
(2000) 10 MAD CK 0081

In the Madras High Court

Case No : R.A. No. 44 of 2000 in S.A. No. 739 of 1999 and C.M.P. No's. 11444 and 11445 of 2000

Mani Janagarajan

APPELLANT

Vs

Kammavar Sangam

RESPONDENT

Date of Decision : 30-10-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 47 Rule 8, 100
Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 11, 15, 64C

Citation : (2000) 4 CTC 425 : (2001) 1 RCR(Civil) 296

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : Mr. V. Shanmugham, for the Appellant; Mr. M.V.S. Parthasarathy, for the Respondent

Judgement

1. The above Review Application has been filed to review the judgment dated 19.7.1999 made in Second Appeal No.739 of 1999.

2. The grounds taken on behalf of the review applicant are that the patta issued under settlement proceedings is one entirely different from mutation proceedings and as such, it is having a better title since after coming into force of the Estate Abolition Act the lands are vested with the Government and the patta granted by the settlement authorities could be deemed as a title deed. For the said proposition, the learned counsel appearing for the review applicant has relied on a decision in Vatticherukuru village Panchayat v. Nori Venkatarama Deekshitulu and others, 1991 Suppl. (2) SCC 228. The second contention is that there is no correlation between pymash number 350 and survey number 310 and the third contention is that no substantial questions of law have been raised in the Second Appeal and as such the Order passed by this Court is without Jurisdiction in view of Section 100 of C.P.C.

3. To elaborate the above said three contentions, the learned counsel Mr.

V.Shanmugham has made an elaborate argument and taken me through the various provisions of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, particularly Sections 11 to 15 and Section 64C.

4. For the purpose of deciding this review application, the brief facts of the case, which are necessary are as follows:

The plaintiff filed O.S.No.366 of 1993 to declare his title to the property and for consequential injunction to restrain the defendant from interfering with his possession. It is stated in the plaint that the property originally belonged to one Shanmuga Nadar, who was the grandfather of plaintiff; that after his demise, the property devolved on plaintiff in oral partition; that since then he is in exclusive possession of the same for more than forty years; that the patta for the property stands in the name of the plaintiff with effect from 7.11.1959; that the plaintiff is also paying the kist to the property from 20.5.1959; that Patta pass book is also given in the name of the plaintiff by the Tahsildar.

5. It is the further case of the plaintiff that the defendant on 4.10.1993 tried to interfere with the peaceful possession of the plaintiff; that though the plaintiff restrained the defendant, but apprehends interference of the defendant over the enjoyment of the suit property; that the cause of action of the suit arose On 7.11.1959 on which date patta for the suit property was given to the plaintiff, 10.12.1979 when patta pass book was issued and on 4.10.1993 when the defendant attempted to interfere with the possession of the plaintiff. On these averments, the suit has been filed to declare the plaintiff's title to the suit property and for consequential injunction.

6. The defendant filed written statement and denied the title of the plaintiff. According to the defendant, the suit property is portion of larger extent having more than Ac.2.73 cents in Survey number 310 originally belonged to Ramasamy Naicker, son of Rengappa Naicker; that Ramasamy Naicker leased out an extent of 9 cents on the south west to the local fund for quarrying purpose; that the appellant Sangham purchased the property by Sale deed dated 1.8.1921 for valuable consideration of Rs.2500; that since then the defendant is in possession of the property and the attempted trespass is denied and prayed for dismissal of suit.

7. The trial Court decreed the suit on the basis of the patta granted by the authorities. The appeal against the said Judgment is also dismissed. Against the said Order of dismissal of the appeal in A.S.No.176 of 1996, Second Appeal in S.A.No.739 of 1999 is filed. In the said Second Appeal, the following questions of law have been raised.

"(a) Whether the courts below erred in law and misdirected themselves in granting the declaration relief merely on the basis of patta in the absence of any other oral or documentary evidence of title or in the absence of alleged acquiring of suit property in the alleged oral partition?

"(b) Whether the courts below erred in law and misdirected themselves in granting the relief with respect to the entirety of the suit property in the absence of any evidence or explanation for entitlement of more extent of lands by the plaintiff/respondent when admittedly lesser extent is granted under Ex.A.1 settlement proceedings?

8. After ordering notice of motion, this Court heard the arguments of the counsel for both sides on the basis and with reference to the questions of law raised. This Court after hearing the elaborate arguments of the senior counsel, set aside the judgments of the courts below on the ground that the plaintiff has no title, and the question of granting of relief on the basis of possessory title may not arise since the appellant herein is having a better title, as against the true owner or against a person having a better title a person claiming possessory title cannot get injunction. The said judgment has been now sought to be reviewed on the grounds above stated.

