

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
18.11.2020	07.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.Nos. 718, 2289 & 3018 of 2018

and

C.M.P.Nos. 14324, 17525 & 17079 of 2018

C.R.P.No. 718 of 2018

S.Umamaheswari ... Petitioner/Defendant

-vs-

P.Murugesan ... Respondent/Plaintaff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 06.10.2017 made in I.A.No. 65 of 2017 in O.S.No. 1201 of 2013 on the file of the II - Additional District Munsif, Coimbatore.

C.R.P.No. 2289 of 2018

S.Sudha ... Petitioner/Defendant

-vs-

M.Bhuvaneswari ... Respondent/Plaintaff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 26.02.2018 made in I.A.No. 1049 of 2015 in O.S.No. 1199 of 2013 on the file of the Principal District Munsif, Coimbatore.

C.R.P.No. 3018 of 2018

S.Umamaheswari

... Petitioner/1st Defendant

-vs-

1. M.Bhuvaneswari
2. Sathyanarayanan
3. Pradeep
4. Pavithra
5. A. Joseph
6. Arputharaj
7. V. Mohan

... Respondents/Plaintiff
Defendant 2 to 7

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No. 1833 of 2017 on the file of the Principal District Munsif, Coimbatore.

For Petitioners in all CRPs' : Mr.K.V.Subramanian, Senior Counsel
for Mr.M.A.Abdul Wahab

For Respondents in CRP.Nos.
2289 & 3018 of 2018 : Mr.S.Parthasarathy, Senior Counsel
for Mr.K.S.Karthik Raja

For Respondents in C.R.P.No.
3018 of 2018 : Mr.N.Sankarasubbu for R6
R2 to R5 & R7 - Given up

C O M M O N J U D G M E N T

The defendants in O.S.No. 1201 of 2013 on the file of the II - Additional District Munsif, Coimbatore, O.S.No. 1199 of 2013 on the file of the District Munsif, Coimbatore (now re-numbered as O.S.No. 366 of 2019 on the file of the District Munsif-cum-Judicial Magistrate, Madukkarai) and the first defendant in O.S.No. 1833 of 2017 on the file of the Principal District Munsif at Coimbatore are the petitioners in all these three revisions.

2. Since the parties to these proceedings are related to each other and the reliefs sought for as well as the facts leading to these revisions are similar, these three revision petitions are taken up together for disposal. While the first two revisions namely, C.R.P.Nos. 718 and 2289 of 2018 are challenging the orders of the Trial Court made in I.A.No. 65 of 2017 and 1049 of 2015 respectively filed under Order 7 Rule 11 of C.P.C., seeking rejection of the plaints. The third revision

namely, C.R.P.No. 3018 of 2018 is filed under Article 227 of the Constitution of India invoking the supervisory jurisdiction of this Court to strike out the plaint in O.S.No. 1833 of 2017. The main ground on which the plaints are sought to be rejected is that the suits as framed are not maintainable.

3. The prayer in each of the suits reads as follows:-

3.1. O.S.No. 1201 of 2013

" i) of permanent injunction restraining the defendant from in any way alienating or otherwise encumbering the suit property.

ii) directing the defendant to pay the plaintiff the cost of this suit.

iii) grant such further or other reliefs as may be deem fit and proper in the circumstances of the case."

3.2. O.S.No. 1199 of 2013 (now renumbered as O.S.No. 366 of 2019 on the file of the District Munsif-cum-Judicial Magistrate, Madukkarai)

" i) of permanent injunction restraining the defendant from in any way alienating or otherwise encumbering the suit schedule properties.

ii) Directing the defendant to pay the plaintiff the cost of this suit.

iii) grant such further or other relief as may be deem fit and proper in the circumstances of the case."

3.3. O.S.No. 1833 of 2017

" i) a permanent injunction restraining the defendants, their men, agent, servant, partisan or any person claiming through or under them from altering, changing or modifying in any manner whatsoever the physical features of the property morefully set out and described in the schedule hereunder.

ii) a permanent injunction restraining the defendants, their men, agent, servant, partisan or any person claiming through or under them from alienating or encumbering any manner whatsoever any specific or earmarked extent of land out of the property morefully set out and described in the schedule hereunder.

iii) directing the defendants to pay the cost of this suit to the plaintiffs.

iv) Pass such and other order as may be deemed fit and necessary in the circumstances of the case and thus render justice."

