

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 06-11-2019

Judgment pronounced on : 28-11-2019
CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

O.S.A. Nos. 185 and 186 of 2019
and
CMP Nos. 17151 and 17154 of 2019
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O.S.A. No. 185 of 2019

1. M. Prabhu Ramakrishn
2.N. Vishal Prasad ... Appellants/Plaintiffs
in both the Appeals

Versus

1. Shyam Kumar Shrivastava
2. Ram Kumar Shrivastava
3. Sanjay Kumar Shrivastava
4. Anita Shrivastava
5. Sangeeta Setpal
6. Rashmi Khare
7. Keerthi Shrivastava
8. Vijay Kumar Verma
9. Ajay Kumar Verma
10. Neeta Shrivastava
11. Sambath Kumar
12. Narayanan
13. Pradeep Kumar
14. Selvdurai
15. Nirmal
16. R. Ramakrishnan
17. A. Vijaya Kumar
18. Munuswamy
19. A. Baskar
20. D. Lokesh
21. K. Prakash

22. The Sub-Registrar
Red Hills, Chennai - 600 052
23. A.K. Nageswara Rao

.. Respondents

Original Side Appeals filed under Order XXXVI Rule 9 of
Original Side Rules r/w Clause 15 of the Letters against the
Order dated 24.06.2019 passed in Application No. 507 of 2019
and Application No. 508 of 2019 in C.S. No. 321 of 2019 on the
file of this Court

For appellants : Mr. Ar.L. Sundaresan, Senior Advocate

for Mr. S. Pugaleanthi
in both the appeals

For Respondents : Mr. S.A. Shanmugam for RR2 to 10
in both the appeals

Mr. A. Palaniappan for RR11 to 21
in both the appeals

COMMON JUDGMENT

R. SUBBIAH, J

Both these appeals arise out of a common order dated 24.06.2019 passed by the learned single Judge in Application No. 507 and 508 of 2019 in C.S. No. 321 of 2019. By the said order, the learned single Judge dismissed the applications in O.A. Nos. 507 and 508 of 2019 and vacated the interim injunction granted on 29.04.2018. Aggrieved by the same, the present Original Side Appeals are filed by the appellants.

2. The plaintiffs are the appellants in these appeals. They have filed the suit for the relief of partition and for declaration to declare the various sale deeds executed by the defendants as null and void and not binding them. According to the plaintiffs, the properties described in the plaint schedule were the ancestral properties which were in possession and enjoyment of the father of the first plaintiff by name W. Narasinga Prasad and his brother Khaniya Lal. Among the several properties owned by them, few of the properties were orally partitioned, but several other properties were not subjected to any partition. In those circumstances, a suit in C.S. No. 114 of 1963 was filed before this Court by the first plaintiff herein and his father W. Narasinga Prasad against Khaniyalal. The suit ended in compromise by a decree dated 24.04.1969 whereby the schedule mentioned properties were allotted to the first plaintiff and his father late. W. Narasinga Prasad. It is the case of the plaintiffs that the first plaintiff's father Narasinga Prasad married one Rama Bai and after her demise, he contracted a second marriage with one C.B.Prasad. Due to the wedlock between the first plaintiff's father and Rama Bai, five children were born and through the second wife, six children were born. The second plaintiff is the son of the first plaintiff and grand son of Late. Narasinga Prasad. Defendants 1 to 5 are grand children of Narasinga Prasad born to his daughter Girija Srivastava. Defendants 6 to 10 are children of late. Uma Devi, another daughter of Narasinga Prasad. The blood sisters of the first plaintiff namely Rathna Shrivastava, Kanthi Shrivastava, Madhumathi and N. Sudha have relinquished their 1/24th share in the entire properties of Late. Narasinga Prasad and therefore, they are not arrayed as parties in the suit. It is stated that the mother of the first plaintiff Mrs.C.B.Prasad died in the year

2012 and before her death, she had settled her share in the suit properties in favour of her grand son namely the second plaintiff. It is also stated that a partition deed dated 31.12.1980 was entered into as per which the quantum of share to all the sharers had been decided. As per the partition deed, the first plaintiff was allotted 13/24 share and other sisters were allotted 1/24 share in the ancestral properties. The grievance of the plaintiffs appear to be that the defendants 1 to 10, who are the legal heirs of first plaintiff's sisters (since deceased) by name Uma Devi and Girija Shrivastava have sold the properties measuring 52 acres jointly to which they are not entitled to. Such sale deeds have emanated by means of fraud and collusion between the defendants 1 to 21 and those sale deeds will not bind the plaintiffs in any manner. The plaintiffs have therefore filed the aforesaid suit.

