

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.11.2016
PRONOUNCED ON : 22.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.439 of 2011
and
M.P.No.1 of 2011

D.Shanmugham ... Appellant/Respondent/Plaintiff

Vs.

L.Lalithamma ... Respondent/Appellant/Defendant

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 10.11.2010 made in A.S.No.90 of 2010 on the file of the Principal Subordinate Judge, Salem, reversing the judgment and decree dated 12.01.2010 made in O.S.No.1302 of 2008 on the file of the I Additional District Munsif, Court, Salem.

For Appellant : Mr.T.Murugamanickam

For Respondent : Mr.P.Jagadeesan

JUDGMENT

The second appeal has been laid by the plaintiff challenging the judgment and decree dated 10.11.2010 made in A.S.No.90 of 2010 on the file of the Principal Subordinate Court, Salem, reversing the judgment and decree dated 12.01.2010 made in O.S.No.1302 of 2008 on the file of the First Additional District Munsif Court, Salem.

2. The suit has been laid by the plaintiff seeking the relief of perpetual injunction restraining the defendant not to let or sublet the suit property for rent to anybody.

3. The defendant is the wife of the deceased Govindarajulu. It is the admitted case of both parties that the deceased Govindarajulu left a Will dated 18.02.1972 bequeathing the suit property and other properties in favour of the defendant, the

plaintiff and others. Admittedly, the suit property has been bequeathed to the defendant for her life time and thereafter, to be taken by the plaintiff absolutely. Therefore, it could be seen that under the last testament of the deceased Govindarajulu dated 18.02.1972, the suit property has been given to the defendant to be enjoyed during her life time only and after her death, the vested remainder is to be taken by the plaintiff.

4. The certified copy of the Will dated 18.02.1972, which has been marked as Ex.A1 prohibits the letting out of the suit property for rent by the defendant and hence, according to the plaintiff, he has come forward with the suit to restrain the defendant from letting out the suit property to others by way of perpetual injunction.

5. Per contra, it is contended by the defendant that in order to maintain herself and also to pay Municipal Tax in respect of the suit property and for other legal necessity, she has by force to let out the suit property for rent and accordingly, it is her case that the suit property has been let out even 16 years prior to the institution of the suit and therefore, according to the defendant, the plaintiff is not entitled to seek the relief of perpetual injunction sought for by him.

6. No doubt, on a consideration of the evidence adduced by the respective parties, the trial court was pleased to decree the suit as prayed for. However, the lower appellate court, on a reappraisal of the evidence, has set aside the judgment and decree of the trial Court and negatived the relief sought for by the plaintiff.

7. For discountenancing the plea of the plaintiff, the lower appellate Court has taken into account the fact that the defendant has much prior to the institution of the suit, 16 years ago, let out the suit property for rent. The above factum has not been, as found by the lower appellate court, specifically denied by the plaintiff. Therefore, it could be seen that the suit as such has become infructuous. The second point that has been taken into consideration by the lower appellate court, even if there is an embargo prohibiting the defendant from letting out the property given to her to be enjoyed during her life time under the Will, still for legal necessity as per law, the defendant is entitled to make use of the suit property to her best use and accordingly, it is found that the act of the defendant in letting out the suit property for rent to eke out her livelihood and to maintain the suit property cannot be found fault with. The findings of the lower appellate Court, with reference to the above aspects, have not been projected to be erroneous in law as well as on facts. As

rightly found by the lower appellate court, on ground of legal necessity, the defendant has let out the suit property for rent and thus, found to be both legally and factually correct. It could be seen that no interference is called for in the findings of the lower appellate Court.

In the light of the above discussions, no substantial question of law is found to be involved in this second appeal. The second appeal deserves to be rejected and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sms

To

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

+1cc Mr. T.Murugamanickam, Advocate Sr.67774

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