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G.S. Ramachar Vs. the Block Development Officer and ors.

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SooperKanoon Citation : sooperkanoon.com/818643

Court : Chennai

Decided On : Dec-10-1991

Reported in : (1993)1MLJ73

Appellant : G.S. Ramachar

Respondent : The Block Development Officer and ors.

Advocate for Pet/Ap. : Mrs. Prabha Sridevan

Judgement :
ORDER

Srinvasan, J.

1. When the appeal was called, Mrs. Prabha Sridevan, learned Counsel for the appellant, reported that the 8th defendant, who is the 6th respondent in the appeal, died and that she has filed an application to bring his legal representatives on record. I find that the 6th respondent herein who was the 8th defendant in the suit remained ex parte in both the courts below. In this second appeal, no notice was issued to him and the counsel got it dispensed with under Order 41, Rule 14 of the Code of Civil Procedure. It is also seen that the prayer in the plaint is not only or. behalf of the plaintiffs but also on behalf of defendants 8 and 9. Thus, the deceased defendant was sailing with the plaintiffs and there was no contest as among them. In these circumstances, there is no necessity to bring the legal representatives of the 6th respondent (8th defendant) on record in this second

appeal. Under Order 22, Rule 4(4), C.P.C., the court can exempt, whenever it thinks fit, the plaintiffs from the necessity of substituting the legal representatives of any such defendant who had remained ex pane. Hence, there is no necessity for the plaintiff to bring the legal representatives of the 6th respondent (8th defendant) on record in this second appeal.

2. The second appeal is taken up for hearing. There is no merit in this appeal. The courts below have declared the title of the plaintiffs to the property in question. But the lower appellate court has found that the plaintiffs are not entitled to mandatory injunction in view of their conduct in keeping quiet when the respondents 1 to 3 formed the road. Even before the suit, a notice was issued under Ex.A-1, dated 12.12.1972. In that notice, it was stated that the respondents 1 to 3 were trying to trespass on the property and form a road. The respondents 1 to 3 were threatened with a suit if they failed to comply with the demand made in the said notice within two months therefrom. Yet the suit was filed only on 30.1.1975. In paragraph 16 of the plaint, it is stated that the road was completed by the respondents 1 to 3 from the point 'X' to Y' It is further stated that the plaintiffs are entitled to damages at least at Rs. 100 per year from the defendants from December, 1972 to December, 1974. Thus, there is an admission that the road was completed in December, 1972. Therefore, it is clear that the plaintiffs were guilty of laches. They should have taken steps even when there was an attempt on the part of the defendants to form a road and obtained an injunction restraining them from forming the road. Having allowed the authorities to spend a lot of public money for forming the road, it is not open to the plaintiffs to ask for mandatory injunction. The relief of mandatory injunction is discretionary and the lower appellate court has applied the correct principles of law in refusing to grant the mandatory injunction.

3. It is next contended that the plaintiffs are entitled to claim more damages than what is granted by the lower appellate court. I find that the plaintiffs have claimed only Rs. 200 in the prayer portion though in the body of the plaint they had mentioned that they were entitled to damages at the rate of Rs. 100 per year. The learned judge has granted more than the amount claimed. But there is no cross-objections or cross-appeal at the instance of the respondents. I am not inclined to interfere with the grant of compensation in favour of the plaintiffs by enhancing the

same.

4. The second appeal fails and the same is dismissed. No costs.

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