

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE /INHERENT JURISDICTION

CIVIL APPEAL NO. 5025 OF 2024

SHARMISTA DEVI AND ANR

...Appellant(s)

Vs.

G. PAVUNAMBAL(DEAD) THROUGH LRS. AND ORS.

...Respondent(s)

WITH

CONTEMPT PETITION (C) No. 373 OF 2016

IN

CIVIL APPEAL NO. 5025 OF 2024 @ SLP (C) 35495 OF 2013

O R D E R

1. This appeal arises out of the judgment of the High Court of Madras at Madurai disposing of Second Appeal No. 747 of 2010. The appellants/plaintiffs herein instituted a simple suit for injunction in the year 2007, the prayer of which is as follows:

“(a) Restraining the defendants and their men in any way interfering with the plaintiffs peaceful possession and enjoyment of the suit property.

(b) Grant suit costs

(c) Pass such other or further reliefs that may be deemed fit in the circumstances of the case and thus render justice.”

2. The suit was dismissed by the Trial Court on 12.06.2009 after coming to a conclusion that the appellants/plaintiffs were not in

possession of the property.

3. Questioning the correctness of the judgment of the Trial Court, the appellants had filed a first appeal. Before the First Appellate Court, the appellants argued placing reliance on Sections 109 and 112 of the Indian Succession Act, 1925 (the "Act"). The Appellate Court examined the matter on the basis of the submission made by the appellants and allowed the appeal primarily on the ground that the issue is covered under Section 109 of the Act. Resultantly, the order of injunction was granted.

4. The respondents/defendants, therefore, carried the matter before the High Court by filing a second appeal. The High Court again examined the matter from the prospects of Sections 109 and 112 of the Act and came to a conclusion that the first part of Section 112 will be applicable as the property was not bequeathed in favor of the appellants/plaintiffs. In this view of the matter, the second appeal was allowed and the order of the First Appellate Court was set aside, thereby restoring the judgment rendered by the Trial Court. In other words, the suit was dismissed.

5. Thus, the appellants/plaintiffs are before us, again contending the basic, that they are in possession of the property.

6. We have heard Mr. Dama Seshadri Naidu, learned senior counsel appearing for the appellants and Mr. Guru Krishna Kumar, learned senior counsel who has been appointed as *amicus curiae* in view of the fact that the counsel for the respondents had withdrawn his vakalatnama and there was no assistance to the Court.

7. Mr. Guru Krishna Kumar has graciously accepted the assignment and effectively assisted us in arriving at a decision.

8. The issue before us can be dealt in two parts.

9. Insofar as the issue relating to the operation of Sections 109 and 112 of the Act is concerned, we are of the opinion that there was no occasion for the Courts below to consider the applicability of these provisions as the suit was for simple injunction. Nothing more. In this view of the matter, all that the Courts could consider was to enquire whether the appellants/plaintiffs were in actual or physical possession of the property or not. There was no question of getting into the validity of the will, whether appellants would succeed or not or even whether defendants have any right in the property. In view of this, the findings of the Courts below with respect to the operation of Sections 109 and 112 of the Act were unnecessary and we hereby set aside these findings.

10. The other aspect relates to possession for the purpose of injunction. Having considered the matter in detail, we are of the opinion that the material on record is not sufficient to indicate as to who is in actual and physical possession of the property. In fact, the suit was instituted way back in the year 2007, and the orders passed by the Trial Court, First Appellate Court and the High Court are inconsistent and do not, in any way, assist us to arrive at a conclusion as to who is in actual possession of the property. In this view of the matter, we permit the appellants to initiate such proceedings as they may deem appropriate and which are permitted in law for the purpose of declaration, partition, possession or injunction. For this purpose, the observations of the High Court in the order impugned before us shall not come in their way.

11. With these observations, the Civil Appeal is disposed of.
12. Pending application(s), if any, stand disposed of.
13. We place on record the valuable assistance rendered by Mr. Guru Krishna Kumar, learned senior counsel as *amicus* who is assisted by Mr. Anandh Kannan N. and Mr. Ashwin K., Advocates.

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14. Learned counsel appearing for the appellants seeks permission to withdraw the Contempt Petition.
15. Permission as prayed for, is granted.
16. Contempt Petition is dismissed as withdrawn.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[ARAVIND KUMAR]

NEW DELHI;
MAY 08, 2024.

ITEM NO.101

COURT NO.13

SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 5025/2024

SHARMISTA DEVI AND ANR & ANR.

Appellant(s)

VERSUS

G. PAVUNAMBAL(DEAD) THROUGH LRS. AND ORS.

Respondent(s)

([PART HEARD BY : HON'BLE PAMIDIGHANTAM SRI NARASIMHA AND HON'BLE ARAVIND KUMAR, JJ.] MR. GURU KRISHNA KUMAR, LEARNED SENIOR COUNSEL AND MR. ANANDH KANNAN N., ADVOCATE-ON-RECORD (A.C.)

IA No. 1/2013 - CONDONATION OF DELAY IN FILING

IA No. 2/2013 - CONDONATION OF DELAY IN REFILEING / CURING THE DEFECTS

IA No. 87891/2021 - EXEMPTION FROM FILING O.T.

IA No. 87890/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 925/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

CONMT.PET.(C) No. 373/2016 In SLP(C) No. 35495/2013 (XII)

Date : 08-05-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE ARAVIND KUMAR

For Appellant(s) Mr. Dama Seshadri Naidu, Sr. Adv.
Mr. G. Balaji, AOR
Ms. Jyotika Malhotra, Adv.

For Respondent(s) Mr. Guru Krishna Kumar, Sr. Adv. (A.C.)
Mr. Anandh Kannan. N, AOR
Mr. Ashwin K, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Civil Appeal No(s). 5025/2024

Delay condoned.

Civil Appeal is disposed of in terms of the Signed Order.

Pending application(s), if any, shall stand disposed of.

CONTEMPT PETITION (C) No. 373/2016

Contempt Petition is dismissed as withdrawn in terms of the
Signed Order.

(KAPIL TANDON)
COURT MASTER (SH)

(NIDHI WASON)
COURT MASTER (NSH)

(Signed Order is placed on the file)