



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 07.02.2024

Pronounced on: 16.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.882 of 2017
and
C.M.P.No.22160 of 2017

A.Subramaniam

...Appellant

Vs.

Indira

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree of dismissing the appeal suit in A.S. No.25 of 2016 dated 11.09.2017 on the file of the learned Subordinate Judge, Ranipet, Vellore District by confirming the Judgment and Decree in O.S. No.59 of 2015 dated 25.10.2016 by the learned District Munsif Court at Ranipet, Vellore District and thereby allow this Second Appeal.

For Appellant : Mr.B.Sundarpandiyan

For Respondent : Mr.K.Nagarajan



JUDGMENT

The unsuccessful defendant who suffered concurrently before the trial Court as well as the First Appellate Court, is the appellant before me.

2. The parties are described as per their litigative status before the trial Court.

3. The brief facts that are necessary for deciding the above Second Appeal are as follows:-

The plaintiff is the wife of the defendant. It is the plaintiff's case that the plaintiff has resided in the suit property along with defendant and their marriage was solemnized on 29.06.1987. The defendant, alongwith his brother and sisters attempted to dispossess the plaintiff from the suit property and the plaintiff was constrained to lodge a police complaint on 17.08.2015 and thereafter, instituted the suit seeking the relief of permanent injunction.

4. The defendant/husband filed a written statement admitting the



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marriage with the plaintiff, however, the defendant has categorically denied the averments that the plaintiff is in physical possession of the suit property. The defendant has stated that the plaintiff resides with her parents and only in order to harass the defendant, the plaintiff has filed the suit and therefore, the defendant sought for dismissal of the suit.

5. The trial Court finding that the plaintiff was the legally wedded wife, granted permanent injunction restraining the defendant from interfering the plaintiff in the suit property.

6. The defendant has preferred an Appeal in A.S. No.25 of 2016 before the learned Subordinate Judge, Ranipet. The First Appellate Court has confirmed the findings rendered by the trial Court and dismissed the Appeal.

7. Aggrieved by the concurrent findings of the Courts below, the defendant has preferred the above Second Appeal. The above Second Appeal has been admitted on 16.11.2023 and the following substantial question of law has been framed:-



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"Whether the judgment of the First Appellate Court is vitiated in its failure to follow the mandate under Order 41 Rule 31 of CPC"

8. I have heard Mr.B.Sundarapandiyam, learned counsel for the appellant and Mr.K.Nagarajan, learned counsel for the respondent.

9. The plaintiff and defendant are admittedly wife and husband. The short point that arises for consideration in this Second Appeal is as to whether the plaintiff has been in physical possession and enjoyment of the suit property, thereby entitling her to the relief of permanent injunction.

10. Though the appellant has admitted his marriage with the plaintiff, he has categorically stated that the plaintiff is residing with her parents only and not in the suit property. It is also an admitted fact that the plaintiff and the defendant were not blessed with any children. Insofar as the relief of declaration, there is no defect, since the defendant has admitted his marriage with the plaintiff and therefore, no interference is warranted with the concurrent findings arrived at by the Courts below declaring that the plaintiff is the lawfully wedded wife.



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11. Insofar as the other declaratory prayer that the children by name S.Venistikaa and S.Tarunika are not legally born children, the case of the plaintiff was that the defendant had married one Thilagavathy and through whom that the said two girl children were born and they were, therefore, illegitimate children. The Courts below have rejected the said declaratory prayer on the ground that the children cannot be treated as illegitimate children by placing reliance on the provisions of the Hindu Marriage Act, 1955.

12. It has come out in the evidence of P.W.2 that the plaintiff resides with her mother at Anna Nagar, Chennai and only thereafter, it appears that the defendant has married for a second time viz., one Thilagavathy, through whom he has two girl children. The Courts below have proceeded to grant a permanent injunction only on the ground that the plaintiff is the legally wedded wife and therefore, she is entitled to live peacefully in the matrimonial home.

13. The plaintiff's brother was examined as P.W.2, in his evidence he



has categorically stated that his sister/plaintiff lived separately from the year 2015 onwards and that it was he who accompanied the plaintiff from the matrimonial home to Chennai, in the month of Aadi, in the year 2015 and at that time, except the defendant, no other relatives of the defendant were available. It is the specific case of the defendant that he never drove away the plaintiff from the matrimonial home. The allegations in the plaint that the defendant and his family members forcibly sent out the plaintiff is proved to be false from the evidence of the plaintiff's witness, P.W.2 who is none else then the brother of the plaintiff. Unless, the plaintiff established that she has been living in the suit property, then alone, she would be entitled to the relief of permanent injunction. Merely because, the plaintiff is the lawfully wedded wife of the defendant would not clothe her with a right to reside in the matrimonial home, especially, when it has not been established that she was driven out of the matrimonial home. The evidence of P.W.2 who was examined by the plaintiff falsifies the plaintiff's case and also documents exhibited by the plaintiff in Exhibits A1 to A8.

14. It is also admitted by the learned counsel on either side that the



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husband has filed HMOP. No.159 of 2016 for divorce before the Sub Court, Vellore and it is represented that the said HMOP was dismissed as against which, the CMA has been preferred and the same is pending before this Court. The learned counsel for the appellant would further state that the plaintiff/wife has filed a Maintenance Petition and the husband/defendant has been paying the maintenance regularly without any default and further he would also state that even in the maintenance proceedings, the wife has given her Chennai address alone, where she resides and not the suit property.

15. It is not the plaintiff's case that she has no roof over her head and though her case was that she was forcibly driven out from the matrimonial home, the same has been proved to be false. The plaintiff is residing in Chennai which is also an admitted fact, which is borne out of records. Thus the plaintiff is not entitled to the relief of permanent injunction as her claim that she is in physical possession of the suit property and her possession was disturbed by her husband viz., the defendant, have not proved.

16. On perusal of the First Appellate Court Judgment, I find that after extracting the pleadings of the respective parties and setting out the grounds



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of Appeal, the First Appellate Court has proceeded to hold as follows:-

"I am of the view that the grounds put forth by the appellant are not suffice to set aside the trial Court's judgment and hence it is answered to issue No.1 that the decision of the learned District Munsif, Ranipet thereby decreeing the suit based on the oral and documentary evidence of the plaintiff does not need any interference and the same needs to be confirmed and thus Point.No.1 is answered, accordingly and it is answer to point no.2 that the appellant is not entitled to any other relief."

17. The approach of the First Appellate Court which is the final Court of fact is far from satisfactory. There is absolutely no independent assessment of the pleadings and evidence adduced by the parties. The First Appellate Court has unfortunately, endorsed the findings arrived at by the trial Court without any discussion of the material pleadings and evidence available on record. The said approach adopted by the First Appellate Court is clearly violative of the provisions under Order XLI CPC. In any event, when the plaintiff is not admittedly in physical possession of the suit property and her case of being driven out from the matrimonial home is also not proved or rather proved to be false, the plaintiff is dis-entitled to the relief of permanent injunction.



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In fine, I am inclined to allow the Second Appeal, answering the substantial question of law in favour of the appellant. Accordingly, the Second Appeal is allowed and I hereby set aside the judgment and decree of the Courts below. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

16.02.2024

Index :Yes/No
Internet :Yes/No
Neutral Citation :Yes/No.
Speaking order/Non-speaking order
rkp
To

1. The Principal Subordinate Judge, Kancheepuram.
2. The District Munsif cum Judicial Magistrate,
Sriperumbuudur.

P.B.BALAJI, J,

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Pre-delivery Judgment in

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and

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