

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2016

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THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal Nos.493 & 494 of 2015 and
M.P.Nos.1 of 2015 in
S.A.Nos.493 & 494 of 2015

1.N.Ramalingam

2.N.Mohanasundaram

3.N.Vijayabaskar

4.Mrs.Renuga Devi ... Appellants/ Respondents/
Plaintiffs in both S.As

Vs.

N.Thanickachalam ... Respondent/ Appellant/
Defendant in both S.As

Prayer in S.A.No.493 of 2015:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 31.01.2008 made in A.S.No.242 of 2006 on the file of the learned IV Additional Judge, City Civil Court, Chennai in modifying the order and decree dated 28.03.2005 made in I.A.No.6007 of 2003 in O.S.No.5234 of 1981 on the file of the learned VI Assistant Judge, City Civil Court, Chennai.

Prayer in S.A.No.494 of 2015:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 31.01.2008 made in A.S.No.243 of 2006 on the file of the learned IV Additional Judge, City Civil Court, Chennai in modifying the order and decree dated 28.03.2005 made in I.A.No.11253 of 2003 in O.S.No.5234 of 1981 on the file of the learned VI Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.K.V.Sundararajan
in both S.As

For Respondent : Mr.R.Subramanian for
in both S.As Mr.B.T.Seshadri

COMMON JUDGEMENT

The appellants in both the appeals in S.A.No.493 & 494 of 2015 are the plaintiffs in O.S.No.5234 of 1981 on the file of the learned VI Assistant Judge, City Civil Court, Chennai. The respondents are the defendants in the suit. The said suit was

filed for partition and for mesne profits. The trial Court passed a preliminary decree in favour of the plaintiffs thereby granting a decree for partition to the tune of 5/16 th share in the suit property to the plaintiffs. The second defendant was allotted 5/16 th share and the third defendant was allotted 6/16 th share. There was no appeal filed by any of the parties against the said preliminary decree and thus, the same has become final.

2. Thereafter, the plaintiffs filed an Interlocutory Application in I.A.No.11711 of 1987 before the learned VI Assistant Judge, City Civil Court, Chennai, for passing a final decree thereby dividing the suit property by meets and bounds. During the said proceeding, an Advocate Commissioner was appointed to divide the suit property and to submit a report. The learned Advocate Commissioner submitted a report to the effect that the suit property was indivisible. Thereafter, the plaintiffs filed another Interlocutory Application in I.A.No.6006 of 2003 before the trial Court for selling the suit property and to pay their share of 5/16 th share. In the mean while, the second defendant sold away her 5/16 th share in favour of the third defendant and thus, the third defendant has got a major share to the tune of 11/16 th share. The third defendant therefore filed I.A.No.11253 of 2003 before the trial Court seeking permission to purchase the share of 5/16 th share of the plaintiffs. The plaintiffs had expressed no objection for the third defendant to purchase their share. In order to ascertain the market value of the suit property, so as to direct the third defendant to purchase 5/16 th share of the plaintiffs, an Advocate Commissioner was appointed. The Advocate Commissioner accordingly submitted a report fixing the market value of the suit property at Rs.57,47,712/-. The same was accepted by the trial Court. The trial Court therefore, directed the third defendant to pay a sum of Rs.17,96,1160/- to the plaintiffs to get the sale completed. Accordingly, I.A.No.11253 of 2003 was disposed of.

3. So far as the mesne profits is concerned, the trial Court fixed the mesne profits at Rs.13,03,065/- and directed the third defendant to pay 5/16 th share out of the same to the plaintiffs i.e., Rs.4,07,377/-.

4. Aggrieved over the fixation of the market value at the rate of Rs.57,47,712/- the third defendant filed A.S.No.243 of 2006 and aggrieved over the fixation of mesne profits at Rs.13,03,065/-, the third defendant filed A.S.No.242 of 2006 before the learned IV Additional Judge, City Civil Court, Chennai. By a common decree and judgment dated 31.01.2008, the First Appellate Court dismissed both the appeals. Challenging the decree and judgment in A.S.No.242 of 2006, the plaintiffs have filed S.A.No.493 of 2015 and challenging the decree and judgment in A.S.No.243 of 2006, the plaintiffs have filed S.A.No.494 of 2015.