3. Pending suit, by an order dated 29.04.2019 passed in O.A. No.508 and 509 of 2019, this Court granted an interim injunction restraining the defendants 1 to 21, their men, agents, representatives or any one claiming through them from in any manner alienating or encumbering the plaint described property till the disposal of the suit. Subsequently, when the application was taken up for hearing on 17.06.2019, the learned single Judge, finding that the plaintiffs themselves have sold certain lands, which are the subject matter of the suit, by executing a sale deed dated 23.05.2019, after obtaining the order of injunction on 29.04.2019, vacated the interim injunction. In Para No.5 and 6 of the order dated 24.06.2019 passed in Application No. 507 and 508 of 2019 in C.S. No. 321 of 2019, the learned single Judge observed as follows:-

"5. Having obtained a discretionary order of injunction, the plaintiff, in my considered opinion, ought not to have sold the property which according to him remains undivided. The remedy of injunction is discretionary and the person who had obtained such discretionary relief cannot thwart the order of injunction himself. The conduct of the plaintiff in selling the properties after having obtained discretionary order of injunction dis-entitles him from being favoured with an order of injunction any longer.

6. The interim injunction granted by an order dated 29.04.2019 is vacated. The Original Applications in O.A. Nos. 507 and 508 of 2019 will stand dismissed."

4. Assailing the order of the learned single Judge in vacating the order of interim injunction, the learned Senior counsel for the appellants/plaintiffs would contend that the appellants did not intentionally or deliberately violated the order of interim injunction granted by the learned single Judge. According to the learned Senior counsel, the appellants/plaintiffs have not sold the lands to the detriment of the other co-owners but has only sold land measuring 44 cents which fell to the share of the first plaintiff. Even

such sale was made by the appellants inasmuch as an agreement of sale was already made in favour of third party purchasers and to avoid being prosecuted by the proposed purchasers. Even the respondents/defendants did not complain that the appellants/plaintiffs have sold the lands which fell to their share and thereby they are prejudiced. In a suit for partition, if one of the co-sharers sells the property, such sale would be subject to the outcome of the suit, while so, vacating the interim injunction would result in the defendants resorting to alienate the properties, which in turn would result in multiplicity of proceedings. The learned Senior counsel for the appellants therefore prayed for allowing these appeals.

5. Per contra, the learned counsel appearing for the respondents/ defendants would contend that the plaintiffs/appellants have resorted to alienate several properties even prior to the filing of the suit. After obtaining interim injunction in their favour on 29.04.2019, the plaintiffs/appellants have executed a sale deed dated 23.05.2019 much to the detriment of the respondents/defendants. The learned single Judge, taking note of the fact that such alienation caused by the appellants/plaintiffs would substantially prejudice the respondents/defendants has rightly vacated the interim injunction. Therefore, the learned counsel for the respondents/defendants prayed for dismissal of the appeal.

6. We have heard the counsel for both sides and perused the materials placed on record. The appellants/plaintiffs have filed the suit for partition and declaration to declare that the various sale deeds executed by the defendants are null and void and not binding them. Pending suit, the appellants/plaintiffs have obtained an interim injunction on 29.04.2019. Admittedly, after an interim injunction was granted, the first plaintiff executed a sale deed in respect of a portion of the property measuring 44 cents, which is the subject matter of the suit. According to the appellants/plaintiffs, the aforesaid sale is in respect of the property which fell to his share and it in no way deprive the right of the respondents/defendants. Such a contention cannot be gone into by this Court at this stage. The fact remains that the alienation by the appellants/plaintiffs during the pendency of the suit is unwarranted. The interim injunction granted in the suit not only binds the defendants from causing any alienation and such an order will equally bind the plaintiffs as well. The interim injunction is only as against the property and not as against any individual. The reason being, any alienation before adjudication of the merits of the case before the Court would invite third party interference, which would inter alia result in multiplicity of proceedings. In order to avoid the third party from claiming any right over the property, which is the subject matter of the suit, by exercising the discretionary power, Courts can grant interim injunction to ensure that the properties, which are the subject matter of the suit, remain unaltered. When admittedly there is

alienation of a portion of the property by the appellants/plaintiffs after obtaining the order of interim injunction, the appellants/ plaintiffs are dis-entitled to continue with such an order. Therefore, we are of the view that the learned single Judge is right in vacating the interim injunction.

7. In the result, we confirm the order dated 24.06.2019 passed in Application No. 507 and 508 of 2019 in C.S. No. 321 of 2019 passed by the learned single Judge. The Original Side Appeals fail and they are dismissed. No costs. Consequently, connected civil miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rsh
To,
The Sub Assistant Registrar
Original Side,
High Court, Madras.

+4ccs to Mr.S.Pugalendhi , Advocate SR.No. 99471,99472
+2ccs to Mr.A.Palaniappan , Advocate SR.No. 100505,100506

OSA Nos. 185 & 186 of 2019

A.SK(20/12/2019)

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