



A.S.No. 653 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

A.S.No. 653 of 2019
and
C.M.P. No. 19672 of 2019

D.Jayalabalachandran (died)

2. R.Balaji,
S/o. V.Ravindran

(2nd respondent transposed as 2nd appellant
vide court order dated 18.04.2023 made in
C.M.P.No.7939 of 2023 in A.S.No.653 of 2019)

... Appellants

Vs.

1. K.Girija,
D/o. V.Kanniah

2. R.Balaji

(2nd respondent impleaded vide order of
court dated 23.01.2023 made in C.M.P.
No. 22603 of 2022 in A.S.No.653 of 2019)

.. Respondents



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PRAYER : Appeal Suit filed under Sec. 96 of Civil Procedure Code, praying to set aside the decree and judgment dated 26.04.2018 passed in O.S.No. 196 of 2011, on the file of learned Principal Judge, Family Court, Chennai.

For Appellant : Mrs.V.S.Usha Rani

For Respondents : No appearance for R1

Mr. A.Mohamed Ismail for R2

ORDER

The appellant herein is the defendant in the suit in O.S.No.196 of 2011, on the file of Principal Judge, Family Court, Chennai, which was filed by 1st respondent/plaintiff for the relief of permanent injunction praying not to cause interference in the peaceful possession and enjoyment of suit properties as described in A, B and C schedule in the suit. The said suit was tried by the Family Court, Chennai along with O.P.No. 958 of 2008 filed by the appellant against the 1st respondent praying for dissolving the marriage solemnised between himself and her



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on 18.01.1989 on the ground of cruelty, desertion and conversion under Sec.13(1)(ia), (ib) and (ii) of Hindu Marriage Act.

2. The Family Court Judge tried both divorce petition as well as the suit and finally concludes that the defendant husband is entitled for divorce on the ground of desertion only and also decreed the suit in favour of plaintiff wife granting the relief of permanent injunction restraining the defendant husband not to cause any interference in the peaceful possession and enjoyment of suit properties. Aggrieved over the findings of granting permanent injunction in favour of plaintiff wife in the suit in O.S.No.196 of 2011, the defendant husband preferred this appeal.

3. The learned counsel for appellant argues that learned trial judge erred in holding that the defendant husband not denied the allegations made by the plaintiff wife that there is apprehension of dispossession, thereby she is entitled for the relief as prayed for, as such is totally unfair and the same is liable to be set aside. He would submit that trial judge also failed to take note of the fact that title of the property was transferred



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in the name of defendant husband and the plaintiff wife, without proving her contribution to purchase the properties, the suit was decreed in favour of plaintiff wife as such is totally perverse findings and it is liable to be set aside.

4. When the matter taken up for hearing, there is no representation on the side of learned counsel for 1st respondent wife and the 2nd respondent, who is purchaser of the property was represented through his counsel. Now, during the pendency of appeal proceedings, sole appellant died and the 2nd respondent, who is purchaser of property was transposed as appellant.

5. The fact remains that the 1st respondent herein is the wife of appellant and both of them got married on 18.01.1989 at Vadapalani and out of wedlock, they got one daughter. At the time of marriage, the appellant was employed at A.G.S. office, as Senior Auditor and thereafter he was transferred to New Delhi. Thereafter, due to misunderstanding, the 1st respondent wife left the matrimonial home with her daughter. As



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she refused for reunion, the 1st respondent wife filed a Original Petition in O.P.No.958 of 2008 seeking for a divorce on the ground of cruelty and desertion and also conversion to Christianity. Subsequently, 1st respondent wife also filed a suit in O.S.No.196 of 2011 praying for a permanent injunction restraining the defendant husband not to cause any interference into the peaceful possession and enjoyment of A, B and C schedule of suit house properties. In the divorce proceedings, the husband raised allegation against wife stating that there was an illegal intimacy with one Devan, which was not proved, besides, with regard to the ground of cruelty, it was also not proved before the trial court. So also, the allegation of conversion to Christianity was also not proved. But, with regard to desertion, the Family Court found that she left matrimonial home and thereafter, husband took steps for reunion, but she was not inclined nor she is not willing to live with him at New Delhi inspite of efforts taken by the husband. Finally, on considering all the facts and circumstances, the Family Court Judge concludes that she deserted her husband for no reason and on that ground, divorce was granted in favour of husband. In respect of the reliefs claimed for the relief of permanent