9. The above said review application has been filed under Order 47, Rule 1 of the Civil Procedure Code. The grounds raised for seeking review of the judgment dated 19.7.1999 would show that none of the grounds stated therein can strictly speaking be said to fall within the ambit and scope of Order 47, Rule 1 of C.P.C. The present application in effect challenge the correctness of the judgment of this Court on the premise that patta issued under settlement proceedings, is different from patta issued under mutations proceedings and the reasoning given in the judgment under review, the defendants are having better title than the one conferred to the plaintiff under Ex.A.1 is error apparent on the face of the record and there is no correlation between pymash No. 350 and survey number 310 and this court has no jurisdiction reverse the concurrent finding of the courts below u/s 100 of C.P.C. The above said grounds, in my view, cannot be treated as error apparent on the face of the record, so as to invoke Order 47, Rule 1 of C.P.C.

10. It is now well settled that review Proceedings have to be strictly confined to the ambit and scope of Order 47, Rule 1 of C.P.C, Under Order 47, Rule 1 of C.P.C, a judgment may be open to review, inter alia, if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise the power of review under Order 47, Rule 1 of C.P.C. In exercise of jurisdiction under Order 47, Rule 1 of C.P.C., it is not permissible for an erroneous decision to be re-heard and corrected. A review petition has a limited purpose and cannot be allowed to be an appeal in disguise.

11. The learned counsel Mr.Shanmugham appearing for the petitioner has relied on the following judgments to sustain the review application:

(1) Rao Bahadur Mothey Gangaraju Zamindar Garu of Ellore Vs. Sree Raja Bommadevara Venkatrayulu Naidu Bahadur Zamindar Garu of Pangidigudem, ;

(2) Dr. Dwaraka Bai Vs. Professor Nainan Mathews, ; (3) Moran Mar Basselios Catholicos and another v. Most Rev. Mar Poullose Athanasius and others, AIR 1954 SC 526; and (4) The Union of India v. Shri Sube Ram and others, (1996) 10 S.C. 529.

12. The decision in Rao Bahadur Mothey Ganqaraju, Zaniindar Garu, Ellore v. Sree Raja Bonmadevara, Venkatrayulu Naidu Bahadur Zamindar Garu, Pangidigudem, AIR 1943 Mad. 235 is on the point when the Court grants an application for review; which may hear the case in full and deal with every point which thinks necessary to consider before passing a fresh order. There cannot be any dispute with regard to the proposition laid down by the said decision. The question remains in this case is whether the grounds raised are error apparent on the face of the record as couched under Order 47 of C.P.C and as considered by various courts including the Apex Court. The preponderance of the judgment clearly shows that only those errors which are self evident without any judicial process, that can only be rectified by means of a review,

13. In the case Dr. Dwaraka Bai Vs. Professor Nainan Mathews, also, Order 47, Rule 8 of C.P.C has been considered and AIR 1938 Mad. 573 has been referred to. A particular portion of this Judgment can usefully be referred to since the learned counsel Mr. Shanmugham has argued that in the present review application, notice has been ordered by this Court, stay also initially is granted and subsequently vacated and hence it is a fit case to grant the relief sought for :

"We may at the outset refer to the valuable observations of Jenkins C.J as to the three stages of a review application. The first is the "ex parte" stage when the Court may either reject the application at once or may grant a rule calling the other side to show cause why review should not be granted. In the second stage the rule may either be admitted or rejected. If the rule is discharged, the case ends then and there; if on the other hand the rule is made absolute then the third stage is reached. The case is then heard on the merits and may result in a repetition of the former decree or in some variation of it."

14. It is true that notice has been ordered in this case by this Court. That would not mean that the, review application has been ordered as prayed for. The three states as stated above are successive stages of each other. The notice ordered in the review application is only for the purpose of putting the other side on notice and have his say also in the review application. Hence, the reliance on the judgment made in Dr. Dwaraka Bai Vs. Professor Nainan Mathews, would not advance the case of the petitioner herein.

15. The other case relied on by the learned counsel Mr. Shanmugam is Moran Mar. Basselios Catholicos and another v. Most Rev. Mar Poullose Athanasius and others AIR 1954 SC 526 for the reason that the words "any other reason" would also mean "sufficient reason" to review the judgment. But in the very same judgment, it has been categorically stated that the word "any other sufficient reason" must mean "a reason sufficient on grounds, atleast analogous to those

specified in the rule". In view of the said categorical exposition of law, this judgment is quite against the case of the petitioner.

16. The last decision relied by the learned counsel for the purpose of sustaining the review application is *The Union of India v. Shri Sube Ram and others*, JT (1996) 10 S.C. 529. In that case, the Court has held that if it were a case of superior Court having interpreted law and the law having become final, by Order 47, Rule 1 of C.P.C, it could not constitute a ground for review of the judgment. But the Court lacks jurisdiction. It is settled legal position that it is a nullity and it can be raised at any stage. This judgment is also, in my opinion, not supporting the case of petitioner, Even assuming for the sake of argument that the Order passed in Second Appeal No.739 of 1999 dated 19.7.1999 is erroneous order. Can it be said that this Court has no jurisdiction to decide the Second Appeal?.

