

Thatchara Brother and Another

Vs

M. K. Marymol and Others

Civil Appeal No. 3577 of 1998

(S. C. Agarwal, B. N. Kirpal JJ)

31.07.1998

ORDER

1. Presumption regarding service of notice on Respondent 3 is drawn.

2. Special leave granted.

3. This appeal is directed against the judgment of the High Court of Kerala dated 14-10-1997 in AS No. 157 of 1995 whereby the High Court has remanded the matter to the trial court for recording further evidence. The matter arises out of a suit filed by Respondents 1 and 2 (hereinafter referred to as "the plaintiffs") for setting aside two sale deeds executed by their mother (Respondent 3) in favour of the appellants in respect of 15 cents of land. The said sale deeds were executed by Respondent 3 in pursuance of an agreement for sale dated 1-9-1979 executed by Mannullil Kurien, the father of the plaintiffs and the husband of Respondent 3. Mannullil Kurien passed away on 12-1-1980 and, thereafter, Respondent 3 in her capacity as a guardian of the minor plaintiffs executed the two sale deeds dated 14-7-1980 and 18-7-1990. The suit of the plaintiffs to assail the validity of the sale deeds was mainly founded on the ground that the permission of the Court was not obtained by Respondent 3, as guardian of the minor plaintiffs, before executing the sale deeds. The trial court dismissed the said suit by its judgment dated 25-10-1994. The trial court has taken note of the admission of Plaintiff 2, who had appeared as PW 1, that during the lifetime of Mannullil Kurien, there was a small building which was got reconstructed subsequently. The trial court found that the present building was constructed by utilising the amount received from the sale of the plaintiff's properties. The trial court has also referred to the recital in the said deed (Exhibit A-2) that Rs. 15,000 was received for completion of the construction of the building and that PW 1 has stated that the two-storeyed building was rented out to a stranger and the amount of rent was utilised for their livelihood and that now they are residing in the said two-storeyed building. It has also been found that there was no other source of livelihood for Respondent 3 for the education of the children and meeting their expenses. The High Court has held that prior permission of the Court was not required for Respondent 3, as guardian of the minor plaintiffs, to execute the sale deeds but it was necessary to show that in executing the sale deeds, Respondent 3 had acted like any other prudent man while dealing with the properties of the minors. The High Court has, however, considered it fit to remand the matter to the trial court for recording further evidence even though there was admission of Plaintiff 2, as PW 1, that the new building is in their father's property and is fetching rent. The High Court has expressed the view that this evidence is not sufficient to prove that the corpus has been invested in an immovable property in the name of a minor and that this fact can be proved by production of the Assessment Register in the files of the Corporation which will show the number of the building and the survey number of the property in which it stands. Feeling aggrieved by the said direction given by the High Court regarding remand of the matter, the appellants have filed this

appeal.

4. We have heard the learned counsel for the parties and carefully perused the judgment of the High Court.

5. We find it difficult to agree with the decision of the High Court to remand the matter to the trial court for recording further evidence. On the basis of the admission of Plaintiff as PW 1 and the recital in the sale deed (Exhibit A-2), the building has been reconstructed after the death of their father and that it had been fetching rent. The trial court has found that the present building was constructed by utilising the amount received from the sale of the plaint schedule properties and that the amount of rent was utilised for the maintenance and education of the plaintiffs since there was no other source of livelihood (sic and) for the education of the plaintiffs and meeting their expenses. The said finding has not been disturbed by the High Court. In view of these findings, we are unable to hold that further evidence was required to prove that the sale proceeds were invested in an immovable property. We are, therefore, unable to uphold the impugned judgment of the High Court remanding the matter to the trial court for recording further evidence. The appeal is accordingly allowed, the impugned judgment of the High Court remanding the matter to the trial court' is set aside and AS No. 157 of 1995 filed by the respondent-plaintiffs is dismissed. No order as to costs.