

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.381 OF 2000

JUDGMENT:

This Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') aggrieved by the judgment and decree dated 02.03.2000 passed in A.S. No.52 of 1992 on the file of the Senior Civil Judge, Chodavaram (for short, 'appellate court'), wherein the dismissal of O.S. No.198 of 1985, *vide* the judgment and decree dated 10.08.1992, on the file of the Principal District Munsif, Chodavaram (for short, 'the trial court'), was confirmed.

2. For the sake of convenience, the parties hereinafter are referred to as they were arrayed before the trial Court in the original suit.

3. Heard the learned counsel for the appellants-plaintiffs and the learned counsel for the respondents-defendants, apart from perusing the material on record.

4. Learned counsel for the appellants-plaintiffs would submit that the findings of both the Courts below are perverse; the documents filed by the plaintiffs would show their possession over the suit schedule property; the 1st plaintiff, who was the kartha of the family, has no right to gift the suit land in favour of the 1st defendant under Ex.B.2; the suit schedule property is the joint family property of the plaintiffs and the same was purchased from the joint family funds; the suit was erroneously dismissed by both the Courts below; and finally prayed to allow the appeal granting permanent injunction in favour of the plaintiffs restraining the defendants from ever interfering with the peaceful possession and enjoyment of the plaintiffs in the suit schedule property.

5. On the other hand, learned counsel for the respondents-defendants would contend that both the Court below have analysed the entire evidence on

record and rightly rejected the relief sought by the plaintiffs; all the contentions raised on behalf of the plaintiffs are answered basing on the evidence on record; the findings of both the Courts below are in tune with the record and law; there is nothing to take a different view; there is no substantial question of law in this appeal; and ultimately, prayed to dismiss the appeal.

6. When this appeal is admitted, the following substantial question of law is framed for adjudication by this Court:

"Whether the Kartha of the Hindu undivided family can alienate the substantial, specified and identifiable items out of the joint family properties without having exclusive rights and without consent from the other coparceners when not for family necessities?"

7. Both the Courts below held that there was no iota of evidence to believe that the subject property was purchased by the 1st plaintiff investing joint family funds. As far as the possession over the suit schedule property is concerned, the 1st defendant acquired the suit schedule property under registered gift settlement deed and he is in possession of the property and as such, perpetual injunction as sought by the plaintiffs was denied by both the Courts below. Both the Courts have also dealt the issue with regard to settlement deed and the findings of both the Courts below are based on both oral and documentary evidence, which are not erroneous or perverse. While dealing with the subject matter of the suit, the trial Court as well as the appellate Court did not go into the question of title of the property. Both the Courts examined the possession over the property and held that the plaintiffs were/are not in possession of the subject property and denied the relief of injunction. These are also factual aspects which are decided in favour of the 1st defendant. Defendant Nos.2 and 3 are the purchasers of the suit schedule property from the 1st defendant under a registered sale deed marked as Ex.B.3. Under these

circumstances, no substantial question of law arises in this appeal. This appeal is devoid of merit and it is liable to be dismissed.

8. In the result, the Second Appeal is dismissed confirming the judgment and decree dated 02.03.2000 passed in A.S. No.52 of 1992 on the file of the Senior Civil Judge, Chodavaram. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 26.06.2018
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