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S.A.No.231 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2024

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.231 of 2024

1. Gomathi
2. K.Sivakumar

...Appellants

Vs.

P.Sengodan

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code,1908, praying to set aside the judgment and decree dated 29.01.2014 made in A.S.No.13 of 2013 on the file of the Sub-Court at Tiruchengode confirming the judgment and decree dated 17.01.2013 made in O.S.No.50 of 2012 on the file of the Additional District Munsif Court, Tiruchengode.

For Appellant

: M/s.R.A.Monalisha
for M/s.R.Marudhachalamurthy

ORDER

The unsuccessful plaintiffs in a suit for bare injunction are the appellants herein. The appellants/plaintiffs filed a suit for bare injunction restraining the defendant in any way alienating or encumbering the properties situated in Survey Nos.419/3 and 418/2. The suit was dismissed by the Trial Court. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.13



S.A.No.231 of 2024

of 2013 on the file of Sub-Ordinate Court, Tiruchengode and the first appellate Court concurred with the findings of the Trial Court. Aggrieved by the concurrent findings, the appellants/plaintiffs have come up by way of second appeal.

2. According to the appellants/plaintiffs, the 1st appellant is the wife of 2nd appellant. The 1st appellant is the owner of the 1st item of the suit properties and 2nd appellant is the owner of the 2nd item of the suit properties. It was pleaded in the plaint that they got title to their respective items of the suit properties by way of registered sale deed dated 24.10.2007 executed by a power agent R.Selvaraj. The extent of land purchased by the 1st appellant is common 1.50 acre in Survey No.419/3 and extent of land purchased by the 2nd appellant is common 0.53 acre in Survey No.418/2. It was pleaded that from the date of purchase, they had been in possession and enjoyment of the suit properties. It was also averred by the appellants that the respondent/defendant also purchased the properties in Survey No.418/2 to an extent of 0.51-1/2 acre and in Survey No. 419/3 to the extent of 1.02 acres totally 1.53-1/2 acres under a registered sale deed 03.10.2009 executed by a power agent namely Sellamuthu. According to the appellants, both the appellants and respondent are joint co-owners of the suit properties and there is no partition effected



S.A.No.231 of 2024

between the plaintiffs and defendant in respect of the suit properties and in fact, the respondent/defendant himself filed a suit in O.S.No.66 of 2009 on the file of Sub-Court, Tiruchengode for partition against the 1st appellant and subsequently, he had also filed a petition to implead the 2nd appellant herein in the above suit for partition and thereafter, this respondent/defendant allowed the said suit for partition for dismissal and made an attempt to alienate the suit properties by dividing the same into house plots and hence, the appellants were constrained to file a suit for bare injunction.

3. The respondent/defendant remained exparte before the trial Court and not filed any written statement.

4. Before the Trial Court, the 2nd plaintiff was examined as P.W.1 and 11 documents were marked as Ex.A1 to Ex.A11 on his side. On behalf of defendants, no witness was examined and no documents were marked.

5. The Trial Court, on appreciation of oral and documentary evidence available on record, dismissed the suit as the suit for bare injunction is not maintainable. The Trial Court held that the suit properties are not partitioned between the appellants and respondent till date and both parties are the co-owners of the each and every inch of the suit properties. The Trial Court also held that it was an admitted fact that respondent/defendant had himself filed



S.A.No.231 of 2024

the suit for partition in O.S.No.66 of 2009 and allowed the same for dismissal.

Therefore, the respondent himself admitted that the suit properties have not been partitioned till date between the appellants and respondent. When the appellants and the respondent have purchased their respective undivided share as common in the suit properties, the respondent has no right to sell a specific portion of the suit property by house plots. Even if he sold, it was not binding upon this appellants in any manner. The Trial court also held that when the appellants sought for the relief for the entire properties in Survey Nos.419/3 and 418/2, such injunction cannot be granted against the co-owner. When this appellants themselves admitted that the respondent is also a co-owner of the suit property, suit for bare injunction is not at all maintainable and consequently, dismissed the suit. Aggrieved by the same, the plaintiffs preferred an appeal in A.S.No.13 of 2013 on the file of Sub-Ordinate Court, Tiruchengode and the First Appellate Court also held that suit for bare injunction against a co-owner was not at all maintainable and also held that appellants should have filed a comprehensive suit for the relief of partition and permanent injunction and concurred with the findings of the Trial Court.

6. On perusal of the findings rendered by the Courts below, this Court is of the view that since both the appellants and respondent are co-owners of the



S.A.No.231 of 2024

suit properties, there is no partition between the parties and since the appellants sought for the relief for the entire properties in Survey Nos.419/3 and 418/2, such a blanket injunction cannot be granted against the co-owner. Hence, I do not find anything to interfere with the findings rendered by the Courts below.

7. Accordingly, the second appeal stands dismissed.

a) by affirming the judgment and decree dated 29.01.2014 made in A.S.No.13 of 2013 on the file of the Sub-Court at Tiruchengode confirming the judgment and decree dated 17.01.2013 made in O.S.No.50 of 2012 on the file of the Additional District Munsif Court, Tiruchengode.

b) In the above facts and circumstances of the case, there will be no order as to costs.

c) Consequently, connected miscellaneous petition is closed.

15.04.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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S.A.No.231 of 2024

RMT.TEEKAA RAMAN,J.,

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To

The learned Principal District Judge, Dharmapuri.

S.A.No.231 of 2024 and
C.M.P.No.7719 of 2017

15.04.2024