

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 09.01.2017
PRONOUNCED ON:
CORAM :
THE HONOURABLE MR.JUSTICE T.RAVINDRAN
S.A.No.728 of 2011
&
M.P.No.1 of 2011

B.Sukumar

... Appellant/Appellant/
Defendant

Vs.

Sekar

... Respondent/Respondent/
Plaintiff

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 18.12.2009 passed in A.S.No.694 of 2007 on the file of the V Additional Judge, City Civil Court, Chennai partially confirming the judgment and decree dated 18.07.2007 passed in O.S.No.8233 of 2006 on the file of the XII Assistant Judge (i/o) XVIII Assitant Judge, City Civil Court, Chennai.

For Appellant : Mr.N.D.Bahety
For Respondents : No Appearance

J U D G M E N T

Challenge in this second appeal is made by the defendant against the Judgment and decree dated 18.12.2009 passed in A.S.No.694 of 2007 on the file of the V Additional Judge, City Civil Court, Chennai partially confirming the judgment and decree dated 18.07.2007 passed in O.S.No.8233 of 2006 on the file of the XII Assistant Judge (i/o) XVIII Assistant Judge, City Civil Court, Chennai.

2.The second appeal has been admitted and the following substantial questions of are formulated for consideration:

(i)Can, any co-sharer of an undivided Hindu joint family property, claim and demand any particular and specific share or amount in the property, as a matter of right, without seeking for partition, in the first place?

(ii)Without a specific power, can a Power Agent, insist and enforce, that too as a matter of right, that cheque payments be made, in the agent's own and personal name, instead of in the name of his principal?

(iii) Can a co-owner maintain an Administration suit, which only creditors and legatees are entitled to file?

3. A reading of the plaint would go to show that the plaintiff has laid the suit for a direction to the defendant to pay the share of rental arrears of income collected from the tenants in the occupation of the plaint schedule property at the rate of Rs.2800/- per month from October 2001 to July 2006, amounting to Rs.1,62,400/- and also for a direction to the defendant to pay continuously the share of rental income to which, the plaintiff is entitled to, so long as the administration of the property is vested with the defendant.

4. It is further found that the plaintiff has valued the suit under Section 22 of the Tamil Nadu Court Fees and Suits Valuation Act 1955. However, according to the defendant, in the copy of the plaint furnished to him, the suit is stated to be valued under Section 39 of the Tamil Nadu Court Fees and Suits Valuation Act 1955 and further according to him, a reading of the plaint would only go to show that it is an administration suit and in such view of the matter inasmuch as the plaint does not contain all the ingredients necessary for maintaining the administration suit, according to him, the suit is liable to be dismissed.

5. The plaintiff has laid the suit through his Power of Attorney agent. According to the defendant, the Power of Attorney agent is not entitled to receive the rental arrears on behalf of the Principal i.e., the plaintiff and on that ground also, the suit is liable to be dismissed. The defendant has also taken up a plea that the suit laid by the plaintiff is barred by limitation.

6. Both the Courts below have concurrently rejected the defence version. The evidence adduced in this matter would go to show that insofar as the entitlement of the plaintiff to receive the rent of Rs.2800/- per month from the defendant in respect of the plaint schedule mentioned property, the defendant has not disputed the same. It is also found from the evidence produced in the matter that the defendant had already remitted the rental income to which the plaintiff is entitled to earlier and also to his Power of Attorney agent once, it is also further found that thereafter, the defendant has instead of remitting the rental income to the Power of Attorney agent, sent the same directly to the plaintiff. According to the defendant, inasmuch as the Power of Attorney agent is not entitled to receive the rental income of the plaintiff, he had instead of sending the amount to the Power of Attorney agent sent it to the plaintiff directly.

