by the respondent. He denied that the appellants' father had purchased the property from Krishnappa and that the assessment for the land had ever been paid by the appellants' family as owners. According to him, the appellants had been cultivating the land in suit as tenants of Boya Krishnappa, and so, the mortgage executed by Krishnappt in his favour was binding against them and so was the mortgage decree and the auction sale that followed it. On these pleadings, the trial Court framed two substantive issues. The first issue was whether the appellants were entitled to the suit property and whether they were in possession within 12 years prior to the date of the Suit, and the second issue was whether the court sale set up by the respondent had taken place and was binding on the appellants. Both these issues were answered by the trial judge in favour of the appellants. On the question about the appellants' title, the trial judge placed the burden on the appellants and noticed the fact that the appellants had not produced any sale-deed to evidence the transaction of sale, nor had they produced a patta. He, however, examined the other documentary evidence adduced by appellants and found that the said evidence satisfactorily proved both their title and their possession within 12 years before the date of the suit. Exhibit A-8 is certified copy of the Changes Register of Rakatla village. This document showed the names of Boya Krishnappa and Venkataramanappa, the father of the appellants as the Pattadars. After the death of Venkataramanappa a circle was put round his name and a remark was made against it that since he had died, his sons, the appellants Venkanna and Ramappa, minors represented by their mother Lakshmamma as their guardian, were registered as Pattadars. According to the trial Judge, this entry must have been made prior to 1926, because in 1926, 1927 and 1928 there were no further changes. Then the trial judge examined Ext. A-1 which showed that the Kulam Number of 440-B was mentioned as 210. A number of cist receipts were produced by the appellants (Exts. A-2 to A-5

and A-9 to A-

35), and the trial Court came to the conclusion that these documents showed that throughout the period, the cist in respect of the land in suit was paid by the appellants' family. In fact, the respondent clearly admitted that the appellants' family had been in possession of the land, but he explained the said possession on the allegation that they were the tenants of Boya Krishnappa. The revenue documents on which the appellants relied were sought to be explained away by the respondent on the ground that the village officers were his enemies and they had fabricated the cist receipts. These contentions were rejected by the trial Court, and giving effect to the documentary evidence, it made a finding in favour of the appellants both in respect of their title and their possession within 12 years from the date of the suit. The fact that the appellants' father's name was not shown in the diglot exhibit B-1, did not appear material to the trial Court, because the said register was published in 1927 and at the time when it was prepared, the information about the transaction in favour of the appellant's father may not have reached the revenue officers. It is true that the appellants had sought to prove their possession of the land by producing certain rent notes alleged to have been executed in their favour by their tenants (Exts. A-6, A-7, A-36 & A-37), but the trial Court thought that these documents could not be accepted as satisfactory or genuine.

The trial Court then considered one circumstance which was against the appellants and on which the respondent relied. It appears that when the respondent put the mortgaged properties to sale in execution of his mortgage decree against Krishnappa, a Commissioner was appointed to value the crops standing in the land and in those proceedings, the appellants stood sureties for the crops at the instance of Krishnappa. The respondent's contention was that crops were standing on the suit land and that the appellants would not offer to give security for the said crops when the mortgagor Krishnappa was directed to furnish security for the value of the crops on the lands covered by the mortgage if they had been the owners of a part of the property. The trial Court was not impressed by this argument because it was not satisfied that the circumstances under which the said surety bond was executed clearly showed that the appellants had furnished security for any crops standing on the land at present in suit. it clearly appears from the Commissioner's report then made that crops were standing on a small portion of the entire survey No. 445-B. The security bond was in English and there was nothing to show that the surety offered by the appellants had anything to do with any crop standing on their land. That is why the trial Court was not prepared to attach any significance to this circumstances Since it found that the property belonged to the appellants' family either by transfer or by reason of adverse possession, it held that the mortgage executed by Krishnappa in favour of the respondent and subsequent proceedings under the said mortgage did not affect the appellant's title. That is how the Suit filed by the appellants was decreed.

