

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.1 of 2014
and
M.P.Nos.1 of 2014 & 1 of 2015

1. Arun Kumar
2. Ashok Kumar ... Appellants/Plaintiffs

Vs.

1. Jayabal
2. Lakshmanan @ Devan
3. Sankaran
4. Babu @ Vivekanandan
5. S.V.Sugar Mills Ltd.,
S.V.Sugar Mills Complex,
Palayaseevaram Village,
Kancheepuram.

6. N.Murugan ... Respondents/Defendants

Prayer: The Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgment and decree dated 19.12.2012 passed in A.S.No.85 of 2011 on the file of the Sub Court, Kancheepuram confirming the Judgment and Decree dated 30.09.2010 passed in O.S.No.3 of 2004 before the Principal District Munsif's Court, Kancheepuram.

For Appellants : Mrs.R.Meenal

For Respondents : Mr.D.Ravichander (for R1)
Mr.D.Murthy (for R6)
R3 to 5 Served
R2 No Such Person

J U D G M E N T

The plaintiffs who filed a suit seeking a bare injunction restraining the 5th defendant, a Sugar Mill from disbursing the proceeds of the sugar cane to the other defendants in the suit have come up with this second appeal, upon the suit being dismissed by the Courts below concurrently.

2. According to the plaintiffs, they had filed a suit for a partition in O.S.No.214 of 2003, claiming a share in the property. The said suit is being resisted by the defendants contending that there had already been a partition. It is the plaintiffs' claim that the partition which is evidenced by a document was obtained by a force and therefore it is not valid. These questions are subject matter of the partition suit. While so, the plaintiffs came up with the present suit for injunction with the prayer as stated above.

3. This suit was resisted projecting the said partition that said to have been taken place on 04.08.2003.

4. The Courts below concluded that the validity or otherwise of the partition dated 04.08.2003, will have to be decided only in the partition suit and there cannot be an injunction as sought for in the present suit. The trial Court also held that it will be open to the plaintiffs to recover their share of the income as mesne profits in the partition suit, if they succeed in the partition suit. On the said findings, the suit came to be dismissed. The appeal filed by the plaintiffs was also dismissed. Hence, this second appeal.

5. I have heard Mrs.R.Meenal, learned counsel appearing for the appellants. Notice of motion was ordered on 06.01.2014. Pursuant to notice, Mr.D.Ravichander, learned counsel appears for R1 and Mr.D.Murthy, learned counsel appears for R6. R3 to R5 are served. Notice to R2 has been returned with an endorsement "no such person".

6. Mrs.R.Meenal, learned counsel appearing for the appellants would vehemently contend that in a suit for bare injunction both the trial Court and the appellate Court erred in pronouncing upon the validity of the partition, dated 04.08.2003.

7. A perusal of the Judgements of the Courts below would reveal that the Courts have not pronounced on the validity or otherwise of the partition deed, dated 04.08.2003. Both the Courts have only said that there is a registered partition deed and the plaintiffs were claiming that it is obtained by coercion. Having launched the suit for partition, it is for the plaintiffs to prove their claim in the partition and a suit for bare injunction will not lie. Hence, I do not see any question of law much less a substantial question of law, in order to enable me to entertain this second appeal. The Second appeal, therefore, fails and it is dismissed accordingly. It is made clear that the validity or otherwise of the partition deed, dated 04.08.2003 will have to be decided in the partition suit namely O.S.No.214 of 2003 by the Courts without being influenced

by any of the observations made in these proceedings. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

vum

To

1.The Subordinate Judge,
Kancheepuram.

2.The Principal District Munsif's Court,
Kancheepuram.

Copy To

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

+1cc to Mr.R.Meenal, Advocate, S.R.No. 29228

+1cc to Mr.D.Ravichander, Advocate, S.R.No. 29359

S.A.No.1 of 2014 and
M.P.Nos.1 of 2014 & 1 of 2015

SR(CO)
GN(04/11/2020)