



S.A.No.769 of 2004

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.769 of 2004

O.V.Krishnaswamy

... Appellant

-vs-

1.S.Lakshmi

2.Dr.S.Chandrasekaran Trust
by its trustee Raman Alwar

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 28.10.2003, passed in A.S.No.41 of 2003 on the file of Principal District Judge, Thanjavur, reversing the judgment and decree, dated 09.04.2003, passed in O.S.No.21 of 2003 on the file of Principal Subordinate Judge, Kumbakonam.

For Appellant : Mr.S.Meenakshi Sundaram,
Senior Counsel,
for Mr.M.Sengu Vijay

For Respondents : Ms.N.Krishnaveni,
Senior Counsel,
for Mr.P.Thiagarajan.



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JUDGMENT

The defendant in the suit is the appellant. The second respondent/plaintiff filed a suit seeking a decree permitting him to sell the suit property to the defendant and to deposit the sale proceeds in a nationalised Bank. The appellant herein, who was arrayed as defendant, filed a Memo, submitting to the decree. The trial Court, by recording the Memo, without going into the merits of the claim made by the plaintiff, simply decreed the suit.

2. The first respondent/third party, claiming herself as the owner of the suit property, filed an appeal in A.S.No.41 of 2003 on the file of Principal District Judge, Thanjavur. Along with the appeal, she also filed an application for reception of additional evidence in I.A.No.300 of 2003 to establish her title over the suit property. The first appellate Court came to the conclusion that the plaintiff failed to prove that the suit property was the Trust property and the proposed sale was not justifiable in law. In view of the said finding, the appeal filed by the first respondent was allowed and the suit was dismissed.



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3. The plaintiff in the suit, namely, the Trust is not aggrieved by the dismissal of the suit and has not chosen to file any appeal. The appeal is filed only by the defendant.

4. At the time of admission, the following substantial questions of law were framed for consideration :

"(1) Whether the lower appellate Court is correct in giving liberty to the first respondent, having dismissed the appeal filed by the first respondent ?

(2) Whether the lower appellate Court is correct in converting the appeal filed under Section 96 CPC into an appeal under Order 43 Rule 1-A of CPC ?

(3) Whether the suit as framed under Section 34 of Indian Trusts Act which is equivalent to Section 92(f) of CPC is maintainable ?

(4) Whether the first respondent can be given liberty to file a fresh suit for declaration having not chosen to implead herself in the present proceedings and whether liberty given by the lower appellate Court is barred by Order 2 Rule 2 CPC ?



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*(5) Whether the decree of the trial Court is in conformity
with Section 2 (2) of CPC ?*

5. The learned Senior Counsel appearing for the appellant submitted that when the first respondent filed an appeal challenging the decree passed by the trial Court on the strength of additional documents filed by her to establish her title, the first appellate Court ought to have gone into the documents filed by the first respondent independently and, instead of considering the evidence produced by the first respondent, the first appellate Court allowed the appeal and granted liberty to the first respondent to establish her title in a separate litigation. The learned Senior Counsel further submitted that the procedure adopted by the first appellate Court is erroneous and hence the liberty granted to the first respondent is liable to be set aside.

6. The learned Senior Counsel appearing for the first respondent submitted that the first appellate Court came to the conclusion that the second respondent/Trust failed to establish its rights over the suit property and convince the Court with regard to the justifiable cause for selling the property of the Trust and, therefore, the appeal was rightly allowed and the suit was dismissed. As far as the liberty granted by the first appellate Court is concerned, the learned Senior Counsel submitted that even without liberty,



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WEB CONTENT

the first respondent is entitled to establish her right in an independent suit. It was also submitted by the learned Senior Counsel that the first respondent filed a suit for declaration of her title in O.S.No.32 of 1967 on the file of Sub-Court, Kumbakonam, and the title of the first respondent was declared by the competent Court as early as 1967. Therefore, it is the submission of the learned Senior Counsel that there is no necessity for the first respondent to file a fresh suit for declaration of title. The learned Senior Counsel also submitted that the appellant is not a party aggrieved by the decree and, therefore, the second appeal filed by him is not all maintainable.

7. Since the very maintainability of the Second Appeal is disputed, the objection with regard to the maintainability is taken up for consideration. The second respondent / Trust filed a suit seeking a decree permitting the Trust to sell the property to the defendant. The first appellate Court allowed the appeal filed by the first respondent and set aside the decree passed by the trial Court and dismissed the suit. The plaintiff has not challenged the dismissal of the suit by filing second appeal. The present appeal is filed only by the defendant in the suit. When the plaintiff /Trust is not aggrieved by the dismissal of the suit, the defendant in the suit is not entitled to challenge the same by way of second appeal. It is not open to the defendant to compel the



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plaintiff to get along with the suit when no second appeal is filed by the plaintiff, challenging the dismissal of the suit. It is also stated by the learned Senior Counsel for the first respondent that the son of the appellant had already purchased the property from the second respondent /Trust. Therefore, it is clear that the appellant has no interest over the subject matter of the suit and, in such circumstances, the decree passed by the first appellate Court, dismissing the suit, will not cause any injury to the appellant. The appellant herein cannot be treated as a person aggrieved by the decree dismissing the suit, when the suit property was already sold to a third party. Even otherwise, the second respondent/plaintiff, being satisfied with dismissal of the suit, not challenged the same by filing second appeal. The dismissal of suit has become final so far as plaintiff is concerned. The appellant herein, as a defendant in the suit, is not at all aggrieved by decree, as he has no independent interest in suit property, except his desire to purchase suit property. He is not even an agreement holder. Even sale agreement will not create interest in immovable property. Hence, the appellant herein is not a person having interest in suit property and as a consequence he is not an aggrieved party. Since he is not real aggrieved person, the Second Appeal filed by the appellant is not maintainable and the same deserves to be dismissed on the ground of maintainability.



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8. In view of the conclusion reached by this Court that the Second Appeal filed by the appellant is not maintainable, the questions of law, framed at the time of admission, need not be answered.

9. In view of the discussion made above, the Second Appeal stands dismissed, by confirming the judgment and the decree passed by the first appellate Court. No costs. Consequently, the connected C.M.P.(MD) No. 8327 of 2018 is closed.

29.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

- 1.Principal District Judge,
Thanjavur.
- 2.Principal Subordinate Judge,
Kumbakonam.
- 3.Section Officer,
V.R. Section,
Madurai Bench of Madras High Court.



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