

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.01.2010
PRONOUNCED ON: 24.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN
S.A.No.1345 of 2008
& MP.No.1 of 2008 & CMP No.5636 of 2016

R.Manickam ... Appellant/Respondents/Plaintiff

Vs.

1.P.Ramasamy
2.R.Jaganathan
3.Pavayammal ... Respondents/Respondents/Defendants

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 30.06.2008 passed in A.S.No.28 of 2007 on the file of the Subordinate Judge, Sankari reversing the judgment and decree dated 30.08.2007 made in O.S.No.37 of 2003 on the file of learned District Munsif, Sankari.

For Appellant : Mr.N.Manokaran
For Respondents : Mr.C.Shankar

JUDGMENT

This Second Appeal has been filed against the Judgment and decree dated 30.06.2008 passed in A.S.No.28 of 2007 on the file of the Subordinate Judge, Sankari reversing the judgment and decree dated 30.08.2007 made in O.S.No.37 of 2003 on the file of learned District Munsif, Sankari.

2. The facts which gave raise to the filing of the present Second Appeal are stated hereunder:

The appellant herein was the plaintiff and the respondents were the defendants in the suit. The suit was filed by the sole plaintiff for bare injunction restraining the defendants from in any way and in any manner disturbing the plaintiff's peaceful possession and enjoyment of the suit schedule mentioned property. According to the plaintiff, there was a oral partition in the year 1987 among the family members in respect of the suit schedule mentioned property and a portion of the same was allotted to the plaintiff and he has been enjoying the said property. The first defendant was the father of the plaintiff, the second defendant was the brother and the third defendant was the mother of the plaintiff. The suit was resisted by the defendants stating that there was no oral partition at all and it was also pleaded in the written

statement that a bare injunction suit would not lie as against the co-sharers and the true owners of the property, as the plaintiff did not pray for the declaratory relief.

3. The trial Court which heard the matter, has ultimately vide judgment dated 30.08.2007 decreed the suit and granted injunction as prayed for in O.S.No.37 of 2003. As against that, the defendants filed an appeal in A.S.No.28 of 2007.

4. The lower Appellate Court, which heard the appeal, after appreciating the evidence placed on record, allowed the appeal and dismissed the suit filed by the plaintiff. According to the lower Appellate Court, the factum of oral partition was not established at all by the plaintiff. In fact the lower Appellate Court has referred to the independent witness viz., PW2, who deposed that he was not aware of any oral partition being taken place between the family members of the parties. The lower Appellate Court has also held that if the oral partition had really taken place then in respect of a sale transaction of a portion of the property, to the third party, there was no necessity for seeking the plaintiff's signature in the document. In fact, the lower Appellate Court has held that the oral partition which was said to have taken place two years before the transaction, free from all encumbrances, there was no necessity for third party party to obtain the signature of the plaintiff. In effect, the lower Appellate Court has concluded that the property remained as family property and therefore, held that the fact of oral partition did not happen at all as claimed by the plaintiff. In any event, the lower Appellate Court allowed the appeal on the ground that in case of injunction against co-sharers, when there was a cloud on the title of the property, which is apportioned to the plaintiff, the plaintiff ought to have asked for declaratory relief before praying for injunction. After the decree of the lower Appellate Court allowing the appeal in favour of the appellant/plaintiff, the present Second Appeal has been filed by the appellant/plaintiff.

5. This Court, after consideration of various submissions of both the learned counsel for the parties, is of the view that the crucial question of law has to be considered in this case, is as to whether the plaintiff can seek for bare injunction as against the co-sharers of the properties, who were arrayed as defendants in the suit without seeking for declaratory relief.

6. As rightly contended by the learned counsel for the defendants that in this case, the factum of oral partition was not established by the plaintiff and in which case, whether the plaintiff was entitled to seek for bare injunction only on the possession aspect as against the co-sharers. In fact, the learned counsel for the defendants/respondents has relied upon a decision of the Hon'ble Supreme Court reported in (2008) 4 SCC 594 (Ananthula Sudhakar Vs.P. Buchi Reddy (dead) by LRs. and Others) in Civil Appeal No.6191 of 2001 dated 25.03.2008,

wherein. the Hon'ble Supreme Court has held that though the plaintiff's title was under a cloud, it is still open to the trial Court to independently appreciate the possession and decide the suit on that basis. However, a clear distinction needs to be made which has been observed by the Hon'ble Supreme Court that in the case of injunction against the co-sharers of the property when the partition is seriously disputed by other co-sharers namely the family members, it is incumbent upon the plaintiff to seek for declaratory relief. In the absence of such relief, the plaintiff cannot seek for injunction alone.