4. The plaintiff in O.S.No. 1201 of 2013 is the husband of the plaintiff in O.S.No. 1833 of 2017 and 1199 of 2013. The first defendant in all the suits is the petitioner herein.

5. The earliest suit namely, O.S.No. 1833 of 2017 came to be filed for the reliefs as stated above claiming that the suit property originally belonged to the plaintiff, the first defendant and one Girija by virtue of purchase under three sale deeds dated 06.04.1993 and each of the purchasers are entitled to 1/3rd share in an extent of 2 acres 90 cents with all easementary rights. It is also stated that the entire 2 acres 90 cents was in enjoyment of the three purchasers. It is also stated that one of the purchasers, Girija died in the year 2000 leaving behind the defendants 2 to 4 in the said suit as her legal representatives. The plaintiff would further claim that she had appointed the 5th defendant as her power agent by an instrument dated 20.08.2009 in respect of 90 cents out of undivided 97 cents belonging to her.

6. It is claimed that the power of the attorney came to be executed as the 5 and 6th defendants offered to negotiate with defenants 1 to 4 to secure a physical partition of the property by metes and bounds. It is also claimed that they had made further promise regarding the division of the property. It was also claimed that the defendants 5 and 6 have now given a total go by to their assurance and sold the 90 cents of the undivided land to the 7th defendant under a sale deed dated 02.03.2017. It is further claim of the plaintiff that the 6th defendant has taken a sale in his name from the 5th defendant in the year 2014 and he had in turn conveyed the property to the 7th defendant on 02.03.2017.

7. It is the further claim of the plaintiff that the defendants are now trying to claim ownership to individual and distinctive portions of the land eventhough they are entitled to only an undivided share. Claiming that the defendants are now attempting to develop the land jointly and that the plaintiff was unable to file a suit for partition of her 7 cents of land along with 40 feet pathway as the lands have to be surveyed and the detailed plan is to be made for the same and the same is likely to take time, the plaintiff sought for the reliefs stated above namely, the permanent injunction restraining the defendants from

altering or modifying the physical features of the property and for a permanent injunction restraining the defendants, their men, agent, servant or any person claiming through or under them from alienating or encumbering in any manner whatsoever any specific or earmarked extent of land out of the property morefully set out and described in the schedule herein.

8. The suit in O.S.No. 1199 of 2013 is filed by the plaintiff in O.S.No. 1833 of 2017 against the petitioner in C.R.P.No. 2289 of 2018. The petitioner in C.R.P.No. 2289 of 2018 is the daughter of the petitioner in C.R.P.No. 718 & 3018 of 2018. The case of the plaintiff in O.S.No. 1199 of 2013 (now renumbered as O.S.No.366 of 2019 on the file of the District Munsif - cum- Judicial Magistrate, Madukkarai) is that she along with the defendant / petitioner herein had purchased the immovable properties under different sale deeds. The suit schedule property, according to her was purchased jointly along with the defendant under two sale deeds dated 25.10.1985 registered as Document Nos. 4202 & 4203 of 1985. Since the defendant was a minor at the time of purchase, she was represented by her father, Mr.S.Srinivasa Gupta. It is specifically claimed that there has been no partition of the suit properties at any point of time. The cause of action for the present suit seems to be that the defendant along with her brother and mother had filed a suit on the file of this Court seeking recovery of money on the basis of a mortgage said to have been executed by the plaintiff.

9. It is also claimed that the said suit was transferred to the III - Additional City Civil Court and was numbered as O.S.No. 10008 of 2010. It is further claimed that the suit has been dismissed after contest. According to the plaintiff, the defendant enraged by the dismissal of the suit is attempting to create encumbrances over the suit schedule property and she is not entitled to do so in the absence of the partition. It is on the above pleadings, the suit in O.S.No. 1199 of 2013 (now renumbered as O.S.No. 36 of 2019 on the file of the District Munsif-cum-Judicial Magistrate, Madukkarai) came to be filed with a prayer for bare injunction restraining the defendants from in any way alienating or otherwise encumbering the suit property.

