



S.A.No.865 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.865 of 2022

Poorani @ Damayanthi

... Appellant

Vs.

1. Vadivelu

2. Sakthi

3. Ganesh

... Respondents

Prayer: Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 06.10.2020 passed in A.S.No.39/2019, on the file of the Principal Sub Court, Puducherry reversing the decree and judgment dated 21.12.2018 passed in O.S.No.592/2019, on the file of the Principal District Munsif, Puducherry.

For Appellant : Mr.U.Karunakaran

For Respondents : Mr.V.S.Senthilkumar

JUDGMENT

The appellant is the plaintiff in O.S.No.592/2010 on the file of the Principal District Munsif, Puducherry. She filed the suit for a



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permanent injunction restraining the defendants from interfering with her peaceful possession and enjoyment of the suit property.

2. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court and at appropriate places, their rank in the present second appeal would also be indicated.

3. The case of the plaintiff in a nutshell is as follows :

One Aryaputhri became entitled to the suit property through a Donation deed, dated 10.02.1908 (Ex.A1). After the death of Ariyaputhiri, his son Ponnusamy Gounder inherited the property. Ponnusamy Gounder had three sons by names Sivasankaran, Athikesavan and Raguraman. The plaintiff is the wife of Adhikesavan. Sivasankaran and Raguraman died as bachelors. Therefore, after the demise of Ponnusamy Goudner, his son, Adhikesavan, husband of the plaintiff inherited the properties. After the demise of Adhikesavan, the plaintiff became entitled to the suit property. The plaintiff is also in possession and enjoyment of the suit property by paying necessary tax to the



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Government. The defendants who are residing in the same locality are attempting to interfere with the peaceful possession of the suit property by the plaintiff and one such attempt was made on 15.02.2010. Hence, the suit.

4. The suit was resisted by the defendants on the following grounds:

- i. All the allegations contained in the plaint are false.
- ii. Ponnusamy Gounder had two daughters by names Savithri and Visalatchi. The father of the first defendant purchased a portion of the suit property from Savithri and Visalatchi through a registered sale deed dated 26.09.1983 (Ex.B1).
- iii. As per law of succession prevailing in Puducherry, the mother's property would devolve upon daughters and hence the sons of Ponnusamy Gounder cannot claim any right over the suit property.
- iv. Sivasankaran, one of the legal heirs of Ponnusamy Gounder executed a consent cum release deed, dated 07.05.1987 (Ex.B2).



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- v. The plaintiff has not clearly stated as to which part of the suit property she owns.
- vi. A portion of the suit property (measuring 5 Kuzhi 8 veesams and one Kuzhi 12 veesams) was sold by the legal heirs of late Ponnusamy Gounder.
- vii. The defendants are in possession of the remaining extent of the land and their possession is lawful.
- viii. The plaintiff has given false information in the plaint. Therefore, the suit is liable to be dismissed.

5. On the basis of the above pleadings, the Trial Court framed the following issues:

- i. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?*
- ii. Whether the plaintiff is entitled for a decree and judgment for the relief sought for?*
- iii. To what relief the plaintiff is entitled?*



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6. In the Trial Court, the plaintiff examined herself and marked Ex.A1 to Ex.A6. The first defendant examined himself and two other witnesses and marked Ex.B1 to Ex.B10.

7. After full contest, the learned Trial Court Judge, vide his decree and judgment dated 21.12.2018, decreed the suit partly in favour of the plaintiff on the following grounds:

- i. A perusal of the Donation deed, dated 10.02.1908 (ExA1) executed in favour of Ariyaputhiri shows that certain properties were settled in his name and the suit property is shown as fifth item.
- ii. The sale deed executed by Savithiri, daughter of Ponnusamy Gounder in favour of Ranganathan @ Damodharan is with regard to the land measuring an extent of 2 Kuzhi 12 vesam in R.S.No.96/8 in the suit village.
- iii. The lands covered under Ex.A1 and Ex.A2 are the lands in R.S.No.96/8 for which patta (Ex.A3) was also issued in favour of the plaintiff.