7. This Court is in complete agreement with the submissions made on behalf of the respondents/defendants. When the very basis of the plaintiff's claim for injunction is the oral partition which was said to have been taken place and which has been seriously disputed by the defendants herein, who are the co-sharers of the property, the proper course for the plaintiff was to seek declaratory relief. Even otherwise, from the evidence that was made available on record, it appears that there was a serious doubt about oral partition being effected at all. Therefore, there was a doubt regarding exclusive possession of the plaintiff as an absolute title owner of the property and therefore, the trial Court has erred in decreeing the suit in favour of the plaintiff.

8. In the above circumstances, this Court finds that the approach of the lower Appellate Court was very much in consonance with the legal principles laid down by the Hon'ble Supreme Court and also in tune with the pleadings/objections and also the materials placed on record. The lower Appellate Court was right in reversing the judgment of the trial Court as the trial Court failed to appreciate the most crucial aspect, namely, that in order to claim exclusive right for possession and enjoyment, the plaintiff has to prove his title over the property in the facts and circumstances of the case. In this case, it is found that the plaintiff has failed to prove his title and also his exclusive possession.

9. This Court, therefore, finds that the question of law already framed while admitting the Second Appeal need to be answered against the plaintiff. This Court feels that the proper question of law has to be framed is whether the suit for injunction is maintainable without seeking declaratory relief when the injunction is being sought against the co-sharers of the property. In the facts and circumstances of the case, the above question of law needs to be answered in favour of the respondents/defendants. The trial Court ought to have held that the suit filed by the plaintiff is not maintainable in the absence of declaratory relief. The lower Appellate Court was right in reversing the findings of the trial Court.

10. In the light of the above, the Second Appeal is dismissed confirming the Judgment and decree dated 30.06.2008 passed in A.S.No.28 of 2007 on the file of the Subordinate Judge, Sankari. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

dn/suk
To

- 1.The Principal Sub Judge, Sankari
- 2.The District Munsif, Sankari.

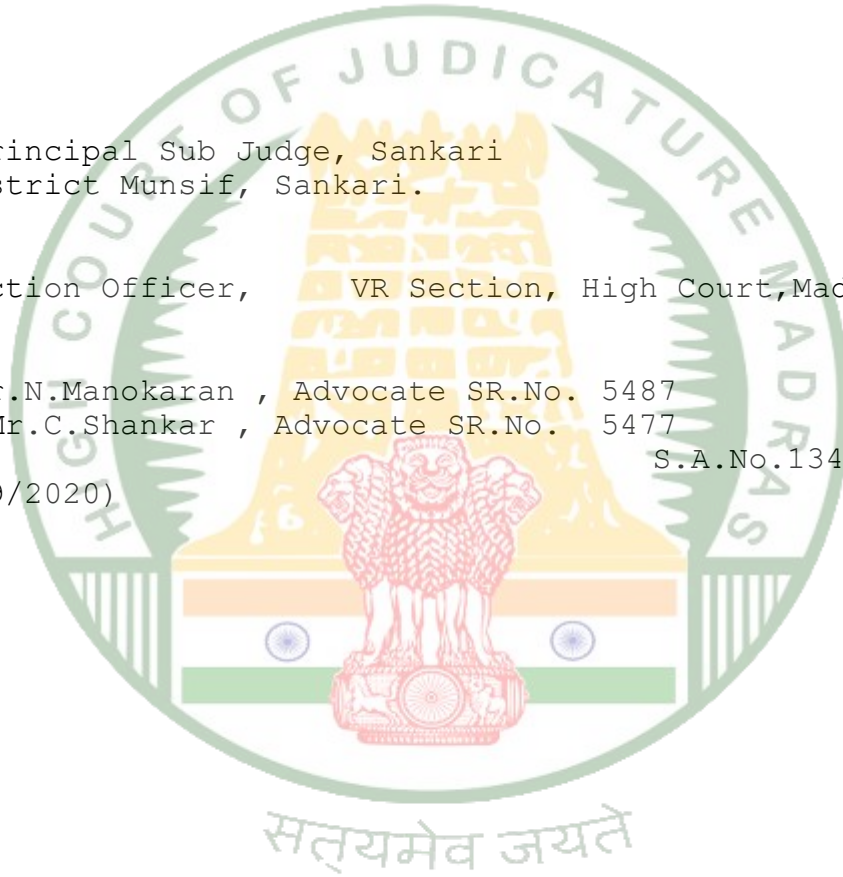
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The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.N.Manokaran , Advocate SR.No. 5487

+2ccs to Mr.C.Shankar , Advocate SR.No. 5477

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A.SK(22/09/2020)



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