
(2012) 12 MAD CK 0133
In the Madras High Court
Case No : S.A. No. 1149 of 1997

Kamalammal

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 12-12-2012

Acts Referred:

Citation : (2013) 1 MadWN(Civil) 830

Hon'ble Judges : A. Selvam, J.

Bench : Single Bench

Advocate : Ramesh @ Ramiah, Advocate, for the Appellants; P. Gunaseelan Muthiah, Government Advocate, for the Respondent Nos. 1 & 2; L. Lakshmi, Advocate No appearance, for the Respondent No. 3; B. Neduncheliyan, Advocate No appearance, for the Respondent No. 4; S.S. Desigan, Advocate No appearance, for the Respondent Nos. 8 to 11; Hallmark Associates, No appearance, for the Respondent No. 12; No appearance, for the Respondent Nos. 5 to 7

Final Decision : Allowed

Judgement

A. Selvam, J.—The concurrent Judgments and decrees passed in Original Suit. No. 220 of 1985 by the District Munsif Court, Tenkasi and in Appeal Suit No. 43 of 1995 by the Sub-Court, Tenkasi are being challenged in the present Second Appeal.

2. The Appellants and Twelfth Respondent herein as Plaintiffs have instituted Original Suit No. 220 of 1385 on the file of the trial Court praying to declare that the Plaintiffs and Defendants 3 to 13 are having joint management of the school mentioned in the Plaint and also to restrain the Third Defendant from getting separate management, of the school mentioned in the Plaint, wherein the Respondents 1 to herein have been shown as Defendants 1 to 4 & 7 to 13.

3. In the Plaint it is averred that the suit property is nothing, but a school bearing Door Nos. 138 & 139, situates in Kannimarammal Kovil Street, Tenkasi and the same is originally belonged to one Thirumalaikumar. The said

Thirumalaikumar and his two sons namely Ulaganathan and Subramanian have had divided their family properties by virtue of a registered Partition Deed dated 4.2.1932, wherein the suit property has been allotted to the share of Thirumalaikumar and he passed away leaving behind him, his two sons namely Ulaganathan and Subramanian as his legal heirs. The said Ulaganathan has passed away and his son by name Ponnambalam has executed a Sale Deed in favour of Muthammal, who is none other than the wife of Subramanian. The said Subramanian has passed away leaving behind him, his wife Muthammal, two sons namely Chellappa and Thirumalaikumarasamy and four daughters namely Kamalam, Subbulakshmi, Sulochana and Lokanayagi. The said Chellappa has passed away leaving behind him, his wife Kuppammal and two daughters namely Rajalakshmi and Ramani. The said Thirumalaikumarasamy has passed away leaving behind him, his wife by name Subbulakshmi and the present Defendants 9 to 13. Since the suit property is a school, the administration of the same should be done by the Plaintiff, who is none other than the wife of Subramanian and the Defendants 3 to 13. Now the Third Defendant viz., Kuppammal has tried to get exclusive management of the school. Under the said circumstances, the present Suit has been instituted for the reliefs sought for in the Plaint.

4. In the Written Statement filed on the side of the contesting Defendants, it is averred that the Plaintiffs are not having any right over the management of the suit property. The husband of Third Defendant by name Chellappa has been authorised to manage the suit property individually and after his demise, the Third Defendant has been managing the suit property. In the suit property, the Plaintiffs and other Defendants are not having right of management. There is no merit in the Suit and the same deserves to be dismissed.

5. On the basis of the divergent pleadings raised on either side, the Trial Court has framed necessary issues and after analysing both the oral, and documentary evidence has dismissed the Suit. Against the Judgment and decree passed by the Trial Court, the Plaintiffs 2 & 3 as Appellants have preferred Appeal Suit No. 43 of 1995 on the file of the First Appellate Court.

6. The First Appellate Court after hearing both sides and upon reappraising the evidence available on record has dismissed the Appeal whereby and where under confirmed the Judgment and decree passed by the Trial Court. Against the concurrent Judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the Plaintiffs 2 & 3 as Appellants.

7. At the time of admitting the present Second Appeal, the following substantial question of law has been settled for consideration:

"Whether the right to manage the educational institution is a property?"

8. The Courts below have concurrently found that the present Suit is not-legally maintainable in view of the embargo created under Section 53 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973.

9. Before considering the submissions made on the side of the Appellants/ Plaintiffs 2 & 3, the Court has to look into as to whether the present Suit is legally maintainable or the said Section is a bar to the present Suit?

10. Section 53 of the said Act reads as follows:

"Civil Court not to decide questions under this Act.- No Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act required to be decided or dealt with by any Authority or Officer mentioned in this Act".

11. Section 53-A of the said Act must be read together. Section 53-A of the said Act reads as follows:

"Settlement of dispute as to Educational Agency, etc.- (1) Notwithstanding anything contained in Section 53, whenever any dispute as to the constitution of any educational agency, or as to whether any person or body of persons, is an educational agency, in relation to any private school, or as to the constitution of a School Committee, or as to the appointment of the Secretary of the School Committee arises, such dispute may be referred by the persons interested or by the Competent Authority to the Civil Court having jurisdiction, for its decision.

