

(1991) 01 MAD CK 0063
In the Madras High Court

R. Govindarajan

APPELLANT

Vs

Devaki Ammal and Another

RESPONDENT

Date of Decision : 11-01-1991

Acts Referred:

Citation : (1991) 2 MLJ 32

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Judgement

Srinivasan, J.—This revision petition has to be allowed on a very short ground that the suit filed by the respondent is not maintainable. In the plaint, it is repeatedly stated that the defendant is a lunatic and the plaintiffs are his curators and guardians. In paragraph 4 of the plaint the specific averment is : "The defendant is a lunatic suffering from the said disease for the past 14 years". Again it is stated: "The plaintiffs are acting as the curators and guardians of the defendant for the past 14 years". In paragraph 5, it is repeated that the plaintiffs are the curators and guardians of the defendant. Again in paragraph 7 it is alleged that the plaintiffs are cultivating the suit lands as guardians and curators of the defendant. In paragraph 10 it is stated that the plaintiffs are appointed as curators and guardians of the defendant on 10.6.1983 under the registered partition deed. Thus, the entire plaint is on the footing that the defendant is a lunatic and the plaintiffs are the curators and guardians. Yet, very curiously, the petitioner is shown in his name as a defendant, without anybody representing him as his next friend or guardian. Once the plaintiffs' case is that the defendant is a lunatic and they are the guardians of the defendant, they cannot maintain the suit for bare injunction against the defendant as such. It is for them to take steps under other provisions of law to establish their right to take possession of the property, if they are not in possession of the property. But, according to them, they are already in possession of the property and are cultivating the same. In these circumstances, the respondents are not entitled to maintain the suit against the defendant and ask for an injunction against him during the pendency of the suit.

2. The procedure prescribed under Order 32, CPC has not been followed. Hence, the plaintiffs are not entitled to get any orders in the suit which is not maintainable on the face of it. This does not mean that I have accepted the allegation of the plaintiffs that the petitioner herein is lunatic. I do not at all hold that the petitioner is lunatic. It is for the respondents to prove it. I am (sic) pointing out that the respondents are not entitled to get any relief in the suit as framed now. In the allegations made by them in the plaint, the (sic) is misconceived.

Even otherwise, any alienation by the petitioner/defendant during the pendency of the suit should be hit by the doctrine of lis pendens and the plaintiffs will not be in any manner affected hereby. Hence, there is no justification for granting injunction against the petitioner herein. The Courts below are in error in granting an injunction as prayed for by the plaintiffs.

3. The civil revision petition is allowed. The orders of the trial Court in I.A. No. 548 of 1989 and of the lower appellate Court in C.M.A. No. 68 of 1989 are set aside. I.A. No. 548 of 1989 stands dismissed. There will be no order as to costs.