

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2407 OF 2002

Azrath Bivi and Anr.

...Appellant(s)

Versus

Chinnathambi (Dead) Thru. LRs.

...Respondent(s)

O R D E R

Heard learned counsel for the parties.

The plaintiffs filed a suit for recovery of possession of the property described in Schedule 'A' appended to the plaint. They further prayed for grant of permanent injunction against the defendants restraining them, their men and agents from in any manner interfering with their possession and enjoyment of the property described in Schedule A and B appended to the plaint and from constructing a new building thereon. In short, the plaintiffs' case was that the suit property belonged to one Sheik Maracair of Pudupattinam village, who died issueless and his property devolved upon his sister Kathija Bivi, who executed a settlement deed in favour of her son Sultan Maracair. Sultan Maracair transferred the property to the plaintiffs by oral hiba on 5th May, 1968. The validity of oral hiba became the subject matter of consideration in OS No.49/1968 filed in the Court of Subordinate Judge, Mayuram, who recorded a finding that hiba was valid. The said finding was upheld by the lower appellate Court.

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During his life time, Sheikh Maracair constructed a shed in the suit property and let out the same to defendant No.1 on a monthly rent of Rs.20/- for a tea shop, who, in turn, entered into some arrangement with defendant No.2 for maintaining the tea shop. Defendant No.1 continued to occupy the tea shop even after execution of settlement deed by Kathija Bivi in favour of her son, Sultan Maracair, and transfer of the property by the latter in favour of the plaintiffs by means of oral hiba. Defendant No.1 defaulted in payment of rent for four years, which necessitated filing of the suit by the plaintiffs for possession and grant of permanent injunction. Upon service of summons, defendant No.1 filed written statement in which he denied that Sheikh Maracair was the owner of the property and, after his death, his sister Kathija Bivi inherited the same. He pleaded that Khatija Bivi was neither the owner of the property nor she was in possession thereof and the settlement deed executed by her was invalid. Defendant No.1 also denied the assertion contained in the plaint that Sheikh Maracair gave him the property for running a tea shop. The transfer of property by Sultan Maracair in favour of the plaintiffs by oral hiba was also disputed. According to defendant No.1, the suit property was a Government property and he was occupying the same for the last thirty years. He claimed title in the suit property by way of adverse possession. The plaintiffs filed a reply to the written submission in paragraph (4) whereof it was stated that defendant No.1 renewed and executed a rent deed dated 5th January, 1970. Defendant No.1 filed two additional written statements but did not deny this averment. On the

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pleadings of the parties, one additional issue was framed on 20th November, 1980, and seven additional issues were framed on 6th December, 1986. Thereafter the parties adduced their respective evidence. Upon consideration of the entire matter, the Trial Court decreed the suit. The appeal preferred by the defendant No.1 was dismissed by the lower appellate Court which concurred with the findings recorded by the trial Court on all the issues.

Defendant No.1 challenged the judgments and decrees of the trial Court and lower appellate Court by filing second appeal. The High Court framed four substantial questions of law and upon reappraisal of evidence, reversed the findings rendered by the Trial Court as well as the lower appellate Court as if it was exercising powers of the first appellate court. The High Court held that the approach adopted by the Trial Court and the lower appellate Court was erroneous. Hence, this appeal by special leave.

Learned counsel appearing on behalf of the appellants submitted that the findings recorded by the trial Court on various issues were based on comprehensive evaluation and appreciation of the pleadings and evidence of the parties and as those findings were confirmed by the lower appellate Court, the High Court was not justified in interfering with the same without having come to the conclusion that the findings of the fact were perverse.

Learned counsel for the respondent supported the impugned judgment by arguing that the findings recorded by the trial Court on the issues of ownership of the suit property and landlord-tenant relationship between the parties were ex facie erroneous. However, he could not

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show that the findings recorded by the Trial Court and upheld by the lower appellate Court were perverse in any manner.

We have gone into the judgments rendered by the Trial Court as well as the lower appellate Court and the High Court. In our view, the findings recorded by the Trial Court as well as the lower appellate court did not suffer from any error what to say of same being perverse. Therefore, the High Court was not justified in reversing the concurrent judgments and decreed of the courts below.

Accordingly, the appeal is allowed, impugned judgment is set aside and the judgment and decree passed by the Trial Court as confirmed by the lower appellate Court is restored.

No costs.

.....J.
[B.N. AGRAWAL]

.....J.
[G.S. SINGHVI]

.....J.
[DR. MUKUNDAKAM SHARMA]

New Delhi,
September 16, 2009.