(2) Pending the decision of the Civil Court on a dispute referred to it under subsection (1), or the making of an interim arrangement by the Civil Court for the running of the private school, the Government may nominate an officer to discharge the functions of the Educational Agency, the School Committee or the Secretary, as the case may be, in relation to the private school concerned".

12. From the conjoint reading of the said Sections, the Court can easily come to a conclusion that if any matter comes within the purview of the Act, with regard to the same a Civil Suit is not maintainable. In the instant case, the main relief sought for is to declare that the Plaintiffs and Defendants 3 to 13 are jointly entitled to manage the school mentioned in the Plaint. Considering the fact that the main relief sought for in the Plaint is to declare that the Plaintiffs and Defendants 3 to 13 are jointly entitled to manage the School mentioned in the Plaint, it is very clear that the Civil Court is having jurisdiction to entertain the present Suit and further the relief of declaration can be granted only by Civil Court and not by any other authority. Therefore the view of the Courts below to the effect that the present Suit is not legally maintainable, is totally incorrect and the same cannot be accepted.

13. Even though the present Second Appeal has been posted on several occasions either for disposal on merits or for dismissal, there is no representation on the side of the contesting Respondents. Under the said circumstances, the present Second Appeal is disposed of on merits on the basis of the contentions putforth on the side of the Appellants/Plaintiffs 2 & 3.

14. The learned Counsel appearing for the Appellants/Plaintiffs 2 & 3 has contended that the suit property and some other properties are originally

belonged to Thirumalaikumar and his two sons namely Ulaganathan and Subramanian and all of them have entered into a Partition Deed dated 4.2.1932 and by virtue of the same the suit property has been allotted, to the share of Thirumalaikumar and he passed away leaving behind him, his two sons namely Ulaganathan and Subramanian and the said Ulaganathan has passed away leaving behind him, his only son by name Ponnambalam and he executed a Sale Deed in favour of the wife of Subramanian, the First Plaintiff herein, wherein he conveyed his half right in the School to the said Muthammal and under the said circumstances, the Plaintiffs being the legal heirs of Subramanian and Thirumalaikumar, are entitled to have joint management in the School mentioned in the Plaint and since the Third Defendant viz., Kuppammal, who is none other than the wife of Chellappa, has claimed exclusive right over the management, the present Suit has been instituted, but the Courts below without considering the nature of reliefs sought for in the Plaint as well as the documents filed on the side of the Plaintiffs, have erroneously non-suited them and therefore the concurrent Judgments and decrees passed by the Courts below are liable to be interfered with.

15. It has already been narrated in detail that the father by name Thirumalaikumar and his two sons namely Ulaganathan and Subramanian have effected a partition by virtue of a registered Partition Deed dated 4.2.1932 and the same has been marked as Ex. A.1, wherein the suit property has been allotted to the share of Thirumalaikumar. The said Thirumalaikumar has passed away leaving behind him, his two sons Ulaganathan and Subramanian and therefore each son are having half share in the estate of Thirumalaikumar including the School mentioned in the Plaint. The said Ulaganathan has passed away leaving behind him, his only son by name Ponnambalam and the said Ponnambalam has executed a Sale Deed in favour of the First Plaintiff by name Muthammal and the same has been marked as Ex. A12, wherein it has been clearly stated to the extent that he conveyed his share in the School to the purchaser viz., Muthammal. Therefore by virtue of purchase under Ex. A12, the First Plaintiff viz., Muthammal has acquired half share.

16. The husband of Muthammal by name Subramanian has passed away leaving behind him his wife (Muthammal), two sons namely Chellappa, Thirumalaikumarasamy and four daughters namely Kamalam, Subbulakshmi, Sulochana and Lokanayagi. The Third Defendant is none other than the wife of the deceased Chellappa. Considering the fact that the Suit, property has been already dealt with under Ex. A1 and also considering that the said Ponnambalam has executed Ex. A12 in favour of the First Plaintiff viz., Muthammal and also considering that the husband of Muthammal by name Subramanian has passed away leaving behind him the said Muthammal and his two sons namely Chellappa and Thirumalaikumarasamy and also considering that the said Chellappa and Thirumalaikumarasamy have passed away leaving behind their respective legal heirs, this Court is of the view that both the Plaintiffs and Defendants 3 to 13 are entitled to manage the School building jointly.

17. The Courts below, as pointed out earlier, have non-suited the Plaintiffs mainly on the basis of the provision mentioned in Section 53 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. Further the Courts below have non-suited the Plaintiffs by virtue of Exs. B1 to B3. Exs. B1 to B3 are nothing, but the orders passed by the concerned authority. The said orders have been passed without looking into the necessary documents. Since Exs. B1 to B3 have been passed without looking into the necessary documents, the Court cannot give much adherence to the same.

18. In the light of the discussion made earlier, it is needless to say that the reliefs sought for in the Plaint can be granted in favour of the Plaintiffs and further the substantial question of law settled in the present Second Appeal is having substance and altogether the present Second Appeal deserves to be allowed.

19. In fine, this Second Appeal is allowed without costs and the concurrent Judgments and decrees passed by the Courts below are set aside and Original Suit No. 220 of 1985 is decreed without costs. However the Plaintiffs are directed to take proper steps so as to pass a scheme decree with regard to management of the School mentioned in the Plaint.