

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.01.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1165 of 2014 & M.P.No. 1 of 2014

Loganathan

.. Appellant/Plaintiff

-Vs-

Kasirajan

.. Respondent/Defendant

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 01.07.2013 passed in A.S.No.71 of 2011 on the file of the I Additional Subordinate Judge, Cuddalore in reversing the judgment and decree dated 29.09.2010 passed in O.S.No.740 of 2004 on the file of the Principal District Munsif, Cuddalore.

For Appellant : Mr.P.Mani

For Respondent : ...

J U D G M E N T

The plaintiff in O.S.No.740 of 2004 on the file of the learned Principal District Munsif, Cuddalore is the appellant. The respondent is the sole defendant in the suit. The said suit was filed by the plaintiff for permanent injunction restraining the defendant from in any manner interfering with his alleged peaceful possession and enjoyment of the suit property and also for permanent injunction restraining the defendant from alienating or encumbering the suit property in any manner. The trial court dismissed the suit in respect of the relief for permanent injunction to restrain the defendant from in any manner interfering with the plaintiff's peaceful possession and enjoyment in the suit property. As against the denial of decree for permanent injunction to restrain the defendant from interfering with his peaceful possession, the plaintiff did not file any appeal. As against the decree for injunction not to alienate, the defendant filed an appeal in A.S.No.71 of 2011 on the file of the learned I Additional Subordinate Judge, Cuddalore. The lower appellate court allowed the appeal by decree and judgment dated 01.07.2013 and set aside the decree for injunction granted by the trial court to restrain the defendant from in any manner alienating the suit property. Challenging the same, the appellant is before this Court with this Second Appeal.

2. Today, the Second Appeal has come up before me for admission. I have heard the learned Counsel for the appellant and I have also perused the records carefully.

3. Admittedly, the plaintiff is the grandson of one Kokilambal Ammal. The defendant is one of the sons of the daughter of Kokilambal Ammal. Now the plaintiff claims that he is in possession of the property and the defendant has got no right whatsoever to alienate the same. The trial court found that the plaintiff and the defendant are co-owners and the plaintiff has not proved that he is in possession of the suit property with exclusion of the defendant. It is, on this ground, the trial court did not grant the decree for permanent injunction. So far as the relief of permanent injunction to restrain the defendant from encumbering the suit property is concerned, decree was granted. The lower appellate court reversed it on the ground that no injunction shall lie against the co-owner.

4. The learned Counsel for the appellant would submit that this principle that no injunction can be granted against the co-owner, cannot be made applicable to a case where the relief sought for is an injunction to restrain the co-owner from in any manner interfering with his peaceful possession and enjoyment in the suit property.

5. Though there is some justification in the said submission of the learned Counsel for the appellant, on that score, I do not find any substantial question of law to admit the Second Appeal. It is needless to point out that as per Section 41(h) of the Specific Relief Act, 1963, when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust, an injunction cannot be granted. In this case, the finding of the courts below is that the plaintiff and the defendant are co-owners. When that be so, in a suit for partition, such an interim order, namely, not to alienate the suit property could be obtained.

6. In view of the same, in my considered opinion, though on a different ground, the lower appellate court has set aside the decree of the trial court, I am of the view that the ultimate decree passed by the lower appellate court in respect of the relief of injunction to restrain the defendant from in any manner alienating the suit property deserves to be confirmed for the reason as I have herein above narrated. Anyhow, it is made clear that if the plaintiff claims that he has got undivided $1/6^{\text{th}}$ share in the suit property, it is always open for him to file a suit for partition. At the same time, I would like to add that I have not expressed any opinion as to whether the plaintiff is entitled for any share in the suit property or not. It is for the plaintiff to work out his remedy in the manner known to law. In such view of the matter, I do not find any merit at

all warranting admission of the Second Appeal as there is no substantial question of law.

7. In the result, the Second Appeal fails and the same is accordingly dismissed. Consequently, connected Miscellaneous Petition is also closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The I Additional Subordinate Judge, Cuddalore
2. The Principal District Munsif, Cuddalore.

+ 1 cc to Mr.P. Mani, Advocate Sr.4134

S.A.No.1165 OF 2014
& M.P. No. 1 of 2014

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