Supreme Court of India
Easwari vs Parvathi & Ors on 10 July, 1948
Author: P C Ghose
Bench: Chandramauli Kr. Prasad, Pinaki Chandra Ghose

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1103 OF 2004

Easwari … Appellant

:Versus:

Parvathi & Ors. … Respondents

J U D G M E N T

Pinaki Chandra Ghose, J.

1. This appeal has been filed assailing the judgment and order dated July 22, 2003 passed by the High Court of Judicature at Madras in Second Appeal No.1806 of 1992. The High Court after perusing the facts and the evidence on record by the said judgment and order allowed the second appeal confirming the order of the Trial Court and setting aside the order passed by the first appellate court.

2. The brief facts of the case are as follows:

The respondents herein (plaintiffs before the Trial Court) filed a suit for declaration and injunction with regard to the properties described as schedule “A” and schedule “B” properties and the Trial Court passed the decree in favour of the plaintiffs for both the schedule properties. Assailing the said Trial Court’s decision the appellant herein filed an appeal before the Lower Appellate Court. The Lower Appellate Court confirmed the “B” schedule property in favour of the plaintiffs (respondents herein) but reversed the decree with regard to “A” Schedule property culminating in filing the second appeal.

3. The plaintiffs, respondents herein, filed Original Suit No. 59 of 1985 before the District Munsif Court at Polur as the legal heirs of deceased Ponnangatti Gounder. The disputes pertained to the properties which were held by deceased Ponnangatti Gounder and his first wife who pre-deceased

him. Ponnangatti Gounder acquired the suit "A" schedule property through succession from his ancestors. The suit property mentioned as schedule "B" property was purchased by Muniammal by registered conveyance deed dated September 14, 1970. Both were in possession and enjoyment of Ponnangatti Gounder and Muniammal and after their death the plaintiffs were and are in possession of the said properties. After the death of Muniammal, it is alleged by the first defendant and her brother, the second defendant that the said Ponnangatti Gounder married the first defendant as a result whereof she made a claim over the suit property.

4. Issues were framed by the Trial Court and after assessing the evidence, both oral and documentary, the Trial Court decreed the suit for both "A" and "B" schedule properties in favour of the plaintiffs. Assailing the said decree an appeal was preferred by the present appellant before the First Appellate Court. The First Appellate Court reversed the decree in respect of the schedule "A" property in the suit. Assailing such judgment and decree, second appeal was filed before the High Court by the plaintiffs.

5. So far as the dispute, as it appears, cannot be extended with regard to schedule "B" property which belonged to Muniammal, since it was purchased by her on September 14, 1970 through Ex.B-6 in respect of which the decree passed by the Trial Court was confirmed by the Lower Appellate Court, the defendant has no claim over the same. The dispute between the parties is only in respect of the schedule "A" property in the suit.

Looking at the facts of the case, the primary question as it appears to us, which has to be dealt with is whether the first defendant, the appellant herein, is the second wife of the deceased Ponnangatti Gounder and whether she is entitled to have a share in the suit "A" schedule property.

6. The High Court dealt with the matter at length. It is stated by the appellant herein before the Trial Court that Muniammal died ten years ago i.e. in 1976. It is further stated that on December 15, 1977 Ponnangatti married to the first defendant, the appellant herein in the Devasthanam of Sri Perianayaki Saneda Kanagagiri Eswarar at Devikapuram. To prove the factum of marriage, she produced a temple receipt before the High Court being Ex.B-8 which was produced from the lawful custody of the trustee of the temple. Exs.B-9 and B-10 were also produced and said to be the accounts for the gifts made at the time of the said marriage. The first defendant/respondent also produced Exs.B-1 and B-2 which are the voters list of 1978 and 1983 wherein it appears that the first defendant was described as the wife of Mannangatti and Ponnangatti. The pass books of the bank accounts for the year 1984 and 1985 being Exs. B-3 and B-4 and bankers' reply were also produced to show that the first defendant was described as wife of the deceased Ponnangatti Gounder. The High Court duly assessed all documents and held that no reliance can be placed on the Exh.B-3 to B-6 as they only represent the unilateral description of the first defendant as wife of Ponnangatti Gounder. Similarly, Ex.B-7 was a mortgage deed executed just prior to the filing of the suit where also the unilateral description of the first defendant as wife of Ponnangatti Gounder can be seen. Similarly, Exs.B-9 and B-10 also cannot be relied upon because it is not very difficult to prepare these documents for the said purpose. Hence the High Court did not place reliance on such exhibits.

