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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.864 of 2016
and CMP Nos.17022 & 17023 of 2016

Muthusamy Gounder

..Appellant/Defendant

Vs.

1. Ramayammal (Died)
2. Chinnasamy

Respondent No.2 brought on record as LR of the
sole respondent viz. Ramayammal vide order of Court
dated 13.07.2017 made in CMP No.9033 of 2017
in SA No.864 of 2016.

..Respondents/Plaintiffs

PRAYER: Second Appeal filed under Section 100 of C.P.C., against
the judgment and decree dated 20.02.2013 in A.S.No.17 of 2012 on
the file of Principal and Sessions Judge, Erode reversing the
judgment and decree dated 20.08.2011 made in OS No.376 of 2008
on the file of the 1st Additional Subordinate Judge, Erode.

For Appellant : Mr. I.C.Vasudevan
for Mr.A.Thiyagarajan

For 2nd Respondent: Mr.N.Manokaran

J U D G M E N T

This appeal is at the instance of the defendant in OS
No.376 of 2008, challenging the preliminary decree for partition
and a permanent injunction restraining the defendant from
alienating the properties till such time of final partition is
effected.

2. The suit was filed by the respondent, who is the sister
of the appellant claiming half share in the suit properties.
According to the respondent, the suit properties belonged to one
Chinnappa Gounder, father of the parties, who died intestate
about 10 years prior institution of the suit. Claiming that the
properties are self-acquired properties of Chinnappa Gounder.
The plaintiff, who is the daughter of Chinnappa Gounder, sued
for partition.



3. The defendant resisted the suit contending that the suit properties were enjoyed as joint family properties. The date of death of Chinnappa Gounder, was also disputed. It is also claimed that since the defendant had no issues, he had treated the son of the plaintiff as his son and also got him married. On the above contentions, the defendant sought for dismissal of the suit.

4. The Trial Court, however, found that the suit is bad for partial partition and the plaintiff has not proved that she was in joint possession of the property. On the above conclusions the Trial Court dismissed the suit. Aggrieved, the plaintiff preferred an Appeal in AS No.17 of 2012.

5. The Lower Appellate Court upon appreciation of the evidence found that the defendant had in fact conceded the plaintiff's 1/4th share in the suit property and he has no objection for grant of 1/4th share. The appellant's counsel also had conceded before the Lower Appellate Court that the plaintiff would be entitled to 1/4th share in the suit property. The application in I.A. No.544 of 2012 filed for production of additional evidence was also allowed by the Lower Appellate Court and death certificates of the parents were marked as Exs.A15 and A16. The Lower Appellate Court eventually concluded that the appellant/plaintiff would be entitled to 1/4th share in the suit properties. On the said finding, the Lower Appellate Court reversed the judgment and decree of the Trial Court and decreed the suit granting 1/4th share to the plaintiff. While granting the decree, the Lower Appellate Court also granted a permanent injunction restraining the defendant from alienating or encumbering the suit properties till final partition is effected. The appellant has come up with this Second Appeal, questioning the grant of a decree for permanent injunction restraining him from alienating the property till final partition is effected. The appellant is not aggrieved by grant of 1/4th share in the properties in favour of the respondent/plaintiff. He is only aggrieved by interdict imposed on alienation by the Lower appellate court.

6. Since notice was ordered, interim stay of passing of final decree alone was granted.

7. I have heard Mr.I.C.Vasudevan, learned counsel appearing for Mr.A.Thiyagarajan, for the appellant and Mr.N.Manokaran, learned counsel appearing for the respondents.



8. Mr.I.C.Vasudevan, learned counsel appearing for the appellant would vehemently contend that the Lower Appellate Court was not right in granting a decree for permanent injunction restraining the Appellant from alienating his share of the property, until a final decree is passed. According to him, such a permanent injunction decree is unknown to law.

