

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.561 OF 2008

P.K. Narayanan RajaAppellant(s)

VERSUS

Ambika And Anr. ...Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1) This appeal is directed against the final judgment and order dated 23.12.2004 passed by the Madras High Court (Madurai Bench) in Second Appeal No.19 of 1995 whereby the High Court allowed the second appeal and set aside the order of the lower Appellate Court.

2) It is not necessary to set out the entire facts of the case in detail except to the extent necessary for the disposal of the appeal.

3) The appellant is the plaintiff and the respondents are the defendants. The appellant and the respondents are members of one family and are thus related to one another.

4) The suit out of which this appeal arises was for a declaration and permanent injunction in relation to certain immovable properties as specified in the plaint, which are alleged to belong to members of the family. The respondents contested the suit.

5) By judgment/decreed dated 29.04.1991 in O.S. No.236 of 1989, the Trial Court dismissed the appellant's suit. The appellant felt aggrieved and filed first appeal before the District Judge. By judgment/decreed dated 07.03.1994, the first Appellate Court allowed the plaintiff's appeal and decreed the suit. The defendants felt aggrieved and filed second appeal before the High Court. By impugned order, the High Court allowed the appeal and dismissed the suit giving rise to filing of the

appeal by way of special leave before this Court by the plaintiff.

6) At the outset, learned counsel appearing for the parties stated and brought to our notice that one civil suit being OS No.46/1986 is pending between the appellant and the respondents in the Court of Subordinate Judge of Srivilliputur (TN). This suit i.e., O.S.No.46/1986 is for partition of several properties belonging to the members of the family, who are also parties to the present appeal.

7) If that be the position then, in our opinion, the property, which is subject matter of this appeal, should also necessarily be subjected to its adjudication in OS No.46/1986 along with other properties. In any event, in our view, it would be just and proper that all properties belonging to or claim to belonging to the family or/and its members though denied by the parties against each other should be

made subject matter of one civil suit rather than two civil suits.

8) It is for this reason, we do not consider it proper to express any opinion on the rights of the parties so far as the suit property in question is concerned and grant liberty to the parties of this appeal to amend their pleadings in OS No.46/1986 in relation to the suit property in question in addition to the properties which are already part of OS No. 46/1986 so that the concerned Trial Court will be able to decide the rights of the parties in relation to the entire properties including the one in question in this appeal.

9) We, therefore, set aside all the three judgments/decrees, i.e., judgments/decrees passed by Trial Court, First Appellate Court and Second Appellate Court out of which this appeal arises and grant liberty to the parties to amend their respective pleadings in civil suit O.S. No.46/1986 by including

the suit property of the present appeal in the pending civil suit (O.S.No.46/1986).

10) The Trial Court will then proceed to decide the suit (O.S.No.46/1986) expeditiously by framing additional issues, if required, in relation to the properties in question on the basis of amended pleadings and will also allow the parties to file documents and lead evidence in support of their pleadings including amended pleadings.

11) The Trial Court will decide the suit strictly in accordance with law uninfluenced by any of the observations made by the Courts below in this case.

12) Let the trial of civil suit (OS No.46/1986) be completed within one year.

13) With these observations and directions, the appeal stands disposed of.

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[S. ABDUL NAZEER]

New Delhi;
August 10, 2018