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- iv. The defendants have not elaborated as to how the properties were partitioned among the legal heirs of Ponnusamy Gounder.
- v. Hindu Succession Act came into force in the year 1963 and therefore, the defendants cannot claim any right through female heirs under Coromandel Hindu law applicable to Puducherry.
- vi. The plaintiff is also residing in the house and as per Section 44 of the Transfer of Property Act, 1882, the purchaser of a co owner's share is not entitled to enter into the house which is in common enjoyment.
- vii. The plaintiff has also proved that she is in possession of a portion of the suit property. However, she has not proved her possession over the vacant land over which the house is situated.

8. Aggrieved over the decree and judgment passed by the Trial Court Judge, the defendants filed an appeal in A.S.No.39/2019 before the Principal Sub Court, Puducherry. The learned Principal Sub Judge, Puducherry, on considering the oral and documentary evidence adduced on both sides, allowed the appeal and dismissed the suit, vide his decree



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and judgment dated 06.10.2020 on the following grounds:

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- i. The trial Court has erroneously held that the plaintiff is entitled for a permanent injunction in respect of the house in the suit property when the plaintiff herself has not claimed any such right in the plaint.
- ii. The plaintiff, during the course of cross examination, had admitted that her father in law Ponnusamy Gounder had two wives by names Thangam and Kanagavalli and that the defendant's vendors Savithri, Sivasankaran and Visalatchi were born to her father-in-law through his first wife Thangam.
- iii. P.W.1 also admitted in her cross examination that her husband was allotted 2/3rd share in the family properties in a Partition suit and that the legal heir of Ponnusamy Gounder executed the sale deeds, Ex.B1 to Ex.B3 in favour of the grand father of the defendants in respect of the suit property.
- iv. The plaintiff has suppressed all these material facts in the plaint.
- v. The plaintiff has not stated the Revenue Village name, survey number, old cadastre number of the suit property properly in the



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plaint as required under Order VII Rule 3 C.P.C.

vi. The plaintiff has not also pleaded the specific extent of the house in the plaint.

9. Aggrieved over the decree and Judgment passed by the first appellate Court, the present second appeal is filed.

10. Heard Mr.U.Karunakaran, learned counsel for the appellant and Mr.V.S.Senthilkumar, learned counsel for the Respondents.

11. A perusal of the records shows that the suit property originally belonged to one Ariyaputhri. Aryapathi had a son by name Ponnusamy Gounder. Ponnusamy Gounder had three sons Sivasankaran, Athikesavan (husband of the plaintiff) and Raguraman. The specific contention of the plaintiff is that her husband inherited the entire extent of the suit property through his father Ponnusamy Gounder. It is also her contention that the other brothers of the plaintiff died as bachelors. Thus the plaintiff has claimed that she is the absolute owner of the suit



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property after the demise of her husband. In the plaint, the suit property has been described as under:

"புதுவை அடமான காபந்து பிரோவில் பதியப்பட்ட பதிவேடுகளில் இருந்து எடுக்கப்பட்ட நகல் நெ.467 (அ) 1908 ம் ஆண்டு பிப்ரவரி மாதம் 10ந் தேதியில் ஆர்.வி.76, நெம்பர் 146ல் பதியப்பட்டுள்ளது. மேற்படி பூரணங்குப்பத்தில் வசிக்கும் காலஞ் சென்ற ராம கவுண்டர் குமாரர் வன்னியர் குலம் விவசாயி அரிய புத்திரி கவுண்டர் உடன் வந்து ஆஜராகி ஏற்றுக் கொண்டு பின் கண்ட சொத்துக்களை தானமாக பெற்று ஒப்புக் கொண்டார். அதில் மேற்படி 5வது பகுதி, மேற்படி வெளியில் உள்ள மேற்பேசியவர் பெயரில் மனை மைமாஷ்டா நெம்பராக உள்ளது. இந்த நிலமானது தாமோதரகிராமனி நிலத்திற்கு மேற்கு, வீரபத்திர செட்டியார் அய்யம் பெருமாள் கவுண்டர் இவர்கள் மனைகளுக்கு வடக்கு, திருமலை கவுண்டர் நிலத்திற்கு கிழக்கு, மந்தவெளி நிலத்திற்கு தெற்கு இதற்குட்பட்டது 16 குழி அளவு கொண்டது. மனுதாரர்க்கு வாதிக்கு சொந்தமானது."

