

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :02.03.2018

PRONOUNCED ON:28.03.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

Cross Objection.No.64 of 2003
in
S.A.No.1195 of 2003

1.M/s.Amalgations Ltd.,

2.M/s.Simpson & Co. Ltd.,
202, Anna Salai,
Chennai – 600 002.

... Cross Objectors

Vs.

1.V.S.Sureshkumar

2.V.S.Krishnakumar

3.V.S.Harikumar

4.V.S.Vishnukumar

5.V.S.Mennakumari

6.M.Beenakumari

7.V.S.Vennakumari

... Respondents

Prayer in Cross objection:

Cross Objections filed under Order XLI Rule 22 of the Code of Civil Procedure in S.A.No.1195 of 2003 on the file of this Hon'ble Court against the A.S.No.12 of 1993 on the file of the Subordinate Judge, Poonamallee, in so far as the findings in paragraph 28 of the judgment in A.S.No.12 of 1993.

For Cross objectors : Mr.T.V.Ramanujam
for M/s.T.V.Krishnamachari

For Respondents : No appearance
Set exparte, vide order dated
02.03.2018

J U D G M E N T

The cross objection has been preferred by the respondents in S.A.No.1195 of 2003 against the findings of the first appellate court in paragraph No.28 of the judgment dated 27.10.1999 passed in A.S.No.12 of 1993 on the file of the Subordinate Court, Poonamallee.

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2. The suit in O.S.No.1674 of 1992 has been laid by the cross objectors for declaration and permanent injunction, in respect of the plaint B schedule property. The abovesaid suit of the cross objectors

has been resisted by the appellants, by filing a written statement and it is found that in support of the case of the cross objectors, P.W.1 has been examined and Exs.A1 to A8 were marked and on the side of the appellants/defendants, D.Ws.1 and 2 were examined and Exs.B1 and B2 were marked. Exs.C1 and C2 were also marked.

3. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the suit laid by the cross objectors. On appeal, the first appellate court, on an appreciation of the materials placed, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the cross objectors, decreed the suit as prayed for. Aggrieved over the same, the defendants have preferred the second appeal. The cross objectors being agreed over the findings of the first appellate court as found in paragraph 28 of the judgment has come forwarded with the cross objection.

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4. When the matter was listed for hearing, inasmuch as the appellants did not turn up for the prosecution of the appeal preferred by them, accordingly, the second appeal preferred by them has come

to be dismissed for non-prosecution. The cross objectors, who have preferred the cross objection placed their submissions as regards their case and accordingly, the cross objection of the cross objectors is taken up for consideration.

5. Briefly stated, it is found that the cross objectors had purchased the plaintiff A schedule property and for having access to the plaintiff A schedule property, it is found that the cross objectors had acquired the plaintiff B schedule property, by way of the various sale deeds and accordingly, it is found that they had formed the road in the B Schedule property for the purpose of gaining access to the main road from the A schedule property and vice versa.

6. The defendants resisted the claim of the declaration of title and the exclusive claim of the use of the B schedule property by the cross objectors and contested the suit laid by the cross objectors, however as abovefound, the first appellate court has accepted the case of the cross objectors.

7. However, on the basis of the materials placed, it is found that the first appellate court on coming to the conclusion that by way of

Ex.A4, a portion of the B schedule had come to be acquired by the cross objectors as well as by way of Ex.B2, the defendants had acquired some right in respect of the B schedule property, the vendors of Ex.A4 and Ex.B2 accordingly being the same, noting that by way of Ex.A4 sale deed, the parties thereto particularly, the cross objectors had agreed that they would utilize the lands conveyed thereunder for the purpose of constructing a drive-way from the main road to the property of the cross objectors referred to supra and the cross objectors had also agreed that they shall not construct any fence, wall or put up other obstructions such as trees, hutches etc., surrounding the property conveyed to them therein and further the cross objectors had also agreed to give access to the vendors over the demised lands for the purpose of taking their cattle and had also agreed to grant the vendors the existing picota right and construct necessary channels, to enable the vendors to irrigate their lands and accordingly, the first appellate court holding that the vendors having retaining the abovesaid right and accordingly, the vendors having conveyed the said rights in respect of the B schedule property, by way of Ex.B2, held that the defendants would be entitled only to the above said right acquired by their vendors by way of Ex.A4 and thereby would be entitled to enforce the same only in respect of the property covered

under Ex.A4 and not in respect of the other portions of the B schedule property acquired by the cross objectors, by way of the other sale deeds placed in the matter.

8.As rightly determined by the first appellate court, when it is found that the cross objectors themselves had agreed to the enjoyment of the abovesaid rights by their vendors, by way of Ex.A4 sale transaction and when it is found that the vendors had conveyed to the defendants their rights by way of Ex.B2, it is found that the defendants as per law, would be entitled to enforce such of the rights as had been acquired by or conceded to their vendors, by the cross objectors themselves under Ex.A4 and in such view of the matter, it is found that the contention put forth by the cross objectors that the defendants are not entitled to enforce the said rights as the same are only personal between them and their vendors merit no acceptance and hence it is thus found that the cross objection preferred on the above lines does not merit approval as such.

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9.A perusal of section 11 of the Transfer of Property Act dealing with "Restriction repugnant to interest created" would go to show that,

"Where on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof."

and accordingly invoking the above said provision of law to the case at hand, when it is found that, when the vendors had acquired certain beneficial enjoyments in the property conveyed for the convenient enjoyment of their other properties, it is found that the vendors would

be entitled to enforce the same and also obtain any other remedy, which they may have in respect of a breach thereof. Accordingly, when it is found that the vendors of Ex.A4 had conveyed their interest in respect of the B schedule property to the defendants also by way of Ex.B2, as rightly determined by the first appellate court, only to the abovesaid extent of benefits conferred on the vendors by way of Ex.A4 in the property comprised therein as above stated, the defendants would be entitled to enjoy the B schedule property and it is thus found that there is no error or mistake in the findings of the first appellate court as has been determined in paragraph 28 of its judgment.

10.The contention put forth by the counsel appearing for the cross objectors that, the above said right conferred on the vendors by way of Ex.A4 does not ceased to have any relevance or force in the present situation as the lands nearby had been converted into the buildings or sites and as no agricultural operations are being carried on in the vicinity, the above said right ceases to exist and hence, the findings of the first appellate court as rendered in paragraph 28 of the judgment is unwarranted and unnecessary. However, when the vendors had been conferred the above said rights by the cross objectors themselves, it is found that as per section 11 of the Transfer

of Property Act, the said right could be enforced by the vendors, accordingly, when from the same vendors, the defendants had acquired certain rights by way of Ex.B2, I do not find any error or mistake on the part of the first appellate court in holding that the defendants would be entitled to lay claim of right only in respect of such of the rights conferred on the vendors by way of Ex.A4 in respect of the property only conveyed under Ex.A4.

11.In the light of the discussions, it is found that there is no merit in the cross objection preferred by the respondents. Resultantly, the cross objection is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

28.03.2018

mfa
Index:yes
Internet:yes

To

1. The Subordinate Judge,
Subordinate Court,
Poonamallee.

2.The Section Officer,
VR Section,
High Court.

T.RAVINDRAN, J.
mfa



Pre-delivery judgment made in
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in
S.A.No.1195 of 2003

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