7. Accordingly, the High Court was left only with the documentary evidence of Ex.B-8 on the one hand and Exs.B-1 and B-2 on the other hand. Ex.B-8 was produced from the lawful custody of trustee of the temple and the said trustee while examining, deposed before the Court in his cross-examination that he did not know about the actual marriage said to have been conducted in the temple. In these circumstances, the probative value of Ex.B-8, as correctly appreciated and held by the High Court, gets diluted. Other Exhibits being Exs. B-1 and B-2 were also specifically dealt with by the High Court and the High Court after assessing the document held that different descriptions of the name of husband of the first respondent are given in the voters list. Therefore, the High Court did not place any reliance on the said voters list.

8. The High Court also placed reliance on Bhaurao Shankar Lokhande & Anr. v. State of Maharashtra and Anr.[1] and found that mere going through certain ceremonies with intention of marriage will not make the ceremonies as prescribed by law or approved by any established custom. The bare fact of a man and a woman living as husband and wife does not normally give them the status of husband and wife.

9. With regard to co-habitation also the High Court held that there is no evidence of long co-habitation, even assuming that Exs. B-1 and B-2 are true, they only show the cohabitation of only one year in 1978 and another year in 1983. In these circumstances, the High Court held that the alleged marriage should be proved only on the basis of legal presumption of long co- habitation which is not present in the instance case. For the proof of marriage, there is no evidence except Ex.B-8 which although was produced from lawful custody of the trustee of the temple, but it did not mention anything about the marriage ceremony or the conduct and solemnization of the marriage at all. The claim of the respondent herein that Murugan and Selvi were born to Ponnangatti but no birth certificate was produced before the Court and in these circumstances the High Court held that the Lower Appellate Court, without proper evidence of marriage of the first defendant (appellant herein) with Ponnangatti, had erroneously come to the conclusion as if the marriage had been conducted properly. Similarly, there could be no presumption under Section 114 of the Evidence Act because the factor of long cohabitation has not been established. In these circumstances, the High Court allowed the Second Appeal, set aside the decree and judgment of the First Appellate Court and confirmed the decree passed by the Trial Court in respect of both Schedule “A” and Schedule “B” properties in favour of the plaintiffs.

10. The case of the appellant before us is based on two grounds; firstly, that the High Court incorrectly allowed the Second Appeal without formulating a substantial question of law in light of this Court’s decision in Veerayee Ammal vs. Seeni Ammal[2] wherein it has been held that as per Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”) the High Court can only entertain a second appeal when there is a substantial question of law involved; secondly, it has been submitted by the learned counsel for the appellant that the High Court erred in terming the marriage of the appellant and deceased Ponnangatti Gounder as invalid inspite of this Court’s decision in S. Nagalingam v. Sivagami[3] wherein it was held that: “17. .....In the Hindu Marriage Act, 1955, there is a State amendment by the State of Tamil Nadu, which has been inserted as Section 7-A. The relevant portion thereof is as follows:

"Section 7-A. Special provision regarding suyamariyathai and seerthiruththa marriages.—(1) This section shall apply to any marriage between any two Hindus, whether called suyamariyathai marriage or seerthiruththa marriage or by any other name, solemnised in the presence of relatives, friends or other persons—

(a) by each party to the marriage declaring in any language understood by the parties that each takes the other to be his wife or, as the case may be, her husband; or

(b) by each party to the marriage garlanding the other or putting a ring upon any finger of the other; or

(c) by the tying of the thali.

(2)(a) Notwithstanding anything contained in Section 7, but subject to the other provisions of this Act, all marriages to which this section applies solemnised after the commencement of the Hindu Marriage (Tamil Nadu Amendment) Act, 1967, shall be good and valid in law.

(b) Notwithstanding anything contained in Section 7 or in any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Hindu Marriage (Tamil Nadu Amendment) Act, 1967, or in any other law in force immediately before such commencement or in any judgment, decree or order of any court, but subject to sub-section (3), all marriages to which this section applies solemnised at any time before such commencement, shall be deemed to have been, with effect on and from the date of the solemnization of each such marriage, respectively, good and valid in law.

(3) * * *

(a) * * *

(i) - (ii) * * *

(b) - (c) * * *

(4) * * *"

18. Section 7-A applies to any marriage between two Hindus solemnised in the presence of relatives, friends or other persons. The main thrust of this provision is that the presence of a priest is not necessary for the performance of a valid marriage. Parties can enter into a marriage in the presence of relatives or friends or other persons and each party to the marriage should declare in the language understood by the parties that each takes the other to be his wife or, as the case may be, her husband, and the marriage would be completed by a simple ceremony requiring the

> parties to the marriage to garland each other or put a ring upon any finger of the other or tie a thali.