17. The learned counsel appearing for the petitioner has also argued that since the matter has been taken up for final disposal after hearing the other side, at the notice of motion stage, no substantial questions of law have been raised and has been decided and thus this Court has no jurisdiction. Admittedly, the case has not been admitted by this Court. Prior to admission, notice has been issued on the respondent and the respondent entered appearance through counsel and argued the Second Appeal on the basis of the questions of law raised in the memorandum of Second Appeal and it is manifest from paragraph No.14 of the judgment wherein it is categorically stated that the learned Senior Counsel for the respondent also argued the matter on the basis of the above substantial questions of law. Hence, the argument contra to same as raised is devoid of any merits.

18. The learned counsel appearing for the petitioner has also relied on the decision in *Kshitish Chandra Purkait Vs. Santosh Kumar Purkait and others*, and argued that u/s 100 of C.P.C. the Court has to formulate the substantial questions of law and put the opposite party on notice and give a fair and proper opportunity to meet the point. In the absence thereof hearing of Second Appeal would be illegal. I am at loss to understand how this judgment is applicable to the facts or the present case. As stated above, two specific questions of law have been formulated and raised in the memorandum of grounds. Even prior to admission of Second Appeal 1, notice of motion has been ordered and in response to the notice of motion, the respondent has engaged the senior counsel and the senior counsel has also argued the matter on the basis of and with reference to the substantial questions of law formulated and raised in the memorandum of grounds and a decision has been arrived at by this Court, In view of the same, I am not able to countenance this point also.

19. Further, the learned counsel appearing for the petitioner has relied on a decision in *Vatticherukuru village Panchayat v. Nori Venkataraina Deekshithulu and others*, 1991 Suppl. (2) SCC 228 for the proposition that the patta granted in the settlement proceedings have greater evidentiary value so as to sustain his argument that the observation in the judgment under review that the appellant is

having a better title and to support, his argument that the Court has misconstrued Ex. A.1 as; mutation entries in the revenue records. To rebut this contention, Mr. Parthasarathy relied, on decisions in Sri-La-Sri Sivaprakasa Pandara Sannadhi Avargal Vs. Smt. T. Parvathi Ammal and Ors, and T.K.Ramanujam Kavirayar and others v. Sri-La-Sri Sivaprakasa Pandara Sannadhi Avargal, Hereditary Trustee of vilapoojai Kattalai attached to Sri Courtalanathaswarni Temple, Courtalam, Thiruvavaduthurai Adheenam, 1988 (2) LW 513, wherein it is stated that the patta granted under Sections 11 to 14 is only a bill and not a title deed. In view of the limited scope of Order 47, Rule 1. of C.P.C, I am not inclined to go in detail about these judgments. However, to see that this question has been considered in the judgment under review, I am referring the reasoning given in the judgment. This Court has given the reason that the plaintiff alleges that the, property originally belonged to grand father and on his death, on the basis of oral partition, he became the absolute owner. Absolutely, no evidence has been let-in to show that the property originally belonged to his grandfather and how he acquired the same. Reliance was placed on Ex.A.1 patta granted wherein it is stated "Vazhimuria" means "devolution of interest". In Ex.A. 1, pymash number is stated to be 350/1 and survey number is 310. After Inam was abolished, it has been re-surveyed and its re-survey number is 310. The same could be seen from Ex.A.2 also which is an extract or town survey register. Even in the appellate Court judgment, in Paragraph No.8 it is stated that patta has been granted under Inam Abolition Act. After Inam Abolition Paimash No, 350 has been divided into 350A and 350/1. The Court also further states that except producing the said patta, no evidence has been let in and also, observed that Ex.A.1 only shows that patta has been changed in the name of the plaintiff, since the property was devolved on him. This observation has been taken in isolation and it has been argued that it is an error apparent on the face of the record. This argument, in my view, is not available to the petitioners in this application, in view of the appellate Court's finding as stated above, which Court dismissed the appeal in favour of the petitioners herein. The learned counsel put forth an argument that the observation of the lower appellate Court cannot be a finding since no issue was raised before it. This argument also cannot be countenanced in the review application. If at all the same could be advanced to destabilise the judgment under review at appropriate forum but not in review application.

21. In view of the above discussion as to the scope and particularly the elaborate arguments and series of case law cited by the learned counsel for the petitioners would itself go to prove beyond any doubt the alleged error now sought to be projected is not self evident and as such would not come within the ambit of Order 47, Rule 1 of C.P.C. useful reference can be had to the judgment in Parsion Devi and Others Vs. Sumitri Devi and Others, . The grievance of the review petitioner against the judgment of this Court dated 19.7.1999 as discussed above cannot be ventilated under the provisions of Order 47, Rule 1 of C.P.C. and his remedy is elsewhere, if he so choses and advises.

22. In view of the same, the Review Petition is dismissed. No Costs. Consequently, the connected C.M.P. Nos. 11444 and 11445 of 2000 are also dismissed.