
(2015) 07 MAD CK 0372
In the Madras High Court
Case No : O.S.A. No. 122 of 2015

S.N. Thiyagarajan and Others

APPELLANT

Vs

S. Rathinammal and Others

RESPONDENT

Date of Decision : 13-07-2015

Acts Referred:

Citation : (2015) 5 MLJ 769

Hon'ble Judges : Sanjay Kishan Kaul, C.J;T.S. Sivagnanam, J

Bench : Division Bench

Advocate : C. Shankar, for the Appellant; K.V. Babu, Advocates for the Respondent

Judgement

Sanjay Kishan Kaul, C.J.

1. Admit. Mr. K.V. Babu, learned counsel for respondents 1 to 3 (Original Plaintiffs) accepts notice, being the affected party. By consent of the learned counsel for the parties, the appeal is taken up for final disposal.

2. The suit for partition filed by the original plaintiffs is based on the interest which has devolved on them from the original owner Mr. M.P. Subramania Mudaliar, who is alleged to have executed a Will not giving any share to the predecessor-in-interest of the plaintiffs, but that Will has not been proved in common form in any manner nor any probate proceeding or any other proceedings of Letters of Administration have been issued. The appellants thus dispute the existence of the alleged registered Will and claim ignorance of the same. The family tree of M.P. Subramania Mudaliar is as follows:

3. The three plaintiffs claim 1/12th share each from their father being the wife and two sons of Late. S. Shanmugam, who was the son of Late M.P. Subramania Mudaliar. The original plaintiffs are said to be residing away from the suit properties and not aware of the transaction which had taken place such as a partition deed, deed of settlement and sale deed and came to know of the same only during August, 2013. It is the further case of the original plaintiffs that the

Will alleged to have been executed by Late M.P. Subramania Mudaliar has never been projected after his death and not proved in the manner known to law as no probate was obtained.

4. We may notice that the Will is dated 24.12.1986, while Mr. S. Shamugam passed away on 01.01.1990. After his death, the plaintiffs moved out of the property.

5. On the basis of the Will, the three beneficiaries being otherwise the three sons of Mr. M.P. Subramania Mudaliar claim to have divided the property by partition deed dated 27.02.2002 duly registered. In terms of this partition deed, Property No. 1 fallen equally on the two sons - S. Arumugam and S. Dhakshinamoorthy, while the Property No. 2 went exclusively to S. Chandraskeran. One of them Mr. S. Chandrasekaran also passed away and prior to his demise, he executed a settlement deed dated 09.07.2008 duly registered. In terms thereof, he and his wife was to enjoy the property during their life time, where after the property would be settled in favour of his daughter and two sons and other children. The appellants purchased the property being item (ii), by a sale deed dated 29.08.2011 from the legal heirs of S. Chandraskeran. In view of the wordings of the settlement deed dated 09.07.2008, the children of the two sons and daughter were also included as vendors and possession was taken. The original plaintiffs sought declaration to declare the partition deed dated 27.02.2002, as null and void as also the settlement deed dated 09.07.2008. They have also sought cancellation of the sale deeds dated 29.08.2011 duly registered, whereby the appellants and others derive title and claim partition to the extent of 1/12th share each. Along with the plaint, the original plaintiffs (Respondent Nos. 1 to 3) have filed an application for interim relief, which has been disposed of by the impugned order dated 02.12.2014, putting a restraint against any change in property No. 2 against the purchasers/defendants 13 to 16, who are the appellants before us.

6. On a perusal of the impugned order, we find that what weighed with the learned Single Judge is the absence of any probate proceedings qua the registered Will. The learned Single Judge has thus opined that in the absence of the same and in the absence of the knowledge of the original plaintiffs about the property being dealt with in accordance with the Will, interim relief is necessary.