7. Thus according to the defendant, the Power of Attorney agent is not entitled to receive the rental income directly from the defendant as the Power Deed does not empower him to collect the same. However, as rightly found by the Courts below and also on a reading of the terms of the General Power of Attorney Deed executed in favour of the Power of Attorney agent marked as Ex.A1, would go to show that the Power of Attorney agent had been authorised by the plaintiff to receive the due share of the rent payable by the defendant and to give receipts as well as in case of default in payment take suitable action to recover the amount on behalf of the plaintiff. Accordingly, it could be seen that inasmuch as the defendant had failed to remit the rental income to the Power of Attorney agent for the period in question after the receipt of notice, it could be seen that the suit has come to be laid by the plaintiff through his Power of Attorney agent.

8. In this second appeal, no material has been placed by the defendant to take a different view from the findings of the courts below that as per the terms of the Power of Attorney Deed marked as Ex.A1, the Power of Attorney agent is entitled to collect the rental income on behalf of the plaintiff. No infirmity has been pointed out in the findings of the courts below for upholding the entitlement of the Power of Attorney agent to collect the rental income on behalf of the plaintiff for the requisite period. As adverted to earlier, even at one point of time, the defendant himself had paid the amount directly to the Power of Attorney agent. However, according to the defendant, subsequently, on coming to know that the Power of Attorney agent is not legally entitled to receive the amount, he had stopped the payment to him and made the remittance directly to the plaintiff i.e., the principal. However, the basis on which the defendant had arrived at such a conclusion is not established either factually or legally. Inasmuch as the defendant had sent the rental income to which the plaintiff is entitled to by way of cheque in favour of the plaintiff, accordingly, the same had been returned, directing him to tender the cheque in the name of the Power of Attorney agent. Insofar as the conclusion of the courts below that the Power of Attorney agent is entitled to receive the rental income on behalf of the plaintiff, as per Ex.A1, no warrant of interference is made out. Therefore, the above finding is confirmed.

9. As regards the contention of the defendant's counsel, that the suit having been laid for the administration of the estate, the ingredients to satisfy the same, having not been incorporated in the plaint, on that ground alone, the suit is liable to be dismissed. However, as rightly found by the courts below a reading of the plaint wholly would only go to indicate that it is a simple suit for recovery of money, to which the

plaintiff is entitled to, from the defendant. Merely because the plaintiff had claimed the rental income from the defendant till the administration of the property described in the plaint vests with the defendant, it cannot be held that the suit has been laid for the administration of the estate. In such view of the matter, the contention put forth by the defendant's counsel that the suit is an administration suit and as the necessary averments with reference to the same are not incorporated in the plaint, the suit should fail as such, cannot be countenanced.

10.As rightly found by the Courts below, the suit has been valued only under Section 22 of the Tamil Nadu Court Fees and Suits Valuation Act 1955 and not under Section 39 of the above said Act. Even, as per the evidence adduced on the side of the defendant, it could be seen that the defendant is also aware of the nature of the suit laid by the plaintiff i.e., the same being only the suit for recovery of money. That apart even during the cross examination of the plaintiff's side witness i.e., PW1, the defendant has not cross examined him on the question of the nature of the suit namely whether the same is the administration suit or the suit simpliciter for recovery of money.

11.Therefore, the contention now put forth by the defendant's counsel that the plaintiff having come forward with a suit for administration cannot turn around and contend that the suit is a simple suit for recovery of money as such, cannot be accepted. Both the courts below have correctly found that it is only a suit for recovery of money to which the plaintiff is entitled to. It is not the case of the defendant that the plaintiff is not entitled to seek the recovery of rental income from the plaint schedule property at the rate of Rs.2800 per month. The defendant cannot take advantage of the absence of the partition deed to non suit the plaintiff. If the plaint schedule property had not been partitioned and accordingly, the plaintiff's entitlement to claim the rental income from the suit property had not been determined, there would have been no question of the defendant paying the same to the plaintiff prior to the filing of the suit.

12.On the other hand as seen from the evidence adduced by the parties concerned, the defendant at one point of time had been remitting the rental income to which the plaintiff is entitled to. Only thereafter, it could be seen that for one reason or the other, he has stopped the payment which had necessitated the plaintiff to institute the suit. It could therefore be seen that the contention of the defendant's counsel that the plaintiff, for the recovery of the rental income, should only lay a suit for partition and his present suit even if the same is to be construed as a suit for recovery of money would not be maintainable as such, cannot be countenanced.

