

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.479 of 2020
and CMP Nos.10227 & 10228 of 2020

P.Philomen Raj @ Raju ... Appellant/Plaintiff

Vs.

Stephen (died)

1. Sabesthiammal ... Respondent/1st Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree in A.S.No.28 of 2018 dated 08.03.2019 on the file of Subordinate Court, Jayankondam reversing the decree and judgment in O.S.No.250 of 2003 dated 08.09.2009 on the file of District Munsif Court, Jayankondam.

For Appellant : Mr.R.Rajaramani

J U D G M E N T

This matter is taken up for hearing through Video-Conferencing.

The plaintiff in OS No.250 of 2003 whose very novel suit for permanent injunction restraining the first defendant from alienating the properties on the ground that the first defendant has got only a life estate came to be unfortunately decreed by the Trial Court upon its being rightly reversed by the Lower Appellate Court, has come up with this Second Appeal.

2. The plaintiff sought for a permanent injunction restraining the first defendant from alienating the properties on the ground that the first defendant was given only a life estate in the properties under a Will of their father and therefore, the alienations would be invalid. The Trial Court without appreciating the law relating to alienation of properties by a life estate holder granted a decree. Aggrieved

the defendants preferred Appeal, pending Appeal the first defendant died.

3. The Appellate Court concluded that the plaintiff has to seek a declaration of title and suit for bare injunction is not maintainable. I can at once point out that the conclusion of the Appellate Court is not correct. At the same time, the Trial Court was also not correct in granting a decree for injunction in a suit of this nature. It is settled law that alienation by the life estate holder is valid till his life time and the remainderman can seek for possession after the life time of the life estate holder.

4. In view of the said stated position of law the very suit ought to have been dismissed as not maintainable. Unfortunately neither the counsels before the Courts below nor the Courts below have adverted to the correct position of law leading to disastrous judgments being rendered by both the Courts. However, it is clear to my mind that the suit of this nature is not maintainable and the same ought to be dismissed on that short point alone.

5. Hence the dismissal of the suit by the Lower Appellate Court is upheld though on different grounds, the Appeal fails and it is accordingly dismissed without being admitted. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Jayankondam

2. The District Munsif,
Jayankondam.

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