
(2013) 04 MAD CK 0108

In the Madras High Court

Case No : C.R.P. (P.D.) No. 142 of 2013 and M.P. No. 1 of 2013

B. Gajendran

APPELLANT

Vs

Adhilakshmi

RESPONDENT

Date of Decision : 03-04-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Family Courts Act, 1984 — Section 7, 7(1)

Citation : (2013) 2 CTC 871 : (2013) 3 DMC 866 : (2013) 2 LW 969 : (2013) 3 MLJ 814

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : K.V. Subramanian for Mr. M. Md. Shafi, for the Appellant;

Final Decision : Allowed

Judgement

S. Nagamuthu, J.—The important question is as to whether the Hindu wife, who is not living with her husband, can maintain a suit before the

Family Court constituted under the Family Courts Act, 1984 for a decree of perpetual injunction to restrain the husband from alienating his own

property. The petitioner is the sole defendant in O.S. No. 124 of 2012 on the file of Principal Family Court at Chennai. The respondent is the

plaintiff and she is the legally wedded wife of the petitioner. The petitioner has filed a petition for divorce in O.P. No. 900 of 2012 on the file of III

Additional Family Court, Chennai. The said case is pending trial.

2. The petitioner has entered into a joint venture agreement with the owner of the suit properties herein. As per the agreement, the petitioner has to

construct buildings and in terms of the agreement, he has got right to sell away some of the flats, on completion of the project. While so, the

respondent has filed the present suit seeking the following relief:

1) Granting permanent injunction restraining the defendant and his agents, partners or anybody acting through him in any manner from alienating the

schedule mentioned properties, without protecting the plaintiff and her son S. Pranavakanth's peaceful, healthy, safety future life and education.

2) For the costs of the suit and pass such further orders as this Hon''ble Court deems fit in the circumstances of the case and thus render justice

Seeking to quash the said suit, contending that the same is a clear abuse of process of Court, the petitioner has come up with this petition.

3. I have heard the learned senior counsel for the petitioner and also perused the records carefully.

4. In this Civil Revision Petition, this Court ordered notice to the respondent on 23.01.2013. Private notice was also ordered by this Court and the

same was served on 04.02.2013. One Mr. R. Varadharajan, learned counsel entered appearance by filing vakalat on behalf of the respondent.

Thereafter, the case was listed for many hearings. When the matter came up for hearing on 15.03.2013, the learned senior counsel for the

petitioner was ready but there was no representation for the respondent. However, with a view to grant further opportunity to the respondent, the

matter was ordered to be listed on 28.03.2013. Again, when the matter came up for hearing on 28.03.2013, the learned senior counsel for the

petitioner argued the matter and there was no representation for the respondent. The respondent was also not present. Therefore, the respondent

was set ex-parte. The matter was adjourned for orders. Today, when the matter came up for hearing, the respondent was not present and there

was no representation also on his behalf and no petition has been filed seeking to set aside the ex-parte order. Therefore, I proceed to dispose of

the Civil Revision Petition on considering the arguments advanced by the learned senior counsel for the petitioner and on considering the materials

available before the Court.

5. It is the primary contention of the learned senior counsel for the petitioner that the Family Court lacks jurisdiction to entertain the suit of this

nature. Taking me through Section 7 of the Family Courts Act, 1984, the learned senior counsel would contend that the issues in this suit and the

relief sought for do not fall in any one of the clauses enumerated in Section 7(1)

of the Family Courts Act. To be precise, the learned senior counsel would submit that when the respondent/plaintiff does not claim any right over the suit property, the suit for injunction in respect of the said property cannot be entertained by the Family Court. For this proposition, the learned senior counsel has relied on a Division Bench judgment of the Allahabad High Court in Smt. Kanchan Upadhyay Vs. State of U.P. and Others, . That was a case where the wife filed a suit for injunction before the Family Court at Allahabad to restrain the husband from selling the house belonging to the husband. The Family Court granted injunction. When this matter came up before the Division Bench of Allahabad High Court, the Division Bench held that the suit is not maintainable. In para 3 of the order, the Division Bench has held as follows:

3. The petitioner relies upon an interim injunction order dated 24.12.2005 obtained by her from the Family Court, Allahabad, restraining the husband from selling the house. For obtaining such an injunction, two things are necessary. First, the person seeking injunction should have a right to that effect. In this case, we do not see how the petitioner, merely on account of being wife, can claim the right to restrain the husband from selling property, which belongs to the husband. Therefore, the injunction did not deserve to be granted on facts. Besides, this injunction, which has been granted in proceedings u/s 125 Cr.P.C. is wholly outside the scope of those matrimonial proceedings pending before the Family Court. Thus prima facie, the Family Court has no jurisdiction to grant this kind of an injunction order.

6. In my considered opinion too, a suit for injunction in respect of the property, over which the wife has got no semblance of right at all, cannot be maintained before the Family Court. For better understanding of the legal position, let me extract Section 7(1) of the Family Courts Act, which reads as follows:

7. Jurisdiction:- (1) Subject to the other provisions of this Act, a Family Court shall -

(a) have and exercise all the jurisdiction exercisable by any district Court or any subordinate civil Court under any law for the time being in force in

respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law,

to be a district Court or, as the case may be, such subordinate civil Court for the area to which the jurisdiction of the Family Court extends.

Explanation:- The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely: -

- (a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;
- (b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;
- (c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;
- (d) a suit or proceeding for an order of injunction in circumstances arising out of a marital relationship;
- (e) a suit or proceeding for a declaration as to the legitimacy of any person;
- (f) a suit or proceeding for maintenance;
- (g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

7. Undoubtedly, explanation (a), (b), (c), (e), (f) and (g) would not cover the issue involved in the present suit as these matters relate purely to the matrimonial relations between the parties. Probably, the Family Court, in the instant case, has misunderstood the Explanation "c". If one closely reads the said provision, there cannot be any difficulty to rightly understand the said provision. This provision, relates to a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them. This means the dispute in the suit should be with reference to the property. In other words, the party, who files the suit, should have a semblance of right or title over the property.

8. In the instant case, in respect of the property, no right whatsoever has been claimed and no cause of action has been stated. It is stated in para

16 as follows:

16. The plaintiff as a law abiding citizen have no other remedy excepting to approach this Hon"ble Court, by way of this suit for permanent

injunction, restraining the defendant from alienating the properties without making sufficient arrangements to the plaintiff and her son. The plaintiff

submits that the defendant had also spoiled her valuable life, giving birth to a male child and the defendant is leading adulterous life happily with Srividya.

9. Except the statement made in the above paragraph, nothing else has been stated in the plaint, which will be relevant to the relief sought for.

Assuming that these averments made in para 16 of the plaint are true, the same have got nothing to do with the suit properties. If the

petitioner/husband has not maintained the respondent/wife and her son, the remedy for her lies elsewhere. Interestingly, the present suit is not a suit

for maintenance and it is only a suit for injunction to restrain the husband from alienating the suit properties. Thus, the dispute is not in respect of

property over which the plaintiff claims any semblance of right. In my considered opinion, as rightly contended by the learned senior counsel for the

petitioner, this suit is a clear abuse of process of Court and therefore, the same is liable to be quashed.

S. Nagamuthu, J.

In the result, the Civil Revision Petition is allowed and the suit in O.S. No. 124 of 2012 on the file of the Principal Judge, Family Court, Chennai is

hereby quashed. No costs. Consequently, connected miscellaneous petition is closed.