5. These two second appeals have come up today for admission. I have heard the learned counsel for the appellants and the learned counsel for the respondents and I have also perused the records carefully.

6. So far as the appeal relating to the fixation of market value of the suit property is concerned, the plaintiffs were not aggrieved by the market value fixed by the trial Court. Therefore, they did not file any first appeal against the same. Challenge was made by way of First Appeal only by the third defendant and he has also lost it. I do not understand as to how the plaintiffs can be aggrieved by the dismissal of A.S.No.243 of 2006, in which, the First Appellate Court has simply confirmed the market value of the suit property as fixed by the trial Court. The plaintiffs who had no grievance in respect of the fixation of the market value of the suit property by the trial Court cannot have any grievance against the decree and judgment of the First Appellate Court in A.S.No.243 of 2006. If at all, there is one who is aggrieved by the decree and judgment of the First Appellate Court in A.S.No.243 of 2006 it must be only the third defendant. But, the third defendant has not filed any Second Appeal. Strangely, the plaintiffs have filed the present Second Appeal in S.A.No.494 of 2015. In these circumstances, I hold that the second appeal in S.A.No.494 of 2015 filed by the plaintiffs challenging the decree and judgment in A.S.No.243 is not sustainable and the same is therefore, liable to be dismissed. Further, there is no question of law at all involved in this second appeal.

7. So far as the mesne profits is concerned, the trial Court fixed the same at Rs.13,03,065/-, out of which, 5/16 th share was ordered to be paid by the third defendant to the plaintiffs. The plaintiffs were not aggrieved by the same and therefore, they do not file any first appeal at all against the said quantum of mesne profits fixed by the trial Court. The third defendant alone was aggrieved over the same and therefore, he filed an appeal in A.S.No.242 of 2006 and that has been dismissed by the First Appellate Court thereby confirming the decree and judgment of the trial Court. When the plaintiffs/appellants had no grievance regarding the fixation of mesne profits by the trial Court, I do not understand as to how they are aggrieved by the decree and judgment of the First Appellate Court. If at all there is one who should be aggrieved by the decree and judgment of the First Appellate Court it must be only the third defendant who filed A.S.No.242 of 2006. But, he has not filed any Second Appeal against the same. Strangely, the plaintiffs/ appellants have filed S.A.No.493 of 2015 before this Court.

8. The learned counsel for the appellants would submit that the mesne profits was fixed for the period which ended the date of decree of the trial Court and the First Appellate Court ought to have ordered for mesne profits for the subsequent period during the pendency of A.S.No.242 of 2006. This argument does not persuade me at all. The plaintiffs are entitled for

mesne profits only till the date of the decree of the trial Court but, for the subsequent period, as per the decree of the trial Court, they are not entitled for mesne profits. Since, they did not challenge the period for which mesne profits was fixed by filing any First Appeal, they cannot challenge the decree and judgment of the First Appellate Court on the First Appeal filed by the third defendant. In such view of the matter, this Second Appeal is hopelessly not sustainable and therefore, the same is also liable to be dismissed. Further, I do not find any substantial question of law at all involved in this second appeal. In view of the foregoing discussions, I find no merit in both the Second Appeals and therefore, they are liable to be dismissed.

9. In the result, the Second Appeals fail and accordingly, the same are dismissed and the common decree and judgment passed by the First Appellate Court confirming the decree and judgment of the trial Court is hereby confirmed. There shall be no order as to cost. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

jbm

To

1.The VI Assistant Judge,
City Civil Court,
Chennai.

2.The IV Additional Judge,
City Civil Court,
Chennai.

2 ccs to Mr.K.V. Sundararajan, Advocate, Sr. 1171, 1172
2 ccs to Mr.R. Dasaratharao, Advocate, Sr. 1053, 1054

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