The respondent challenged this decree by preferring an appeal in the Court of the District judge at Anantapur. The learned District judge framed one comprehensive point for determination and that was : whether the appellants had proved title to and possession of the suit property within 12 years before the date of their suit. Both parts of this issue were answered by him in favour of the appellants. Like the trial Court, he also noticed the fact that there was no sale-deed or patta on which the appellants relied, but be considered the oral and documentary evidence produced by both the parties and held that the trial judge was right in the findings recorded by him. In his opinion,

"the entire evidence in the case and the probabilities and circumstances made out by unimpeachable documentary evidence helped the appellants to prove both their title and their possession within 12 years before the date of the suit." Both the courts have noticed the fact that the respondent himself had admitted that about 20 or 25 years ago, all the lands in the locality including surevy No. 440-B were banjar, they were of no value and people were getting them for the mere asking. In fact, the mortgage deed executed in favour of the respondent supports this admission. The mortgage was in regard to 166 acres and the amount advanced was Rs. 650/only. This aspect of the matter has relevance in dealing with the question as to whether a registered document was necessary to convey title to the appellants' father in respect of the property in suit.

It will thus be seen that the effect of the findings concurrently recorded by the courts of fact is very clear. The property in suit when it was purchased was not shown to be worth more than Rs. 100/- and so, it was not unlikely that a sale as alleged by the appellants may have taken place between their father and Krishnappa; but since the evidence about the said sale was not satisfactory, the two courts considered their evidence about possession with a view to decide whether they had established a possessory title as claimed by them. The possession of the land was admitted to be with the appellants' family for more than the statutory period and as such, it was open and continuous. The plea of the respondent that the said possession was that of a tenant was rejected, and so, the said possession in law was adverse against the whole world. It was also clear that the possession continued until 1947 which was within twelve years before the date of the suit, These findings were based on appreciation of oral and documentary evidence examined in the light of the circumstances of the case and the probabilities. No question of construction of any document arose, nor did any question of drawing an inference of law arise in this case. The questions which 'arose were simple questions of fact and on them concurrent findings were recorded by the two courts. Aggrieved by the decree passed in his appeal by the District Court, the respondent moved the High Court under section 100 C. P. C., and his appear was heard by Sanjeeva Rao Nayudu J. The learned judge emphasised the fact that no sale deed had been produced by the appellants to prove their title, and then examined the documentary evidence on which they relied. He was inclined to hold that Ext. A-8 had not been proved at all and could not, therefore, be receive(] in evidence. It has been fairly conceded by Mr. Sastri for the respondent before us that this was plainly erroneous in law. The docu- ment in question being a certified copy of a public document need not have been proved by calling a witness. Besides, no objection had been raised about the mode of proof either in the trial Court or in the District Court. The learned judge then examined the question as to whether the said document was genuine, and he thought that it was a doubtful document and no weight could be attached to it. A similar comment was made by him in respect of the cist receipts on which both the courts of fact had acted. In his opinion, the said documents were also not genuine and could not be accepted as reliable. He then referred to the fact that the appellants had offered security in proceedings between the respondent and his judgment-debtor Boya Krishnappa, and held that the said conduct destroyed the appellants' case; and, he also relied on the fact that the leasedeeds produced by the appellants had been disbelieved and that also weakened their case. It is on these considerations that the learned judge set aside the concurrent findings recorded by the courts below, allowed the second appeal preferred by the respondent and directed that the appellants' suit should be dismissed with costs throughout. It is the validity of this decree which is challenged before us by the appellants and the principal ground on which the challenge rests is that in reversing concurrent

findings of fact recorded by the courts below, the learned judge has clearly contravened the provisions of s. 100 of the Code.

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 (1). In the case of Deity Pattabhiramaswami'v. S. Hanymayya (2), this Court had occasion to refer to the said 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. In R. Ramachandra Ayyar v. Ramalingam Chettiar (3), 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 (1) (1890) L.R, 17 J.A. 122. (2) A I.R 1959 S.C. 57. (3) [1963] 3 S.C.R. 604.

High Courts should bear in mind the caution and warning pronounced by the Privy Council in the case of Mst. Durga Chowdhrain'(1) and should not interfere with findings of fact.

It appears that the decision of this Court in Deity Pattabhiramaswamy (2), 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 recognised 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 (1) (1890) L.R. 17 I.A. 122 (2) [1963] 3 S.C. R. 604.

accepted without dissent and it can be stated without any doubt that it enunciates what can be properly characterised 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 prescribed 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 endeavour to avoid.

In the result, the appeal is allowed, the decree passed by the High Court is set aside and that of the District judge restored with costs throughout.

Appeal allowed.