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injunction with regard to three house properties as described in the plaint schedule, the contentions of plaintiff wife is that though the properties stand in the name of her husband, she also contributed money to purchase the property, but her husband attempted to sell the property and also tried to dispossess her. The said allegation was denied by the defendant husband. Finally, the trial judge decreed the suit in favour of plaintiff wife holding that defendant husband has not denied the allegation of dispossession made by wife, thereby presumed that he has attempted to sell the property. Accordingly, the relief of permanent injunction was granted in favour of plaintiff wife.

6. Heard and considered rival submissions made by learned counsel for appellant/purchaser and perused the records.

7. Considering submissions made on the side of appellant husband that admittedly, all the three house properties are stand in the name of appellant and though 1st respondent wife claimed that she made contribution to purchase the properties, but before the trial court, she has



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not adduced any evidence to show her source of income. So, it is not in dispute that all the house properties stand in the name of her husband and he is a true owner of properties unless the contribution is proved. But, the trial judge failed to take note of the legal aspect, erroneously concludes that the appellant husband has to prove the title of the properties, as such is totally erroneous one. It is settled proposition that the plaintiff, who approached the court has to prove her case on her own accord and not to fall upon the defence of defendant. Now, the case in hand, the respondent/plaintiff wife contended that she made contribution to purchase the property, but as discussed above, there is no proof to that effect. It is an admitted fact that the appellant husband was employed in Central Government as a Senior Auditor and earned a considerable amount. So, the burden is on the plaintiff to prove the source of contribution to purchase the suit properties. When she fails, legal presumption is supporting the appellant husband that he is the absolute owner of the properties. Furthermore, there is no record to show that the respondent wife filed a suit for declaration to prove her title over the properties and as on date, no such suit was filed. Therefore, against a true



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owner, the plaintiff wife is not entitled to get an order of injunction, but the trial judge erroneously granted the relief of blanket injunction order in favour of her, as such is liable to be set aside.

8. Now, the fact reveals that the appellant husband has suffered with heart attack and other ailments and he has undergone dialysis and to meet out his medical expenses, he sold the property to the present appellant/subsequent purchaser for a valid consideration during his life time and the same was objected by the 1st respondent wife by giving her objections before the Registrar to cancel the said document. The Registrar has conducted the enquiry and on hearing appellant husband as well as subsequent purchaser, finally held that for a valid consideration, the appellant Jayabalachandran sold the property to R.Balaji on 05.08.2022 based on prevailing guideline value and as per the records, R.Balaji is the owner of the property. Accordingly, sale was held as valid and the objections raised by the respondent wife is rejected. On 13.07.2023, a copy of the order furnished on the side of appellant husband also taken into consideration. Therefore, the order passed by the trial judge in



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O.S.No.196 of 2011 as such is not maintainable in law. If at all, the 1st respondent/plaintiff is having any maintenance claim, she can ask from the appellant husband, but there is no proof placed before the court below and simply she filed a suit for injunction against her husband, who is a real owner of the property, thereby he is entitled to sell the property as an absolute owner, which cannot be prevented by a blanket order of permanent injunction. Accordingly, this Appeal Suit is allowed and the findings of learned Family Court Judge, Chennai in O.S.No.196 of 2011 is set aside and the suit is dismissed as no merits. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

28.08.2023

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp

To
Principal Judge,
Family Court, Chennai.



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T.V.THAMILSELVI, J.

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