10. The 3rd suit namely, O.S.No. 1201 of 2013 was filed by the husband of the plaintiff in the other two suits, claiming that he along with the defendant in the said suit purchased the suit property under a sale deed dated 25.10.1985 registered as document No. 4201 of 1985. The plaint in O.S.No. 1201 of 2013 is almost a photo copy of the plaint in O.S.No. 1199 of 2013 (now numbered as O.S.No. 366 of 2019 on the file of the District Munsif-cum-Judicial Magistrate, Madukkarai). It is claimed that

since the plaintiff and the defendant are in joint and constructive possession, the defendant is not entitled to alienate the property. In the backdrop of the above allegations, the prayer for permanent injunction restraining the defendant from alienating or otherwise encumbering the property is sought for in the said suit. The defendant in O.S.No. 1199 of 2013 filed the written statement contending that an appeal has been filed against the dismissal of the suit in O.S.No. 10008 of 2010 before the III - Additional City Civil Court and the same is pending before this Court in A.S.No. 18 of 2013. It was also contended that the plaintiff cannot maintain a suit for a bare injunction restraining alienation only without seeking any other prayer. It was also claimed that the suits are barred under Section 41 (h) of the Specific Relief Act.

11. The defenants in O.S.No. 1201 of 2013 and 1199 of 2013 filed the applications in I.A.Nos. 65 of 2017 and 1049 of 2015 seeking rejection of the plaints under Order 7 Rule 11 of C.P.C. It was contended that there was no cause of action for the suits and it isthat they are barred by law. It was also contended that the suits amount to abuse of process of Court.

12. These applications were resisted by the plaintiffs in those suits contending that the law does not prohibit such a suit. It is claimed that a co-owner can seek an injunction restraining the other co-owner from selling the property without his or her consent. The Trial Court which heard the applications concluded that the plaints cannot be rejected under Order 7 Rule 11 as the rejection of the plaints in these proceedings would amount to rejection on the basis of a statementclaim made in the written statement which is not permitted under law. Upon such conclusion, the learned District Munsif dismissed the applications. Hence, the defendants in O.S.No. 1201 of 2013 and 1199 of 2013 have come by way of revisions. As already pointed out that the 3rd revision in C.R.P.No. 3018 of 2018 has been filed directly under Article 227 seeking to strike out the plaint.

13. I have heard Mr.K.V.Subramanian, learned counsel Senior Counsel appearing for Mr.M.A.Abdul Wahab for the petitioners and Mr.S.Parthasarathy, learned Senior Counsel appearing for Mr.K.S.Karthik Raja for the sole respondent in C.R.P.No. 2289 of 2018 and the first respondent in C.R.P.No. 3018 of 2018. Mr.N.Sankarasubbu for the 6th respondent in C.R.P.No. 3018 of 2018. R2 to R5 and R7 have been given up in C.R.P.No. 3018 of 2018.

14. Mr.K.V.Subramanian, learned Senior Counsel for the petitioners would draw my attention to Section 41(h) of the Specific Relief Act and contend that when an equally efficacious remedy is available, a suit for bare injunction will not lie. He would also point out that a reading of the complaints in all the three suits does not disclose any invasion or threat of invasion to the right of the plaintiff in all the suits.

15. As regards the first suit namely, the suit in O.S.No. 1833 of 2017, it is the grievance of the plaintiff that the defendants 5 and 6 have not honoured their commitment. It is open to the plaintiff to seek appropriate relief of specific performance against the defendants 5 and 6 and or partition against the defendants 1 to 4, who are admittedly co-owners. Having executed a power of attorney and having allowed the defendants 5 and 6 to deal with the property, the plaintiff cannot seek an injunction against the co-owners from either alienating or developing the property. He would also point out that the suit for bare injunction restraining alienation, if decreed, will lead to anomalous situation where the property rights of the individual, protected under Article 300A of the Constitution of India, will be interfered with permanently by the Court.

