Supreme Court of India
Chinthamani Ammal vs Nandagopal Gounder And Anr on 20 February, 2007
Author: S Sinha
Bench: S.B. Sinha, Markandey Katju

CASE NO.:
Appeal (civil) 6198 of 2000

PETITIONER:
Chinthamani Ammal

RESPONDENT:
Nandagopal Gounder and Anr

DATE OF JUDGMENT: 20/02/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:

J U D G E M E N T S.B. SINHA,J.

This appeal is directed against a judgment and decree dated 31.07.1998 passed by a learned Single Judge of the High Court of Judicature at Madras in Second Appeal No. 1899 of 1985 whereby and whereunder an appeal under Section 100 of the Code of Civil Procedure preferred by the respondents herein from a judgment and decree dated 11.09.1985 passed by the Subordinate Judge, Arni, North Arcot District in Appeal Suit No. 68 of 1984 was allowed, in turn, allowing an appeal from a judgment and decree dated 27.07.1984 passed by the Court of the Principal District Munsif, Arni in Original Suit No. 1301 of 1979.

Plaintiffs in the suit are the respondents before us. The said suit was filed for declaration and injunction against the appellant herein.

Kesava Gounder and Respondent No. 1 were brothers. They admittedly were members of a joint family. Kesava Gounder was suffering from small pox. He died in 1943. Immediately prior to his death, he allegedly expressed his intention to severe his status as a member of the joint family.

The wife of the said Kesava Gounder (mother of the appellant herein) and the appellant were admittedly looked after by the respondents. However, the mother of the appellant left the family in or about 1945 and married another person. Appellant was not only brought up by Respondent No. 1, she was also given in marriage. She allegedly claimed a share in the property. Possession of the respondents was sought to be disturbed. Respondents filed a suit for declaration and injunction against her in the Court of Munsif. The principal issue which arose for consideration in the said suit was as to whether the said Kesava Gounder had expressed his intention to separate as a result whereof the joint family severed although no partition by meets and bounds took place.

The contention of the respondents was that the property being a joint family property on the death of Kesava Gounder in 1943, they succeeded thereto by survivorship and had been enjoying the same ever since and only at a much later date the appellant made an attempt to disturb their possession.

Appellant's husband had also filed a suit claiming a leasehold right in the said property.

Both the suits were heard together. The Trial Court by its judgment and order dated 27.07.1984 opined that the said Kesava Gounder died in the year 1943 as a member of undivided joint family and, thus, the appellant had derived no right, title and interest in the said property by succession or otherwise. An appeal preferred thereagainst by the appellant, however, was allowed by the Subordinate Judge holding that the father of the appellant died as a divided member of the joint family as a result whereof she became entitled to claim half share. The second appeal preferred by the respondents herein from the said judgment and decree passed by the first appellate court has been allowed by reason of the impugned judgment. Mr. B. Sridhar, learned counsel appearing in support of the appellant, would submit that although the appellant at the time of her father's death was only three years old, the factum of separation was proved by DW-2 - her aunt, who in her deposition stated:

"The father of this defendant while he was unwell became divided in status. At that prevailing situation out and out partition was not possible. The first plaintiff gave his word to take care of this defendant and her mother."

The learned counsel would contend that in view of the decision of this Court in A. Raghavamma and another v. A. Chenchamma and another [AIR 1964 SC 136], the father of the appellant and Respondent No. 1 herein having separated themselves, she succeeded to the share of her father.

The learned counsel appearing on behalf of the respondents, on the other hand, would support the judgment.

Although, before us, the appellant has made a claim of deriving right, title and interest by way of succession to the interest of late Kesava Gounder, in the written statement filed by her before the learned Trial Judge, only a limited right was claimed, which, allegedly, culminated into an absolute title in terms of Section 14(1) of the Hindu Succession Act, 1956. The High Court in its judgment held that the property in suit being agricultural property, the Hindu Women's Right to Property Act, 1937 being not applicable in relation thereto in the year 1943, the mother of the appellant or for that matter, she herself could not have succeeded to her father's interest in the property which was a joint family property. It was further held that the plea that the said Kesava Gounder died as a divided member was put forth 36 years after his death, was wholly improbable.