13.As regards the plea of limitation raised by the defendant, the courts below have correctly addressed the issue on that point in the right perspective and no interference is called for with reference to the same as the same does not suffer from any infirmity. It is also found that the first appellate court had also rightly declined the direction sought for by the plaintiff to direct the defendant to pay the rental income continuously as long as the administration of the plaint schedule property is vested with the defendant. The same is also rightly determined by the first appellate court.

14.In such view of the matter, the decision reported in 1959 MLJ 33(Chinnadurai @ Ramachandran and Others Vs. The Court of Wards, Madras, rep by the Estate Collector of Sivagiri Estate) projected by the defendant's counsel is found to be not applicable to the facts and circumstances of the case at hand.

15.In the light of the above discussions, the substantial questions of law 1 & 2 formulated in this second appeal are answered in favour of the plaintiff and against the defendant. As regards the third substantial question of law formulated, it is found that it does not arise for consideration inasmuch as the suit is laid only for recovery of money and not as an administration suit.

16.In conclusion, the second fails and accordingly is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The V Additional Judge,
City Civil Court, Chennai
2. The XII Assistant Judge,
(i/o) XVIII Assistant Judge,
City Civil Court, Chennai.

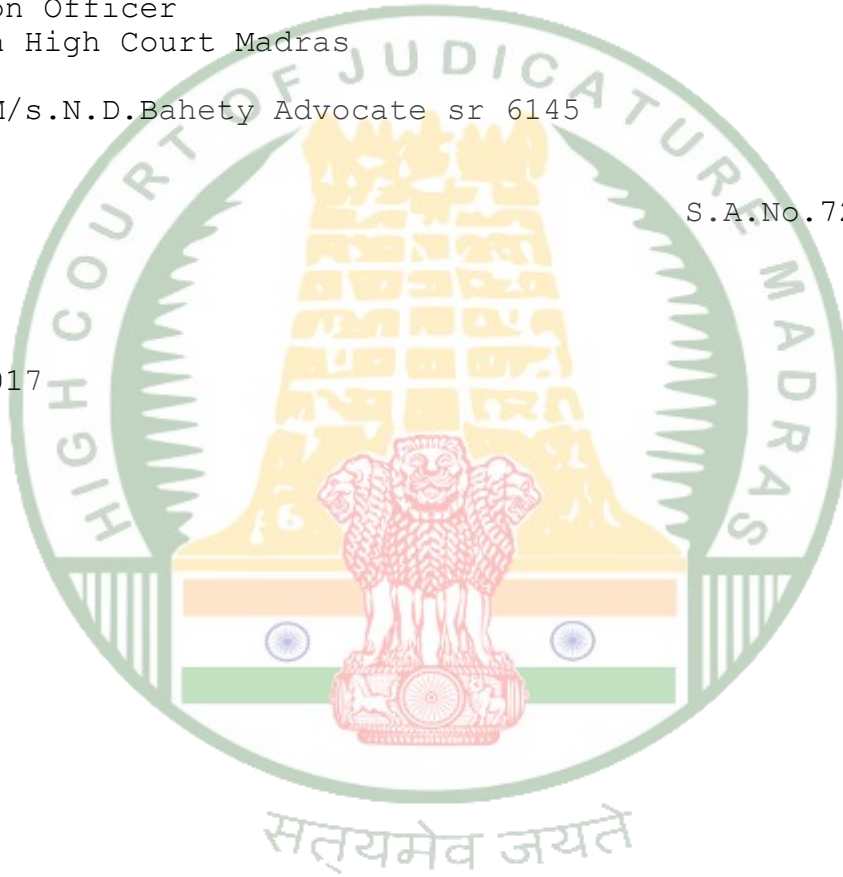
copy to

The Section Officer
VR Section High Court Madras

+1 cc to M/s.N.D.Bahety Advocate sr 6145

S.A.No.728 of 2011

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