

2023 LiveLaw SC 342

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

A.S. BOPANNA; J., HIMA KOHLI; J.

Civil Appeal No(s). 6300-6301/2016; 12 April, 2023

SEETHAMAL & ANR. *versus* NARAYANASAMY & ORS.

Civil Procedure Code, 1908; Sections 96 and 100 - a first appeal and a second appeal arising out of two proceedings cannot be clubbed and disposed of by a common judgment even though the parties are essentially the same and the property in dispute is common.

For Appellant(s) Mr. V. Chitambaresh, Sr. Adv. Mr. R. Nedumaran, AOR Mr. M.M. Iqbal, Adv. Ms. Sonal Gupta, Adv. Mr. C. Govind V, Adv.

For Respondent(s) Mr. V. Prabhakar, Adv. Ms. Jyoti Parashar, Adv. Mr. N.J. Ramchandar, Adv. Mr. Pramit Saxena, AOR

ORDER

1. Heard the learned senior counsel for the appellants as also the learned counsel for the respondents and perused the appeal papers.
2. At the outset, we note, that the judgment dated 30.07.2012 passed by the Madurai Bench of Madras High Court is a common judgment whereunder, the Second Appeal arising under Section 100 of the Civil Procedure Code, 1908 in S.A. No.994/1999 and the Regular First Appeal arising under Section 96 of the Civil Procedure Code, 1908 in A.S. No.26 of 2004 which warrant different scope of consideration, have been considered and disposed by the common judgment dated 30.07.2012.
3. In that background, while taking note of the basic facts relating to the contentions put forth, we note that the genesis of the suit, which lead to the Second Appeal in S.A. No. 994 of 1999 was one for declaration and injunction contending that the plaintiffs are entitled to a declaration that they are the absolute owners of the property and consequently, for injunction. Such relief was sought in O.S. No. 268 of 1996 contending that, an oral partition has been effected between the parties by the judgment dated 14.09.1998, the suit was dismissed. In the said proceedings, the contention of oral partition was not accepted and the suit filed by the plaintiff was dismissed. The Regular First Appeal against the said judgment was also dismissed through the judgment dated 29.01.1999 in F.A. No. 105/1998. It is in that light, a consideration was required to be made in the Regular Second Appeal as against the concurrent finding of fact recorded by the Courts below and consider as to whether the same raised any substantial question of law.
4. In the above background, it is to be noted that the suit which is the subject matter of A.S. No. 26 of 2004, had arisen out of a suit in O.S. No. 140 of 2001, which was ultimately renumbered as O.S. No. 31 of 2004. The said suit was filed by the Seethammal and Guruvammal seeking for partition and separate possession of the properties which were indicated in the Schedule thereto. The properties which were the subject matter of the suit for declaration and injunction, which is the subject matter in the Second Appeal in S.A. No. 994/1999 was also a part of the plaint whereunder the partition was sought. The Suit for partition was allowed and as such, the Regular First Appeal in A.S. No. 26/2004 was pending. It is in that light, since, the parties were same in the said two proceedings, the appeals had been clubbed and considered by the High Court.
5. Though, in a normal circumstance, to avoid contradicting decrees, the Courts would be justified in considering the matters together, we note that in instant proceedings the

nature of consideration in the Second Appeal as against a consideration to be made in the First Appeal were entirely different in as much as the reappreciation of the evidence and interference with the finding of the fact would arise only in the First Appeal and not in the Second Appeal. Further more, in the instant case, when the substantive consideration relating to partition, as had been raised in suit bearing O.S. No.31/2004 (re-numbered) which lead to the appeal in A.S. No. 26/2004, would have answered the contention as to whether there was an oral partition which had arisen in O.S. No. 268 of 1996. If, on independent consideration, the prior partition was not proved, the concurrent finding against oral partition in the earlier suit would have sustained itself. The same would have answered the suit for partition, which would have been a consideration ultimately to decide the suit for declaration and injunction which was the subject matter in Second Appeal No. 994 of 1999, only if there was reversal of the judgment in O.S. No. 31/2004. Therefore, in that circumstance, clubbing of the proceedings was not justified which ultimately has led to the present conclusion.

6. At this stage, in any event, this Court would not be justified in taking note of the merits of the contentions since, the High Court, at the first instance will have to take into consideration the facts arising in A.S. No. 26 of 2004, decide the same and thereafter, take note of the proceedings therein, whereupon, the Second Appeal in S.A. No. 994 of 1999 would arise for an independent consideration. Therefore, in that circumstance, we note that the judgment dated 30.07.2012, which had clubbed the proceedings has in turn led to the conclusion wherein, a different consideration is required in the nature of the proceedings. We are therefore, unable to sustain the judgment. However, we make it clear that the proceedings in S.A. No. 994 of 1999 and A.S.No. 26 of 2004 now to be remanded to the High Court shall be de-linked from each other and thereafter, the consideration be made. While so considering, we find it appropriate to observe that the appeal in A.S. No. 26 of 2004 be considered initially and based on the decision that would be taken on that, the same be applied to the proceedings in S.A. No. 994 of 1999.

7. All contentions of the parties on merits, are left open.

8. Further, taking into consideration the nature of the litigation and for the time period that the parties have been litigating, we request the High Court to refer the matters to mediation at the outset and thereafter, consider the matters on their merits only if the mediation does not fructify. Thereafter, it may decide the matter as expeditiously as possible and in accordance with law.

9. The appeals are accordingly, disposed of along with the pending application(s), if any.