The legal position that the appellant herein could not claim any right, title and interest whether in terms of the provisions of the Hindu Women's Right to Property Act, 1937 or as a successor of the said Kesava Gounder, if the joint status was not severed, is not in dispute. The Hindu Women's Right to Property Act was not applicable in relation to agricultural land. The State of Madras made an amendment in that behalf in the year 1947 whereafter, only a widow became entitled to claim

limited ownership in the share of her husband. The mother of the appellant i.e. wife of the said Kesava Gounder, thus, did not derive any right, title and interest in the property of her husband in the year 1943, when he expired. Furthermore, admittedly, she left the family and married another person in the year 1945 and thus the question of her deriving any benefit in terms of the 1947 amendment also did not arise.

Before the learned Trial Judge, the parties adduced their respective evidences. The learned Trial Judge had an occasion to look to the demeanour of the witnesses. He came to the conclusion that the properties in suit had all along been held as a joint family property opining that the father of the appellant did not have any divided status as alleged or at all.

The first Appellate Court reversed the said finding relying only on or on the basis of the statement made by DW-2 - the aunt of the appellant which has been noticed by us hereinbefore. The said statement by itself does not prove that the said Kesava Gounder made an unequivocal declaration that he intended to separate himself from his brother or the same was duly communicated to the other co-sharers. DW-2 did not say when such a declaration was made in presence of all coparceners. It was not stated that at the time of making such purported declaration, the respondents were present.

If such a declaration had been made and the respondents herein accepted the same, ordinarily, not only the respondents would be asked to divide the property by partition by meets and bounds but also to look after the said property which fell in the share of the appellant. Allegedly, Respondent No. 1 was requested to look after his family and not their property. The property, admittedly, continued to be possessed as a joint property. It was never partitioned by meets and bounds. Appellant never paid any rent separately. No revenue record was prepared in her name.

Even the husband of the appellant claimed the property as a lessee. When the properties continued to be possessed jointly by the owners thereof, a presumption in regard to the status of joint family both backward and forward must be raised as no evidence was brought on records to establish unequivocal declaration on the part of Kesava Gounder to separate himself from the joint family. If having regard to the nature of oral evidences adduced before it, the learned Trial Judge came to the conclusion that the appellant had failed to prove her case, the first Appellate Court, in our opinion, as has rightly been held by the High Court, could not have reversed the said finding without assigning sufficient and cogent reason therefor.

In law there exists a presumption in regard to the continuance of a joint family. The party who raises a plea of partition is to prove the same. Even separate possession of portion of the property by the co-sharers itself would not lead to a presumption of partition. Several other factors are required to be considered therefor.

Furthermore, when the learned Trial Judge arrived at a finding on the basis of appreciation of oral evidence, the first Appellate Court could have reversed the same only on assigning sufficient reasons therefor. Save and except the said statement of DW-2, the learned Judge did not consider any other materials brought on records by the parties.

In Mandholal v. Official Assistance of Bombay [AIR 1950 Federal Court 21], it was observed:

"It is true that a Judge of first instance can never be treated as infalliable in determining on which side the truth lies and like other tribunals he may go wrong on question of fact but on such matters if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at, the appeal court should not lightly interfere with the judgment."

[See also Madhusudan Das v. Narayanibai - AIR 1983 SC 114 : (1983) 1 SCC 35], In Smt. Rajbir Kaur and Another v. S. Chokesiri and Co. [(1989) 1 SCC 19], this Court observed:

"48. Reference on the point could also usefully be made to A.L. Goodharts article in which, the learned author points out :

"A judge sitting without a jury must perform dual function. The first function consists in the establishment of the particular facts. This may be described as the perceptive function. It is what you actually perceive by the five senses. It is a datum of experience as distinct from a conclusion.

