

A

KRISHNANANDA

v.

KATTU SIVA ASHRAM AND ORS.

JANUARY 18, 2007

B

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

C

*Appeal—Second appeal—Maintainability—Suit—Plea of adverse possession by one of the defendants—Title of both plaintiff as well as the defendant rejected by trial court—No appeal by that defendant—In first appeal title of that defendant denied—Second appeal by him dismissed—On appeal, held: Second appeal by the defendant was not maintainable.*

D

**Respondent No. 1-Plaintiff filed a suit against defendant No. 4-Appellant. Appellant claimed title over the land by adverse possession. The claim of the appellant was negated by Trial Court. Suit was also dismissed. Appellant did not prefer any appeal thereagainst. In appeal, the First Appellate Court opined that both respondent-No.1 and appellant had not acquired any title to the property. Appellant filed second appeal thereagainst and the same was dismissed on the ground that appeal was not maintainable because the appellant did not file any suit regarding his claim nor did trial court give any relief in that behalf. Hence the present appeal.**

E

**Dismissing the appeal, the Court**

F

**HELD: The second appeal filed at the instance of the appellant herein was not maintainable as the First Appellate Court had merely arrived at certain findings which might be relevant for the purpose of determination of an issue by and between the appellant and the original plaintiff, but the same were not relevant for determination of an issue amongst the defendants inter se. Moreover, no decree against the appellant was preferred.**

**[Para 5] [1133-F-G]**

G

**CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6196 of 2000.**

**From the Final Judgment and Order dated 20.8.1998 of the High Court of Judicature at Madras in S.A. No. 1148/1998.**

H

**Atul Y. Chitale, Suchitra Atul Chitale, Sujeeta Srivastava and Madhup**

Singhal for the Appellant

R. Sundaravaradan, Sr. Adv., V.G. Pragasam, S. Vallinayagam, V. Krishna Murthy, V. Balaji and A.T.M. Sampath with him for the Respondents.

The Judgment of the Court was delivered by

**S.B. SINHA, J. :** 1. The defendant No. 4 in the original suit is the appellant before us. The plaintiff is the first respondent herein. The suit of the original plaintiff was dismissed. The defendant No. 4 did not prefer any appeal thereagainst.

2. Appellant claimed title over the land by adverse possession. The said claim was negated by the learned Trial Judge. The First Appellate Court, however, opined that both the plaintiff (respondent No. 1 herein) and defendant No. 4 (appellant herein) had not acquired any title to the property.

3. Aggrieved by certain findings arrived at by the First Appellate Court, the appellant preferred a second appeal before the High Court of Madras which was dismissed summarily. The High Court opined that as defendant No. 4 did not file any suit nor the Trial Court having given any relief in that behalf, the appeal was not maintainable.

4. The appellant is before us aggrieved by the said order of the High Court.

5. There cannot be any doubt that the second appeal filed at the instance of the appellant herein was not maintainable as the First Appellate Court had merely arrived at certain findings which might be relevant for the purpose of determination of an issue by and between the appellant and the original plaintiff, but the same were not relevant for determination of an issue amongst the defendants inter se. Moreover, no decree against the appellant was preferred.

6. It is stated before us by Mr. Sundaravaradan, learned senior counsel appearing on behalf of respondent Nos. 2 to 4, that in view of the fact that the aforementioned Raman Pillai died without leaving behind any issue; escheat proceeding has been initiated. If that be so, there cannot be any doubt, whatsoever, that the appellant herein would be entitled to raise all

A contentions in regard to his title in appropriate proceedings, if initiated against him. He may even bring a fresh proceedings against the said respondent.

B 7. The appellant has sought to produce before us a purported Will dated 5.1.1965, executed by the said Raman Pillai. We, however, reject the prayer of the appellant to take the said Will on record as the contention that Raman Pillai bequeathed his entire property in his favour should not be allowed to be raised before us at this stage for the first time. This appeal is dismissed with the aforementioned observations. No costs.

C K.K.T.

Appeal dismissed.