



S.A.No.202 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 20.06.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.202 of 2019

K.N.Sridharan

... Appellant

-Versus-

K.N.Narasimhan

... Respondent

Appeal filed under Section 100 of C.P.C. to set aside the judgement and decree passed in A.S.No.338 of 2012 dated 16.04.2013 on the file of the XVII Additional Judge, City Civil Court at Chennai by partly allowing the Judgment and Decree passed in O.S.No.13923 of 2010 dated 16.07.2012 on the file of the XVIII Assistant Judge, City Civil Court at Chennai.

For Appellant : Mr.K.N.Sridharan

Party in person

For Respondent : Mr.R. Neethi Perumal

JUDGEMENT

The present second appeal arises out of judgment and decree of the learned XVII Additional City Civil Court, Chennai in A.S.No.338 of 2012



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dated 16.04.2013 in partly allowing the appeal and setting aside the judgment and decree of the XVIII Assistant City Civil Court at Chennai in O.S.No.13923 of 2010 dated 16.07.2012.

2. For the sake of convenience, the parties will be referred to as per their ranks in the suit.

3. There is no dispute between the parties that the suit schedule mentioned properties belonged to one Kittappa. The said Kittappa had two sons and four daughters. He executed a "Will" on 29.07.1992 bequeathing the suit schedule mentioned properties in equal moieties to the plaintiff and the defendant.

4. The plaintiff, alleging that he is excluded from the property at the instance of the defendant, who is his elder brother, presented the suit for permanent injunction restraining the defendant from creating any encumbrance over the plaintiff's share in the A and B schedule mentioned properties and for a mandatory injunction to permit the plaintiff to enter and exit the suit schedule mentioned properties and for costs.



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5. A written statement was presented whereby the existence of the Will dated 29.07.1992 executed by the late K.N.Kittappa was admitted. It was, however, pleaded by the defendant that there was no cause of action for the suit. The grievance made in the plaint that the parties' mother was admitted to the old age home was not disputed, but it is the case of the defendant that she was admitted to the old age home at the instance of the plaintiff and not at his instance. He would state that he is bearing the maintenance and other expenses for the property, and the documents for the property are also with him. He would further plead that he is taking steps to have the Will dated 29.07.1992 probated before this Court.

6. On the basis of these pleadings, the learned trial judge framed the following issues:

- “1. Whether the plaintiff is entitled for permanent injunction as prayed for?
2. Whether the plaintiff is entitled for Mandatory injunction as prayed for?
3. To what other relief the plaintiff is entitled?”

7. On behalf of the plaintiff, the plaintiff examined himself as PW1 and



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his sister, M.Premavathy as PW2. He marked Ex.A1 to Ex.A3. On the side of the defendant, he examined himself as DW1 and marked Ex.B1 to Ex.B21.

8. On consideration of the entire case, the court came to the conclusion that the property belonged to the father and granted the relief as prayed for since the properties had not been partitioned between the brothers.

9. Aggrieved by the same, a regular appeal was preferred by the defendant before the learned XVII Additional City Civil Court at Chennai. The learned Additional Judge partly allowed the appeal and held that the grant of injunction by the learned trial judge would be only with respect to the plaintiff's share of the property and not over the shares which belong to the Appellant K.N.Sridharan.

10. Aggrieved by the same, the present second appeal has been preferred before this Court.



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11. Originally this court ordered notice regarding admission on 11.02.2019. The respondent was served with notice and he has engaged Mr.R.Needhi Perumal to argue the appeal.

12. This appeal was heard on the following substantial question of law:

“ 1. Whether the first appellate court is right in saying that there is cause of action for granting injunction against encumbrance of the property in as much as the original documents are with the appellant even now?”

13. Mr.K.N.Sridharan would submit that there was no cause of action for the suit since he did not prevent the plaintiff from entering the property. He would state that the defendant had left the property on account of the fact that the property became incapable for residing as it was affected by termites. He would state that unnecessary allegations had been made against him by the plaintiff, and therefore, as there is no cause of action, the appeal deserves to be allowed, and the suit has to be dismissed.

14. Per contra Mr.R.Needhi Perumal would submit that there is no necessity for this Court to go into the merits of the matter, as pending the



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proceedings, the dispute which arose with respect to the Will executed by the father on 29.07.1992 had been settled out of court and the parties entered into a memorandum of compromise and subsequently, a probate was also granted by this Court. He would further state that after the probate was granted, the respondent herein had received a sum of Rs.52,00,000/- for releasing his right over the A and B schedule mentioned properties in favour of the appellant. He would state that, as of today, the appellant is the owner of the A and B schedule property, and therefore, nothing remains to be adjudicated in the appeal.

15. I have carefully considered the submissions of Mr.K.N.Sridharan the party-in-person and Mr.R.Needhi Perumal for the respondent.

16. The Supreme Court of India in ***Shipping Corpn. of India Ltd. v. Machado Bros., (2004) 11 SCC 168*** had held that in case the suit becomes infructuous on account of the fact that the cause of action extinguished, it is duty of the Court to dismiss the suit as one bereft of cause of action.

17. The cause of action for the present suit was that K.N.Narasimhan, the plaintiff feared that his elder brother viz., K.N.Sridharan would exclude him



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from his right, title and interest over the property by alienating and encumbering the same. He had also pleaded that K.N.Sridharan had prevented him from entering the property.

18. By virtue of the fact that subsequent events have over taken this appeal and, as of today, the appellant has become the absolute owner of the property due to the compromise deed, probate, as well as the release deed executed by the respondent in favour of the appellant, I need not strain myself to decide whether the cause of action existed on the date of presentation of the plaint. By the aforesaid subsequent acts, the suit has become infructuous, and therefore, there is nothing for me to decide upon.

19. Consequently, recording the statement that the appellant/K.N.Sridharan has become the absolute owner of the property, due to the aforesaid subsequent events, the judgement and decree of the courts below are dissolved. It is recorded that they are dissolved by the acts of the parties. In fine, S.A.No.202 of 2019 is allowed. The judgment and decree of the XVII Additional City Civil Court at Chennai in A.S.No.338 of 2012 dated 16.04.2013 in partly reversing the judgment and decree of the learned XVIII Assistant City Civil Court at Chennai in O.S.No.13923 of 2010 dated



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16.07.2012 are set aside. The decree of injunction granted by the courts below shall stand dissolved. As parties are close relatives, I am not inclined to impose any costs in the appeal.

20.06.2024

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Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order

To

- 1.The XVII Additional City Civil Judge, Chennai
- 2.The XVIII Assistant City Civil Judge, Chennai



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V.LAKSHMINARAYANAN, J.

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