

Rajamanicka Mathurar

Vs

Dharmaraj and Others

Civil Appeal No. 1770 of 1969

(R. S. Sarkaria, O. Chinnappa Reddy JJ)

29.10.1979

JUDGMENT

1. This appeal by special leave is directed against a judgment dated December 13, 1968 of a learned single Judge of the High Court of Madras. The facts shortly are as follows :

2. The appellant is the 7th defendant and respondents 1 to 14, are respectively the plaintiff, 1st defendant, 3rd defendant and 4th defendant on the file of the District Munsif's Court at Mannargudi. The plaintiff filed a suit in the Court of the Munsif's for a declaration of his title to the suit property and for recover of the possession together with future mesne profits. His case was the appellant (defendant 7) who had married his elder sister, Ayi Manickathammal, had no children by her and the he was brought up from his very childhood by the appellant who out of love and affection, executed a settlement deed (Ex. A-2) on February 5, 1952 in respect of the 2 items of suit properties and the appellant was looking after the properties on his behalf because the donee-plaintiff was a minor.

3. The trial Court decreed the suit. The 1st appellate Court reversed the decree and dismissed the suit. In second appeal the High Court set aside the decree of the appellate Court and remanded the case to it, with the following observations and directions :

The learned Judge of the lower appellate Court seems to have been prepared to swallow his case wholesale, hook line and sinker. I am afraid that the conclusion of the learned appellate Judge suffers from a number of defects like ignoring relevant considerations and laying undue stress upon irrelevant considerations. If the matter stood as it is, I would have been prepared to consider whether the appeal should not have been allowed straightway. But as the question regarding the rights of the other defendants has not been considered by the lower appellate Court, I am of opinion, that the lower appellate Court should be asked to reconsider the matter from the proper perspective also taking into consideration the rights of defendants 1, 3 and 4.

4. It is manifest that the High Court has not pointed out what relevant considerations were ignored and what irrelevant considerations were taken into account by the 1st appellate Court. Nor did it specify "the proper perspective from which the lower appellate Court was to reconsider the matter". Further, its remark that the lower appellate Court "seems to have been prepared to swallow the defence case wholesale, hook, line and sinker is too sweeping and may prejudice a fair and fair reconsideration of the matter by the 1st appellate Court after the remand. If we may say so with great respect, the judgment of the High Court is vague and indefinite and does not deserve to be maintained.

5. Accordingly, we allow this appeal, set aside the judgment of the High Court and send the case back to it with the direction that it should readmit the appeal on its original number, rehear the parties and then decide it a fresh in accordance with law.

6. Costs shall abide the result in High Court.

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