
(2008) 01 MAD CK 0021
In the Madras High Court
Case No : L.P.A. No. 33 of 2002

Sundaramoni Venkatesan

APPELLANT

Vs

T. Karthikeyan and Others

RESPONDENT

Date of Decision : 03-01-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33

Citation : (2008) 2 CTC 654 : (2008) 1 LW 522 : (2008) 1 MLJ 851

Hon'ble Judges : S.J. Mukhopadhyaya, J;M. Venugopal, J

Bench : Division Bench

Advocate : Dhiraviyanathan, for the Appellant; V. Raghavachari, for 5th respondent, for the Respondent

Judgement

M. Venugopal, J.—This L.P.A. No. 33 of 2002 is filed by the appellant/6th respondent/5th defendant against the judgment and decree

passed by the learned Single Judge of this Court in A.S. No. 959 of 1985 dated 22.6.1998 praying to set aside the said judgment and decree in

regard to the Item No. 4 of the Plaint ""B"" Schedule Property purchased by the appellant herein as per sale deed Ex.B6 dated 22.12.1980 from the

first defendant.

2. The 2nd and 3rd respondents herein (minors) represented by their mother and guardian have filed a suit as Plaintiffs in O.S. No. 35 of 1981 on

the file of the learned Sub Judge, Nagercoil praying for partition and separate possession of their 2/3rd share in ""A"" Schedule joint family

properties and for declaring their title to an extent of 2/3rd share in ""B"" Schedule properties setting aside the sale deeds executed by their father,

the first defendant in favour of defendants 2 to 5 and for recovery of the same with future mesne profits at the rate of Rs. 988/- per annum from the

date of suit till date of recovery.

3. The learned Sub Judge, Nagercoil after considering the available materials and evidence on record came to the conclusion that the plaintiffs are

entitled to the relief of partition and separate possession of 2/3rd share in Plaintiff "A" Schedule properties and items 1, 3 and 4 in Plaintiff "B

Schedule properties and that the sale deeds executed by the first defendant in favour of defendants 3 to 5 are set aside in respect of 2/3rd share of

the plaintiffs and relegated the mesne profits to be decided separately in final decree proceedings.

4. As against the judgment and decree of the learned Sub Judge, Nagercoil passed in O.S. No. 35 of 1981 dated 06.08.1982 in A.S. No. 769

and 959 of 1985 were filed by 4th defendant and 3rd defendant as Appellants before this Court and this Court dismissed A.S. No. 769 of 1985

and allowed A.S. No. 959 of 1985 and held that the 6th respondent / 5th defendant is not entitled to any relief in regard to 4th Item of "B

Schedule property purchased from the first defendant as per Ex.A.4-Sale Deed dated 22.12.1980.

5. Aggrieved against the judgment and decree passed by the learned Single Judge of this Court in A.S. No. 959 of 1985 dated 22.06.1998, the

5th defendant as Appellant has preferred the present L.P.A. No. 33 of 2002.

6. According to the learned Counsel for the appellant/5th defendant, the present appellant/5th defendant in law can assail the judgment and decree

passed by the learned Sub Judge, Nagercoil in O.S. No. 35 of 1981 dated 06.08.1982 even without filing any first appeal against the said

judgment and contends that as per Order 41 Rule 33, the appellate Court is possessing the requisite power to pass any decree and to make

suitable order.

7. It is the further contention of the appellant/5th defendant that the appellant has purchased the property as per Ex.B6, sale deed dated

22.12.1980 from the first defendant for a sale consideration of Rs. 8,200/- and therefore, the appellant/5th defendant's interest is to be protected,

since the said sale is valid and binding on respondents 2 and 3, the minors represented by their mother, Chanthragani.

8. A perusal of the Ex.B6, registered sale deed dated 22.12.1980 indicates that the 5th defendant/appellant has purchased the Item 4 of the "B

Schedule property in the Plaint from the first defendant for a sale consideration of Rs. 8,200/-. The said sale deed is a Public document and

registration amounts to notice. The purpose of registration is to enable individuals to find out whether any particular piece of property, with which

they may be concerned, has been made subject to some particular legal obligation. Moreover, the registration of a document will give solemnity of

form and legal significance to the said document in registering the same.

9. The learned Counsel for the appellant relied on AIR 1963 SC 185 at special page 187 V.T.S. Chandrasekhara v. Kulandaivelu wherein it is

observed as follows:

Constitution of India, Articles 132, 133 - Scope - Certificate under Article 133 - High Court cannot limit certificate to any particular point - Entire

appeal is before Supreme Court - Point though not argued before High Court not abandoned - Supreme Court dealt with the same.