7. On hearing the learned counsel for the parties, we are not able to agree with the conclusion of the learned Single Judge to the extent that the original plaintiffs claim complete ignorance about everything: The fact remains that the owner of the property passed away on 20.12.1986 and had executed a registered Will four days prior to his death. His legal heirs through whom the original plaintiffs claim share also passed away on 01.09.1990, when the original plaintiff moved out of the suit property. This is in the context of the Will providing for only right of residence of S. Shanmugam seeking to suggest that in view of his death, the original plaintiffs moved out of the property. Thus, the hiatus period from when the rights accrued is actually 1986 or at least 1990, when the

predecessor-in-original interest passed away. The partition had been claimed, with 23 years' laches from that date, claiming ignorance of the subsequent documents concerned, even though the original plaintiffs have moved out of the property being Item No. (ii). We are not commenting on the entitlement or the share of the original plaintiffs, as all aspects would have to be determined in trial. This can, however, not mean that the innocent purchasers in the form of the appellants who verified the title as per the documents submitted and have registered sale deeds in their names, should be prejudiced, bringing their enjoyment of property practically to a standstill. The suit has been filed after about two years of the transaction. The original plaintiffs are claiming an undivided share and if they are able to establish their case in the suit, then necessary adjustments can be made from the remaining share of the two other co-owners who own property being Item No. (i) as well as the consideration which has been received by the legal heirs of Mr. S. Shanmugam for property being Item No. (ii).

8. We are conscious of the fact that out of the two properties, one of the properties was settled on S. Chandrasekaran, from whose legal heirs the appellants have purchased the property. The other property is settled in equal share on the other two sons of Late M.P. Subramania Mudaliar against whom the original plaintiffs are seeking such shares in the properties. Thus, the original plaintiffs share would be satisfied from their share in property being Item No. 1 which has not been sold, but continues to be with the two other sons of Late M.P. Subramania Mudaliar - S. Arumugam and S. Dhankshanamurthy as well as the sale consideration realized from the second property which has been sold to the appellants and the consideration appropriated by the four legal heirs and grand children of Late S. Chandrasekaran. This is established so, as out of the total sale consideration of Rs. 79,82,500/-, a sum of Rs. 58 lakhs has been deposited before the City Civil Court, being the share assigned to the minors grand children/defendant Nos. 9 to 12.

9. We may notice an interesting facet of the nature of the relief claimed in the interim stage. The original plaintiffs have conveniently not claimed any injunction qua their share in property No. 1 fallen to S. Arumugam and S. Dhakshnamurthy nor have they claimed any right to preserve the consideration realized by the legal heirs of S. Chandrasekaran, but the target seems to be only the appellants, who are purchasers of the property being Item No. (ii) and would like to construct on the property, by seeking an embargo on construction. Thus, it is obvious that there appears to be an endeavour to really to put pressure on the appellants, who are third party bona fide purchasers.

10. In adopting the aforesaid approach, we are fortified with the view of the Hon'ble Supreme Court in *Mandali Ranganna and Others etc. Vs. T. Ramachandra and Others*, AIR 2008 SC 2291 : (2008) 4 CTC 360 : (2008) 8 SCALE 277 : (2008) 11 SCC 1 : (2008) AIRSCW 3817, wherein it has been held that while considering an application for grant of injunction, the court will not

only take into consideration the basic elements in relation thereto - existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties. Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the property exclusively, ordinarily will not be entitled to an order of injunction, as the grant or refusal of injunction has a serious consequences depending upon the nature thereof.

11. The aforesaid test of such inordinate delay in approaching the court at least from 1990, to our mind, has not been properly explained. There is also no irretrievable prejudice caused, if the share of the original plaintiff can be satisfied from the share of the other inheritors of the property, to the exclusion of the appellants, who are third party purchasers of only one of the properties - the second property being available, as also the consideration received from the appellants by the third set of co-sharers. The result of the aforesaid is that we vacate the interim injunction granted by the impugned order and set aside the said order, leaving the parties to bear their own costs. Needless to say any observation made by us in the present appeal is only qua the interim stage and will not prejudice the parties in any manner in trial in the suit.