16. Mr.K.V.Subramanian would also seek to rely upon the judgment of the Hon'ble Supreme Court reported in Sunil Kumar Vs. Ram Prakash reported in AIR 1988 SC 576 wherein the Hon'ble Supreme Court after elaborate discussion of the law relating to alienations held that the coparcener cannot seek to restrain a Karta from alienating the property for legal necessities. In doing so, the Hon'ble Supreme Court observed as follows:-

"28. The provisions of Section 38 have to be read along with Section 41. Section 41 provides that an injunction cannot be granted in a case falling under clauses (a) to (j). Clause (h) thereunder provides that an injunction cannot be granted when a party could obtain an efficacious relief by any other usual mode of proceeding (except in case of breach of trust). The coparcener has adequate remedy to impeach the alienation made by the Karta. He cannot, therefore, move the Court for an injunction restraining the Karta from alienating the coparcenary property. It seems to me that the decision of the Punjab and Haryana High Court in Jujhar Singh Vs. Giani Talok Singh, 1986 Pun LJ 346 : (AIR 1987 Punj & Har 34) has correctly laid down the law. There it was observed at p.348 (of Pun LJ): at p. 36 of AIR)

"If it is held that such a suit would be competent the result would be that each time the manager or the Karta wants to sell property, the coparcener would file a suit which may take number of years for its disposal. The legal necessity or the purpose of the proposed sale which may be of pressing and urgent nature would in most cases be frustrated by the time the suit is disposed of. Legally speaking unless the alienation infact is completed there would be no cause of action for any coparcener to maintain a suit because the right is only to challenge the alienation mde and there is no right recognised in law to maintain a suit to prevent the proposed sale. The principle that an injunction can be granted for preventing waste by a manager of Karta obviously would not be applicable to such a suit because the proposed alienation for an alleged need or the benefit of the estate cannot be said to be an act of waste by any stretch of reasoning. We are, therefore, of the considered view that a coparcener has no right to maintain a suit for permanent injunction restraining the manager or the Karta from alienating the coparcenary property and his right is only to challenge the same and to recover the property after it has come into being."

17. He would also draw my attention to the judgment of the Punjab & Haryana High Court in Jujhar Singh vs Giani Talok Singh referred to by the Hon'ble Supreme Court wherein, the Division Bench had held that the coparcener cannot restrain a Karta from alienating the property of the joint family in exercise of his power as a manager. While doing so, the Division Bench had examined the provisions of sections 38 and 41 of the Specific Relief Act had observed as follows:-

"6. Apart from the fact that there is no precedent for supporting the proposition that the suit like the present one would be maintainable, it is also difficult to conceive the nature of the injunction to be granted in such a suit. At best, the suit can be to restrain the proposed alienation because the manager or the karta cannot be restrained from making alienation of the coparcenary property for all times in future as he has legal right to do so if he is of the opinion that there is a genuine need or that it would be for the benefit of the estate".

18. My attention is also drawn to the another judgment of the Single Judge of Punjab & Haryana High Court in Lal Dass vs Raghbir Dass and Another reported in AIR 2004 P&H 41 wherein, the learned Single Judge of the Punjab & Haryana High Court had after referring to the judgment of the Hon'ble Supreme Court in Sunil Kumar's case (supra) had concluded that a suit for bare injunction restraining the Karta of a joint family from alienating the property of the joint family is not maintainable.

19. Contending contra, Mr.S.Parthasarathy, learned Senior Counsel appearing for the respondent / plaintiff would rely upon the judgment of the Single Judge of this Court in Dakshinamoorthy Vs. State Bank of India, Arasaradi Branch reported in 2001 (3) LW 83 wherein, it was held that a suit for permanent injunction restraining the alienation is maintainable. I have considered the rival submissions.

