

(2013) 04 MAD CK 0230

In the Madras High Court

Case No : S.A. No. 446 of 2013 and M.P. No. 1 of 2013

Lakshmi

APPELLANT

Vs

K. Ramani and Santhi Ramani

RESPONDENT

Date of Decision : 30-04-2013

Acts Referred:

Citation : (2014) 1 MLJ 60

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : A. Muthukumar, for the Appellant;

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—This second appeal is focussed by the plaintiff, inveighing the judgment and decree dated 30.01.2013 passed by the learned Subordinate Judge, Nagapattinam in A.S. No. 2 of 2012 confirming the judgment and decree dated 10.11.2011 passed by the learned District Munsif, Nagapattinam in O.S. No. 173 of 2008. The parties, for the sake of convenience, are referred to here under according to their litigative status and ranking before the trial Court.

2. Heard the learned counsel for the appellant. Despite printing the name of the learned counsel for the respondents/Caveators, no one appeared.

3. A summation and summarisation of the relevant facts absolutely necessary and germane for the disposal of this second appeal would run thus:

a) Lakshmi the mother of D1 filed the suit seeking injunction as against D1, her son and D2- her son's wife in respect of the property described in the schedule of the plaint on the main ground that the said property was purchased by her and that the defendants" are trying to interfere with the same.

b) However, the defendants filed the written statement resisting the suit by contending that the father of D1 during his life time, purchased properties in the name of his children citing the mother as the guardian. In fact, in respect of the

suit property, wherein a saw mill is being run, the licence was taken in the name of the mother and nothing more, and that would not confer any title in her favour in respect of the suit property. The plaintiff as on the date of the filing of the suit was not in possession and enjoyment of the suit property and D1 only has been in possession and enjoyment of the same.

Accordingly, they prayed for the dismissal of the suit.

c) Only two issues were framed by the trial court as under:

(i) Whether the plaintiff is entitled to get permanent injunction as prayed for?

and

(ii) To what relief?

d) Ultimately, the trial court dismissed the suit on the main ground that one co-owner cannot get injunction as against another co-owner.

e) Challenging and impugning the same, the plaintiff preferred the appeal on various grounds; whereupon, the first appellate court, dismissed the appeal confirming the judgment and decree of the trial court.

f) Being aggrieved by and dissatisfied with the judgments and decrees of both the for a below, the plaintiff has preferred this second appeal by suggesting the following substantial questions of law:

1. Whether the courts below erred in law in deciding the title in a suit for bare injunction when there was no issue regarding the same?

2. In the absence of any cross objections or cross appeal by the defendants whether the lower appellate court erred in law in reversing the finding of the trial court that the parties to the suit are co-owners to the suit property?

3. Whether the lower appellate court erred in law in dismissing the suit for injunction after having held that the plaintiff is a permissive occupant?

4. Whether the lower appellate court erred in law in holding that the suit property belonged to the first defendant on the ground that PW 1 and his brother had attested Ex. B1?

5. Whether the attestation of Ex. B1 by PW 1 and his brother would bind the plaintiff?

6. Whether the courts below have misconstrued and mis-appreciated the evidence on record?

(extracted as such)

4. At the outset itself, the learned counsel for the appellant/plaintiff would in all fairness submit that he would be satisfied, if this court observes while dismissing this second appeal that the findings in this injunction proceedings would not be

taken as conclusive in respect of the partition suit filed by the plaintiff herein as well as her one other son Siva in O.S. No. 26 of 2011 pending on the file of the District Court, Nagapattinam. According to him, the defendants" themselves pleaded that the plaintiff"s husband/D1"s father purchased the suit property in the name of D1; when such is the position, it is the joint family property; however, the first appellate court has made some discussion, which are not at all necessary for the disposal of the appeal and those are all beyond the scope of the injunction suit and similarly, the trial court also discussed various points, which are beyond the scope of the suit.

5. I would like to observe that, the suit itself is only for bare injunction and not for declaration of title. The fact remains that the plaintiff herein and her one other son Siva filed a comprehensive suit for partition citing various items of properties as well as the suit property herein. Only in that comprehensive suit, these complicate issues should be got decided. Here, the trial court has not chosen to even incidentally frame any issue relating to title or the rights of the respective parties. In such a case, any finding relating to title would have no binding effect in the points and issues that are to be decided in the partition suit. However, both the courts below had concurrently gave a finding that the plaintiff herein did not prove her possession and enjoyment as on the date of the filing of the suit. Only that finding can be taken as binding on the plaintiff and as against such finding, I do not think that any second appeal would lie. With the above observation, this second appeal is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.