9. Upon hearing the counsels, the following question of law is framed for determination in the appeal.

Whether the Lower appellate Court was right in granting a decree for permanent injunction restraining the defendant from alienating or encumbering the suit properties till final partition is effected, thereby, depriving him of his right to property?.

10. I have heard the counsels on the question of law framed.

11. The prayers in the suit are as follows:

- a). Directing the division of the suit properties into two equal shares by metes and bounds with reference to good and bad soil and allot one such share to the plaintiff;
- b). Appointing a commissioner to effect division of the suit properties in the aforesaid manner;
- c). granting a permanent injunction restraining the defendant from alienating or encumbering the suit properties till final partition takes place;
- d). directing the defendant to pay the costs of the suit to the plaintiff.

12. Mr.I.C.Vasudevan, learned counsel appearing for the appellant would contend that the third prayer itself is misconceived and there cannot be a prayer for permanent injunction restraining alienation of the property. He would also submit that even a co-owner of the property has the power to alienate his share in the property and he cannot be enjoined from exercising his constitutional right to property. According to him, the prayer for injunction restraining alienation can be an interim prayer pending a lis and it cannot be a permanent injunction as it travels beyond the scope of the lis between the parties.



13. Contending contra, Mr.N.Manokaran, learned counsel appearing for the respondent would submit that if the appellant is permitted to alienate the property pending suit for partition it will result in multiplicity of proceedings. Many a times, parties do alienate specific portions of the properties in specific boundaries, thereby making the entire preliminary decree in executable.

14. I have considered the rival submissions.

15. I do not think that a decree for permanent injunction restraining alienation could be granted by a Court, thereby depriving a person of his right to property. It is open to the owner of the property or the co-owner of the property to deal with whatever interest he possesses in the property. I do not think that the Court can injunct a person from exercising his right to property by alienating the same. A prayer for permanent injunction like one sought for in the present suit is unknown to law.

16. The Lower Appellate Court, therefore, in my considered opinion, was not right in granting a decree for injunction restraining the defendant from alienating the property till a final decree is passed. The decree holder may not even seek passing of a final decree and the defendant in a partition suit cannot be compelled to seek a final decree. By not seeking a final decree, the plaintiff or the decree holder in the partition suit where an injunction like this is granted can prevent the other co-owner from exercising his right to property.

17. I am therefore of the considered opinion that such decrees cannot be granted and should not be granted by Courts particularly, restraining alienation in suits for partition, after the preliminary decree is passed. It is always open to the parties to sell his or her share of the property divided or undivided. Therefore, the substantial question of law is answered to the effect that Court cannot grant a decree for permanent injunction restraining alienation till the final decree is passed. At best any alienation could be made by subject to the result of the suit, that situation is also taken care of by Section 52 of the Transfer of Property Act, which provides any alienation made during the pendency of the suit will be subject to the result of the suit. I therefore, see no necessity for grant of a decree for permanent injunction restraining the parties from alienating the property till such



time a division is effected. If the parties to a partition suit being a sharers chooses to alienate a property, the purchaser takes the risk, as the alienation would be subject to the result of the suit.

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18. In the case on hand, the rights of the parties have been declared by a preliminary decree. The plaintiff's 1/4th share has already been declared, so the defendant has got every right to deal with his 3/4th share in the property in the manner known to law.

19. In view of the above, the Second Appeal is allowed in part, the decree for permanent injunction granted by the Lower Appellate Court is set aside. It is open to the parties to take proceedings for passing a final decree.

20. In view of the disposal of the Second Appeal, the stay granted on 28.01.2019 will stand vacated. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

jv

To

1.The Principal Sessions Judge, Erode.

2.The 1st Additional Subordinate Judge, Erode.

3. The Section Officer,
V.R. Section, High Court of Madras.

+1cc to Mr.N.Manokaran, Advocate SR.No.97819

+2cc to Mr.A.Thiyagarajan, Advocate SR.No.97754

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TM(CO)
GMY(03/01/2020)