20. The prayers in all the three suits has been extracted above. All the suits seek a permanent injunction restraining the defendants therein from alienating or encumbering the suit properties. No other prayer is sought for. Admittedly, the plaintiffs in all the three suits are co-owners along with the defendants in those suits except the defendants 5 and 6 in O.S.No. 1833 of 2017. The plaintiff in O.S.No. 1833 of 2017 has appointed the 5th defendant as her power of attorney and the alienations made by the 5th defendant in favour of the 6th defendant and by the 6th defendant in favour of the 7th defendant. Out of 2 acres 90 cents of land as a 1/3rd sharer, she was entitled to about 97 cents. She had appointed the 5th defendant as her power of attorney authorizing him to convey 90 cents of land purchased by her under the sale deed of the year 1993. It is also admitted by her that the 5th defendant had sold the said 90 cents to the 6th defendant even in the year 2014 and the 6th defendant had in turn sold the said 90 cents to the 7th defendant on 02.03.2017. The validity of the said sale deeds is not disputed by the plaintiff.

21. No doubt, she had claimed that the said sale deeds were contrary to the understanding between her and the agent namely, the 5th defendant. The cause of action for the relief of injunction is a apprehension that the defendants are attempting the sale of the specific portions of the property. If that is her grievance then her remedy is to sue for partition and separate possession of her entitlement namely, 7 cents of property out of 2 acres 90 cents. A reading of paragraph 7 of the plaint would also disclose that the plaintiff has pleaded

sort of an arrangement that she should get 7 cents of property along with 40 feet pathway. Unfortunately, there is no pleading as to whether the other coowners, are the parties to such arrangement. It is also claimed that the defendants are attempting to sell earmarked portions of the property. The remedy of the plaintiff is as already pointed out is to seek for partition and not an injunction.

22. Eventhough, Mr.S.Parthasarathy, learned Senior counsel for the respondents would vehemently contend that Section 9 of C.P.C., enables the plaintiff to file whatever suit he or she wants to and the Court has to entertain it. Despite the bar contained in any other enactment the maintainability of the suit will have to be examined only after evidence is let in. I am unable to accept the said submissions. Section 41 of the Specific Relief Act enjoins duty on the Court to refuse injunction when the equally efficacious relief can be obtained by another other usual mode of proceeding except in case of breach of trust. I have not found any averment of breach of trust in any of the three plaints. Section 38 enables the Court to grant a decree for perpetual injunction under certain circumstances. Subsection 1 of Section 38 enables the Court to grant an injunction to prevent the breach of an obligation existing in favour of the plaintiff. Subsection 3 of Section 38 enables the Court to grant an injunction when the defendants invade or threaten to invade a right of the plaintiff to the property or enjoyment of the property under certain circumstances set out in clauses (a) to (d) of Subsection 3.

23. As already pointed out, the only allegation on which the plaintiffs seek injunction is that the defendants are attempting to alienate the property. The defendants are admittedly co-owners along with the plaintiffs, they are entitled to alienate their share in the property. If they alienate something in excess of their share in the property, the same would not be binding on the plaintiff. What applies to a non-alienating coparcener would apply to a co-owner also. It is always open to the plaintiff to ignore such sale and sue for partition. Therefore, I do not think that the plaintiff has made out a case for grant of perpetual injunction under Section 38 itself.

24. As pointed out by the Hon'ble Supreme Court in AIR 1988 SC 576, Section 38 would have to be read along with the provisions of Section 41 (h) of the Specific Relief Act. Section 41(h) of the Specific Relief Act provides circumstances under

which a Court ought not to grant injunction. One of the circumstances is when an equally efficacious remedy can certainly be obtained by another usual mode of proceeding except in case of breach of trust. As I have already pointed out, there is no claim for breach of trust in any of the plaints therefore, the Court cannot grant an injunction as prayed for by the plaintiff. When there is an embargo on the Court from granting a decree for injunction, no useful purpose will be served by dismissing the revisions and directed the parties to go to trial.