It is obvious that, in almost all cases tried by a judge without a jury, an appellate court, which has not had an opportunity of seeing the witnesses, must accept his conclusions of fact because it cannot tell on what grounds he reached them and what impression the various witnesses made on him."(emphasis supplied)

49. The following is the statement of the same principle in "The Supreme Court Practice: "

Great weight is due to the decision of a judge of first instance whenever, in a conflict of testimony, the demeanour and manner of witnesses who have been seen and heard by him are material elements in the consideration of the truthfulness of these statements. But the parties to the cause are nevertheless entitled as well on questions of fact as on questions of law to demand the decision of the Court of Appeal, and that court cannot excuse itself from the task of weighing conflicting evidence, and drawing its own conclusions, though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.(pp. 854-55) ... Not to have seen witnesses puts appellate judges in a permanent position of disadvantage against the trial judge, and unless it can be shown that he has failed to use or has palpably misused his advantage for example has failed to observe inconsistencies or indisputable fact or material probabilities [ibid. and Yuill (1945) p. 15; Watt v. Thomas] the higher court ought not take the responsibility of reversing conclusions so arrived at merely as the result of their own comparisons and criticisms of the witnesses, and of their view of the probabilities of the case. ... (p. 855) ... But while the Court of Appeal is always reluctant to reject a finding by a judge of the specific or primary facts deposed to by the witnesses, especially when the finding is based on the credibility or bearing of a witness, it is willing to form an independent opinion upon the proper inference to be drawn from it.... (p. 855)

50. A consideration of this aspect would be incomplete without a reference to the observations of B.K. Mukherjea, J., in Sarju Pershad Ramdeo Sahu v. Raja Jwaleshwari Pratap Narain Singh which as a succinct statement of the rule, cannot indeed be bettered :

"The question for our consideration is undoubtedly one of fact, the decision of which depends upon the appreciation of the oral evidence adduced in the case. In such cases, the appellate court has got to bear in mind that it has not the advantage which the trial Judge had in having the witnesses before him and of observing the manner in which they deposed in court. This certainly does not mean that when an appeal lies on facts, the appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. The rule is and it is nothing more than a rule of practice that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of the witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judges notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate court should not interfere with the finding of the trial Judge on a question of fact.

51. The area in which the question lies in the present case is the area of the perceptive functions of the trial Judge where the possibility of errors of inference does not play a significant role. The question whether the statement of the witnesses in regard to what was amenable to perception by sensual experience as to what they saw and heard is acceptable or not is the area in which the well-known limitation on the powers of the appellate court to reappreciate the evidence falls. The appellate court, if it seeks to reverse those findings of fact, must give cogent reasons to demonstrate how the trial court fell into an obvious error.

52. With respect to the High Court, we think, that, what the High Court did was what perhaps even an appellate court, with full fledged appellate jurisdiction would, in the circumstances of the present case, have felt compelled to abstain from and reluctant to do. Contention (c) would also require to be upheld."

In Jagannath v. Arulappa and Another [(2005) 12 SCC 303], this Court while considering the scope of Section 96 of the Code of Civil Procedure opined that it would be wholly improper to allow first appeal without adverting to the specific findings of the Trial Court.

In H.K.N. Swami v. Irshad Basith (Dead) By LRs. [(2005) 10 SCC 243], this Court opined that the appellate court is required to address all the issues and determine the appeal upon assignment of cogent reasons. In this view of the matter, it is not necessary for us to consider the submission of Mr. Sridhar in regard to the effect of the severance of the joint status, as adumbrated by this Court in A. Raghavamma (supra).

For the reasons aforementioned, there is no merit in this appeal, which is accordingly dismissed. However, in the facts and circumstances of this case, there shall be no order as to costs.