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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2019

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

C.M.A.No.2687 of 2012
and M.P.No.1 of 2012

1. Balakrishnan
2. Rajakumari

..Appellants/Defendants 1,2
in Trial court

Vs.

Thirumalayee

..Respondent/Plaintiff in
Trial Court

Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of the code of Civil Procedure against the Judgment and Decree dated 19.09.2011 made in A.S.No.10 of 2011 on the file of the Principal Sub Court, Salem reversing the Judgment and Decree dated 27.10.2010 made in O.S.No.717 of 2009 on the file of the District Munsif Salem by remanding the matter.

For Appellants : Ms. K.Ponmani for Mr.V.Rajesh

For Respondent : Mr.M.A.Abdul Wahab for
Mr.V.Veluchamy

J U D G M E N T

This Civil Miscellaneous Appeal has been directed against the Judgment and Decree dated 19.09.2011 made in A.S.No.10 of 2011 on the file of Principal Sub Court, Salem reversing the Judgment and decree dated 27.10.2010 made in O.S.No.717 of 2009 on the file of Principal District Munsif Court, Salem.

2. The following substantial questions of law are raised by the appellants for consideration:

'A. Whether the Judgment of the lower Appellate Court is vitiated in that it has rendered findings on the grounds which have not been raised by the appellant?

B. Whether the lower Appellate Court fell into error by remanding the matter giving an opportunity to the respondent to fill up the lacuna in her case on



findings made by the Trial Court, which have not been challenged by her by way of separate appeal.?'

3. According to the appellants, the suit, viz., O.S.No.717 of 2009 was filed by the respondent, namely, Thirumalayee for dividing the suit property into four equal shares by metes and bounds and to pass a preliminary decree allotting 1/4share and one such share to her within a time fixed by the trial court. A detailed written statements were filed by the appellants / defendants taking a stand that the suit property is not the property of the father of the respondent / plaintiff herein and the 3rd defendant therein, namely, Perumayee, therefore, they have no right or share in the suit property. It is also the claim of the appellants / defendants that the respondent / plaintiff has filed the suit with malafide intention to grab the property.

4. It is the further case of the appellants that the trial court, during the course of enquiry found that some of necessary parties to the suit were not impleaded, therefore, it had come to the conclusion that the suit filed by the respondent was hit by 'principles of non-joinder of parties'. When the trial court has come to the conclusion that the suit was not maintainable and that it was hit by non-joinder of necessary parties, it had also granted a relief of permanent injunction not to alienate the property till the fresh partition suit is filed.

5. Aggrieved by the Judgment and Decree of partly dismissing the suit [O.S.No.717 of 2009] for non-joinder of parties and partly granting relief of permanent injunction, the Appeal Suit, viz., A.S.No.10 of 2011 was filed by the appellants on the file of learned Principal Subordinate Judge, Salem.

6. Heard the learned counsel on either side and perused the documents placed on record.

7. A perusal of the Judgment and Decree in A.S.No.10 of 2011 dated 19.09.2011 passed by the learned Principal Subordinate Judge, Salem shows that the same is clear and lucid because the trial court, while rejecting the suit for non-joinder of necessary parties, ought to have dismissed the suit for partition claim because under Order 14 Rule 1 of C.P.C., the court is required to frame issues of fact or of law that necessarily and properly arose for determining the real controversy involved in the pleadings of the parties. Therefore, unless an issue is framed on which the attention of parties is focussed and when they are afforded an opportunity, a finding could not be arrived at. The object of framing issues



is to direct the attention of the parties to the main question of fact or law to be decided. Further, Order 14 Rule 5 of Civil Procedure Code indicates that if any issue is left out, the court may, before passing the decree, amend the issue or frame additional issue and all such amendments or additional issues are necessary for determining the matter in controversy between the parties. While so, the trial court is not justified in the absence of a definite issue to grant any relief, more particularly, when it had come to the conclusion that the suit was not maintainable and hit by non-joinder of necessary parties.

8. I fully agree with the Judgment and decree passed by the learned Principal Subordinate Judge, Salem in A.S.No.10 of 2011 dated 19.09.2011, the reasons being are; when the trial court has dismissed the suit for non-joinder of parties, it cannot, again, further proceed to grant any relief of permanent injunction making it clear that till the fresh suit for partition is filed, the said order of permanent injunction shall be continued. If the fresh suit is not filed, the risk of order granting permanent injunction will be continued endlessly. Therefore, the learned Principal Subordinate Judge, Salem has rightly found fault with the Judgment and decree passed by the trial court and cancelled the partial relief granted and remanded the matter for fresh disposal. Accordingly, there is no infirmity in the judgment and decree dated 19.09.2011 passed by the learned Principal Subordinate Judge, Salem in A.S.No.10 of 2011 warranting interference in the hands of this Court and the substantial questions of law raised by the appellants are answered against them.

9. In fine, the present Civil Miscellaneous Appeal is dismissed and the Judgment and Decree dated 19.09.2011 in A.S.No.10 of 2011 is confirmed by this Court for the reasons assigned in this appeal. Consequently, the interim stay granted on 20.09.2012 in M.P.No.1 of 2012 shall stand automatically vacated. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssd



To

1. The Principal Sub Judge
Salem

2. The District Munsif
Salem

copy to
The Section Officer
VR Section
High Court Madrs-104

+1 cc to Mr.V.Rajesh Advocate sr52084

C.M.A.No.2687 of 2012 and
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