Any of these ceremonies, namely, garlanding each other or putting a ring upon any finger of the other or tying a thali would be sufficient to complete a valid marriage. Sub-section (2)(a) of Section 7-A specifically says that notwithstanding anything contained in Section 7, all marriages to which this provision applies and solemnised after the commencement of the Hindu Marriage (Tamil Nadu Amendment) Act, 1967, shall be good and valid in law.

11. The appellant has first challenged the correctness of the High Court in allowing the Second Appeal under Section 100 of the Code, which is reproduced as under:

"Section 100- Second appeal- (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed exparte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question." A plain reading of the said provision conveys that a second appeal be allowed only when there is a 'substantial' question of law involved. However, it is settled law that the High Court can interfere in second appeal when finding of the First Appellate Court is not properly supported by evidence. In Vidhyadhar v. Manikrao & Anr.[4] this Court held as under "3. The findings of fact concurrently recorded by the Trial Court as also by the Lower Appellate Court could not have been legally upset by the High Court in a second appeal under Section 100 CPC unless it was shown that the findings were perverse, being based on no evidence or that on the evidence on record, no reasonable person could have come to that conclusion." Furthermore, in Yadarao Dajiba Shrawane (dead) by LRS v. Nanilal Harakchand Shah (Dead) & Ors.[5] this Court stated:

> "31. From the discussions in the judgment it is clear that the High Court has based its findings on the documentary evidence placed on record and statements made by some witnesses which can be construed as admissions or conclusions. The position is

well settled that when the judgment of the final court of fact is based on misinterpretation of documentary evidence or on consideration of inadmissible evidence or ignoring material evidence the High Court in second appeal is entitled to interfere with the judgment. The position is also well settled that admission of parties or their witnesses are relevant pieces of evidence and should be given due weightage by courts. A finding of fact ignoring such admissions or concessions is vitiated in law and can be interfered with by the High Court in second appeal." The above view of the Court must be read in consonance with the decision of this Court in Rattan Dev v. Pasam Devi[6] wherein it was specifically stated that:

"Non-application of mind by the appellate court to other material, though available, and consequent failure of the appellate court to discharge its judicial obligation, did raise a question of law having a substantial impact on the rights of the parties, and therefore, the second appeal deserved to be heard on merits." In light of the above decisions we are of the opinion that the High Court cannot be precluded from reversing the order and judgment of the Lower Appellate Court if there is perversity in the decision due to mis-

appreciation of evidence. This holds good especially in light of the principle that even when both the Trial Court and the lower court have given concurrent findings, there is no absolute ban on the High Court in second appeal to interfere with the facts (See: Hafazat Hussain v. Abdul Majeed[7])

12. Having perused the impugned judgment in the Second Appeal and the judgment of the First Appellate Court which has been set aside by the High Court, we are of the opinion that the High Court correctly formulated the substantial question of law, the same is produced as under:

"Whether the Lower Appellate Court erred in not taking into account the law laid down in 1989 (2) L.W. 197 (DB)?" In Mohan v. Santha Bai Ammal[8] being the case referred to in the abovementioned question, it has been held that mere receipt of showing payment of money without obtaining and producing the marriage certificate or without summoning production of the original marriage register maintained by the temple, may not be sufficient to establish the marriage. In light of the same the High Court while answering the substantial question, found no substantial evidence by which factum of marriage is established.

13. After perusing the documentary evidence and other evidence before us, we are of the opinion that the High Court was correct in entertaining the matter in second appeal. The only aspect which needs to be considered by us is, whether the High Court correctly appreciated the evidence and concluded that the First Appellate Court without proper evidence of marriage held that the marriage took place.

14. In our opinion, the High Court correctly assessed and appreciated the facts in the instant case and we concur with the views expressed by the High Court. We also endorse the reasoning given by

the High Court. In our opinion, from the evidence on record it cannot be said that the marriage between Ponnangatti Gounder and Easwari was proved.

15. For the discussions and the reasoning given in the preceding paragraphs, we do not find merit in the appeal and accordingly we affirm the judgment and order passed by the High Court and dismiss this appeal.

.....J.

(Chandramauli Kr. Prasad) New Delhi;

.....J.

July 10, 2014 (Pinaki Chandra Ghose)

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[1] (AIR 1965 SC 1564)
[2] (2002) 1 SCC 134
[3] (2001) 7 SCC 487
[4] (1999) 3 SCC 573
[5] (2002) 6 SCC 404
[6] (2002) 7 SCC 441
[7] (2001) 7 SCC 189
[8] 1989 (2) L.W. 197