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Abdul Hameed Vs. Eganathan

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Court : Chennai

Decided On : Oct-10-1980

Reported in : AIR1981Mad137

Judge : Suryamurthy, J.

Acts : Code of Civil Procedure (CPC), 1908 - Order 41, Rule 20

Appeal No. : S.A. No. 1444 of 1977 (P)

Appellant : Abdul Hameed

Respondent : Eganathan

Advocate for Def. : A. Subramanian, Adv.

Advocate for Pet/Ap. : F.A. Rasheed, Adv.

Judgement :

1.This is a second appeal from the judgment of the learned Subordinate Judge, Karaikkal, dismissing A.S. 23 of 1974 preferred by the third defendant against the judgment and decree in 0, S. 6 of 1973, on the file of the Court of the District Munsif, Karaikkal.

2. The respondent herein, Eganathan, filed 0. S. 6 of 1973, for cancellation of the 'Act de Notoriete' D/- 19-6-1954 and for a declaration of his title to the suit property. The 3rd defendant claimed title to the suit property under a sale deed

executed by the father of defendants 1 and 2. Defendants 1 and 2 who were the sons of the vendor under whom the third defendant claims title to the suit property, were absent and set ex parte. The suit was decreed with costs as prayed for by the learned District Munsif.

3. Against the judgment and decree of the learned District Munsif, Karaikkal, the 3rd defendant has filed A. S. No. 23 of 1974 on the file of the Sub Court, Karaikkal, without impleading defendants 1 and 2. The plaintiff is the only respondent in the appeal. The learned. Subordinate Judge dismissed the appeal on the ground that the appeal is not maintainable without impleading defendants 1 and 2.

'Whether the appeal before the first appellate Court was not maintainable on the ground that defendant 1 and 2 had not been impleaded as respondents? Defendants 1 and 2 had no subsisting interest in the suit property oil the date of suit and did not also claim any such interest. They were not necessary parties to the suit. No relief was claimed against defendants 1 and 2. Therefore, the plaintiff need not have impleaded them as defendants.

..... The substantial question of law formulated for consideration in this second appeal is:-

Rule 20 (1) of Or. 41 C. P. C., provides that - 'Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing, to a future day to be fixed by the Court and direct that such person be made a respondent'.

Defendants, 1 and 2 in the instant case are not interested and cannot be interested in the result of the appeal as they claim no right whatsoever in the suit property. Therefore, they need not have been made parties in the appeal.

4. In Rahima Bivi v. Sirajunnissa Bi : (1971)2MLJ243 Alagiriswami, J. has held that ---

'In case, where the party who had not been impleaded in the appeal had a substantial interest in a portion of the properties concerned in the suit or in a portion of the properties which was originally purchased, there cannot be two contradictory decrees, one upholding the validity of the transfer in favour of the original transferee and another setting it aside. It is an that ground that the failure to implead in the first appeal a party who had succeeded in the trial Court but who had not been impleaded in the lower appellate Court could not be adversely affected by a decision against his interest in the appellate Court and, therefore, no relief could be given to him. Such a consideration does not arise here. The first defendant had no interest in the property and he got no relief by the decree in the trial Court. On the other hand, the only person interested was the 6th defendant. By the first defendant not being impleaded as a party no interest of his was affected. I am, therefore, of opinion that the failure to implead the first defendant in the appeal before the lower appellate Court does not bar the sixth defendant from getting any relief in the lower appellate Court, or in this Court'.

The ratio of the decision cited above is applicable on all fours to the instant case. Therefore, the failure to implead defendants 1 and 2 as respondents in the appeal does not vitiate the trial and is not a ground for dismissing the appeal Hence, the judgment and decree of the learned Subordinate Judge of Karaikkal, in A. S. 23 of 1974, are set wide, and the matter is remanded to, the learned Subordinate Judge, Karaikkal, for disposal on merits. The appeal is allowed to the extent indicated above. There will be no order as to costs. The Court fee paid on this memorandum of second appeal will be refunded to the appellant.

5. Appeal allowed.

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