10. He also cited Koksingh Vs. Smt. Deokabai, wherein it is held as follows:

(A) Civil P.C. (1908) Ord 41 Rule 33 - Power of appellate Court to grant relief in favour of respondent.

If an appellate Court is of the view that any decree which ought in law to have been passed was in fact not passed by the Court below, it may pass

or make such further or other decree or order as the justice of the case may require. Thus under Order 41 Rule 33 the High Court is competent to

pass a decree for the enforcement of a charge in favour of the respondent notwithstanding the fact that the respondent did not file any appeal from

the decree.

11. It is the case of the 2nd and 3rd respondents (minors)/plaintiffs that their father/first defendant fell into bad ways and started squandering the

monies and properties for immoral and illegal purposes with no one to guide or control him and that the alienations regarding "B" Schedule properties

were aware of the fact that first defendant was always seen fully drunk and therefore, the alienations made by the first defendant are all invalid. In

Ex.B6, sale deed dated 22.12.1980 it is mentioned by the vendor/first defendant that the sale is effected for settling the debts in regard by him and

for family necessity expenses.

12. P.W.1, Chanthrakani, (the mother of the minor plaintiffs) in her evidence has deposed that the 5th defendant is related to her husband/first

defendant and that the 5th defendant was aware of the activities of the first defendant and that she gave Ex.A7-Notice dated 14.10.1980 for

herself and on behalf of minor children stating that no one should purchase their family properties from her husband, first defendant and that the first

defendant has not settled the loan after selling the properties.

13. P.W.2, Vijayan has deposed that there was no necessity for first defendant to sell the properties and that the first defendant always used drink

and not resided in the house properly and stayed in the lodge and there was one case against the first defendant for causing nuisance by consuming

liquor.

14. D.W.1, Karthikeyan in his evidence has stated that he is aware of the first defendant and that it is not correct to say that he used to drink and

cause mischief and he was not aware as to whether there was any case in this regard and that he did not enquire about the same.

15. Admittedly, the appellant/5th defendant has not examined herself as witness before the Trial Court. But in the written statement filed by the

appellant/5th defendant, she has averred that "she purchased 54 1/2 cents of paddy land in Re-survey No. 77/8 of Dharmapuram Village for a

valuable consideration of Rs. 8,200/- by virtue of sale deed dated 22.12.1980 executed by the first defendant and that the sale deed was executed

by the first defendant due to pressing necessity of discharging earlier debts."

16. In K. Muthuswami Gounder Vs. N. Palaniappa Gounder, , it is held that ""High Court was justified in exercising power under Order 41 Rule

33 and setting aside the decree of redemption in favour of the appellant.

17. In Post-Graduate Institute of Medical Education and Research and Another Vs. A.P. Wasan and Others, , it is observed as follows:

D.Civil Procedure Code, 1908 - Order 41 Rule 22 Expln. Filing a cross objection against an adverse finding of a lower court not obligatory and

respondent could challenge such finding in his submissions to the appellate forum - But when records showing absence of such challenge against

finding of Single Judge before Division Bench of High Court and Division Bench also expressly recording accordingly, it was incumbent upon that

party to have that matter clarified before the Division Bench - Practice and Procedure - High Courts)

18. As a matter of fact in the interest of justice, an appellate Court can mould

the relief and can pass any decree or order even though no appeal or cross objection has been filed. There must be a direct connection between the debt and immorality set up by the 2nd and 3rd respondents/minor plaintiffs. Moreover, it is not necessary for the purchaser of a property to show that she made inquiry before the sale as to the nature of debt and its pressing necessity to discharge the same. Though in Ex.B.6-Sale Deed dated 22.12.1980, it is mentioned that the sale is effected for settling the first defendant's debts and for family necessity expenses and since there is no direct connection between the debt and the immorality of the first defendant set up by the 2nd and 3rd respondents/minor plaintiffs and in as much as the appellant/5th defendant is a bonafide purchaser for value of the Item 4 of the Plaint ""B"" Schedule property as per Ex.B6, sale deed dated 22.12.1980 and since the suit has been laid nearly a year after the execution of sale deed Ex.B6 dated 22.12.1980 and on consideration of available material evidence and records in the present case, we are of the opinion that in equity and fair play the appellant's rights are to be protected and exercising the powers under Order 41 Rule 33 C.P.C., we direct this item of property is to be allotted to the share of the first defendant to prevent aberration of justice and this can be worked out in final decree proceedings and in that view of the matter, we are inclined to allow the LPA and accordingly, set aside the preliminary decree of the trial Court in O.S. No. 35 of 1981 dated 06.08.1982 and also the judgment and decree of the learned Single Judge in A.S. No. 959 of 1985 dated 22.06.1998.

19. Having regard to the facts and circumstances of this case, the parties are directed to bear their own costs.