25. As far as the decision of this Court in Dakshinamoorthy's case relied upon by Mr.S.Parthasarathy, I must point out that the judgment of the Hon'ble Supreme Court in AIR 1988 SC 576 has not been brought to the notice of this Court and I am constrained to point out that the conclusions of the learned Judge run counter to the principles of law laid by the Hon'ble Supreme Court. I am therefore, forced to conclude that the judgment in Dakshinamoorthy's case relied upon by Mr.S.Parthasarathy cannot be treated as a precedent in the light of the observations of the Hon'ble Supreme Court in Sunil Kumar Vs. Ram Prakash wherein, the Hon'ble Supreme Court has specifically dealt with the provisions of Section 38 and Section 41(h) of the Specific Relief Act and concluded that a suit for injunction restraining the Karta from alienating the property cannot be maintained at the instance of a coparcener. When the Hon'ble Supreme Court has held that the Court cannot grant an injunction restraining the Karta from exercising his powers of sale for legal necessities over the entire property of the coparcenery, since non-alienating coparcener has got a remedy by way of a suit to set aside the alienation, I am of the considered opinion that a co-owner stands on a much better footing than a Karta whose powers are dependent on the existence of necessities. As a joint owner of the property the defendant has the right to deal with his/her share of the property in any manner if he or she likes. It is not the case of the plaintiff that the plaintiff has got some right of preemption or some preferential right to purchase the property of the other joint owner. In the absence of any such pleading, I am of the considered opinion that a suit for bare injunction restraining the alienation cannot at all be maintained.

26. The matter can be approached in a slightly different angle also. What would be the effect of a decree for injunction if granted in these suits. There will be a perennial permanent injunction restraining the defendants from alienating their property. It will be a direct invasion by the Court on the right to property protected under Article 300A of the

Constitution of India because right to property includes a right to alienate the property.

27. A prayer for restraint on alienation can be an interlocutory prayer in a suit for partition or specific performance or a suit seeking a declaratory relief. A restraint of alienation for a limited period could be granted to avoid multiplicity of proceedings. But in a case where the plaintiff can initiate the appropriate legal proceeding to obtain a larger relief and refuses to do so, the said plaintiff cannot be favoured with a decree for permanent injunction that too restraining the alienation. The intention of the legislature behind the provisions of the Specific Relief Act as well as the C.P.C., is to prevent multiplicity of proceedings. While Order 2 Rule 2 of C.P.C., mandates the plaintiff to sue for all the reliefs and prohibits him or her from claiming the reliefs omitted to be sought for at a later point of time. Proviso to Section 34 of the Specific Relief Act debars the plaintiff from claiming the relief of declaration alone without seeking a further relief where he or she is in a position to seek such further relief and Section 41(h) of the Specific Relief Act restrains the Court from granting an injunction when the plaintiff can sue for a larger relief.

28. The object behind these provisions, as already pointed out, is to prevent multiplicity of proceedings and also to prevent conflicting decrees in respect of the same subject matter. I am unable to fathom a position where a Civil Court grants a decree for permanent injunction restraining a owner/co-owner from alienating the property. Thereafter a suit for partition is filed and the said co-owner, who has been enjoined by a decree for permanent injunction of a competent Court, is allotted a share in the property. Grant of such injunctions would lead to such anomalous situations. The legislature had incorporated various provisions in the C.P.C as well as the Specific Relief Act only to prevent such anomalous situations arising out of such ill-advised suits. The Trial court fell in error in concluding that the rejection of these grounds would be a rejection based on the consideration of the defence. I am convinced that these three suits should not be retained on the file of the Courts for even a moment longer. I am of the considered opinion, these three suits are abuse of process of Court and it is an attempt to prevent the defendants from exercising the proprietary right over the property.

29. In view of the above, all these three revisions stand allowed, the applications in I.A.No. 1049 of 2015 in O.S.No. 1199 of 2013(O.S.No. 366 of 2019 on the file of the District Munsif-cum-Judicial Magistrate, Madukkarai) and the application in I.A.No. 65 of 2017 in O.S.No. 1201 of 2013 will stand allowed, both the complaints will stand rejected, the C.R.P.No. 3018 of 2018 will stand allowed. The complaint in O.S.No. 1833 of 2017 will stand struck off from the file of the Principal District Munsif Court, Coimbatore. Consequently, connected miscellaneous petitions are closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

kkn

To:-

1 The II - Additional District Munsif,
Coimbatore.

2 The Principal District Munsif,
Coimbatore.

+3 CC to Mr.K.S.Karthik Raja Advocate Sr.No.39353, 39353, 39354

C.R.P.Nos. 718, 2289 & 3018 of 2018
and
C.M.P.Nos. 14324, 17525 & 17079 of 2018

NMI (CO)
KP (19/12/2020)

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