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Court : Chennai Madurai

Decided On : Oct-24-2016

Judge : S.S. Sundar

Appeal No. : Second Appeal (MD) No. 127 of 2011

Appellant : Meena

Respondent : Athithanagai and Others

Judgement :

(Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, praying to set aside the judgment and decree passed in A.S.No.88 of 2010, dated 11.11.2010 on the file of the Additional Sub Court, Tirunelveli, confirming the judgment and decree dated 01.04.2009 passed in O.S.No.1350 of 2004 on the file of the First Additional District Munsif Court, Tirunelveli.)

1. The defendant in the suit in O.S.No.1350 of 2004 on the file of the First Additional District Munsif Court, Tirunelveli, is the appellant in this Second Appeal.

2. The case of the plaintiffs in O.S.No.1350 of 2004 is that the first plaintiff is entitled to 1/3rd share of her son by virtue of a settlement deed dated 07.05.2003. Similarly, the original owner namely D.Madasamy had executed a settlement deed in favour of the first plaintiff's son and plaintiffs 2 and 3 by virtue of settlement deed dated 23.06.1975. It is not in dispute that the 1/3rd share of the first plaintiff is derived on the basis of the alleged settlement deed dated 07.05.2003 alleged to

have been executed by one Tamil Selvan son of first plaintiff.

3. However, the case of the defendant is that she had filed a suit for maintenance in O.S.No.460 of 2004 on the file of First Additional District Munsif Court, Tirunelveli, and that she is entitled to proceed against the suit property, in furtherance of her right to enforce the decree that might be passed in O.S.No.460 of 2004. In the suit, there is also a prayer for creating a charge over the properties particularly items 1 and 2 therein. The first plaintiff in O.S.No.460 of 2004 is the defendant in O.S.No.1350 of 2004, which is filed for permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property. The first plaintiff in O.S.No.1350 of 2004 is also the second defendant in O.S.No.460 of 2004. The suit for maintenance is decreed and charge is created in respect of items 1 and 2 of suit properties in O.S.No.460 of 2004. Item 1 in O.S.No.460 of 2004 is the suit property in O.S.No.1350 of 2004.

4. It is contended that the suit property originally belonged to one D.Madasamy. Admittedly, the said Madasamy had executed a registered settlement deed in favour of his children namely the son and two daughters. It is also admitted that all the children were given only equal share namely 1/3rd share in all the properties.

5. It is also admitted that the plaintiff in O.S.No.460 of 2004 has filed the suit for maintenance and obtained a decree for maintenance at the rate of Rs.3,000/- per month. The suit in O.S.No.1350 of 2004 has been filed by the plaintiffs/respondents herein for permanent injunction restraining the defendant / appellant namely the wife of Tamil Selvan, from interfering with the peaceful possession and enjoyment of the suit property. The suit for maintenance has been decreed and the suit for permanent injunction was also decreed. When it is admitted that as against the suit property in the suit for injunction, the appellant has obtained a charge decree following the decree for maintenance, the decree for permanent injunction can only be subject to the charge decree in O.S.No.460 of 2004. The fact that the appellant has obtained a charge decree so as to enable the appellant to proceed against the suit property while executing the decree for maintenance is not in dispute. When two suits are simultaneously decided and the right of the appellant is acknowledged, it is not open to the trial Court to ignore the

decree in O.S.No.460 of 2004 and the respondents are entitled to get a decree for injunction subject to the appellant to proceed against the suit property while executing the decree for maintenance. In that view of the matter the second appeal is allowed to the extent indicated above. The first respondent is entitled to a decree for injunction in respect of the suit property subject to the appellant's right to proceed against the suit property for executing the decree for maintenance in O.S.No.460 of 2004 on the file of the First Additional District Munsif Court, Tirunelveli. Hence, the judgment and decree of the appellate Court in A.S.No.88 of 2010 confirming the judgment and decree in O.S.No.1350 of 2004 on the file of the First Additional District Munsif Court, Tirunelveli, is set aside and the plaintiffs / respondents are entitled to a decree for injunction in respect of the suit property subject to the right of appellant to enforce the charge that flows from O.S.No.460 of 2004 and in all other respects, the judgment and decree of the Courts below are confirmed.

6. This Second Appeal is allowed to the extent indicated above. However, there is no order as to costs.

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