12. It is pertinent to point out that the plaintiff has not shown as to where exactly the suit property is situate. The plaintiff has not also described the suit property properly in the plaint. It is settled law that



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when the suit property is not described properly, the suit is liable to be dismissed. Moreover P.W.1 had contended that her father-in-law Ponnusamy Gounder had three sons by names Sivasankaran, Athikesavan and Raguraman. However, during the course of cross examination, P.W.1 had deposed that her father - in -law had two wives by names Thangam and Kanagavalli. She also admitted that Savithri, Sivasankaran and Visalatchi were born to her father-in-law through his first wife Thangam. Though in the plaint, the plaintiff had stated that the brothers of her husband Sivasankaran and Raguraman died as bachelors, had admitted that Raguraman had a wife by name Jayalakshmi and had six children. Moreover, it was also admitted by her that a partition suit in O.S.No.110/2016 on the file of the Sub-Court Puducherry was filed in which her husband was allotted 2/3rd share in the properties belonging to his family. A copy of the decree passed in O.S.No.110/2016 has not been filed. In any event, the plaintiff in her plaint had suppressed many material facts and thus she has not come to Court with clean hands. The first appellate Court in fact analysed the evidence of P.W.1 and had observed thus:



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"16. In this suit, PW1 adduced evidence that the suit property belong to Ponnusamy and it devolved upon his 3 sons by name Sivasankaran, Adhikesavan (plaintiff's husband) and Raguraman and after the death the two sons by names Sivasankaran and Raguraman it devolved upon plaintiff's husband. Adhikesavan, contra to the evidence; the PW1 admitted in her cross examination that her father-in-law Ponnusamy had two wives by name Thangam and Kanagavalli and the defendants vendors Savithiri, Sivasankaran and Visalatchi were born to her father-in-law through his 1st wife Thangam. Similarly when PW1 adduced evidence in her chief examination that the said Raguraman and his brother Sivasankaran died as bachelor, contra to her evidence PW1 admitted in her cross examination that the said Raguraman had a wife by name Jayalatchumi and six children. PW1 further admitted in her cross examination that the said Ponnusamy did not execute any Will or documents in respect of the suit



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property and she admitted in her cross examination that, between the legal heirs of Ponnusamy a partition suit was decreed in which her husband was allotted 2/3 share. As such when the plaintiff admit that the suit property originally belong to Ponnusamy and the said Ponnusamy died intestate without executing any documents in respect of the suit property, PW1 has clearly admitted in her evidence that the defendants vendor Savithiri, Sivasankara and Visalatchi who executed Ex.B1 to Ex.B3 in favour of the grandfather of the defendants are the children of Ponnusamy through his 1st wife and the plaintiff's husband Adhikesavan, Sivasankaran, and Raguraman are the children of Ponnusamy through his 2nd wife and also further admitted in her cross examination that in respect of the suit property between the legal heirs of Ponnusamy a partition suit was decreed in which her husband was allotted 2/3 shares. As such when the evidence of PW1 clearly proves that the defendants vendor are also legal



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heirs of Ponnusamy through whom the plaintiff claim title, the defendants title deed in Ex.B1 to Ex.B3 are executed in the year 1983, 1987 and 1990 and the present suit having been filed in the year 2010 clearly shows that there is a serious dispute with regard to the plaintiff's title in the suit property. The cross examination evidence of PW1 and Ex.B1 to Ex.B3 itself clearly proves that there is a serious cloud over the plaintiff's title in the suit property, as such the present suit is for bare injunction in respect of 16 Kuzhies is not maintainable."

13. The plaintiff claims title and possession over the entire extent of the suit property, even though she admitted during the course of evidence that her husband was allotted 2/3rd share in the properties belonging to the family. When the plaintiff has suppressed the material facts in the plaint, she is not entitled to get any relief sought for by her. The Trial Court had committed an error by observing that the plaintiff is in possession of the house situate in the suit property when there is no



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pleading to that effect in the plaint. All the observations made by the first appellate Court are perfectly in order. In fact, there is no substantial question of law involved in the present second appeal.

14. In the result,

- i. The Second Appeal is dismissed. No costs.
- ii. The decree and judgment dated 06.10.2020 passed in A.S.No.39/2019, on the file of the Principal Sub Court, Puducherry are upheld.
- iii. The suit in O.S.No.592/2019, on the file of the Principal District Munsif, Puducherry is dismissed with costs.

12.12.2024

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To
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1. The Principal Sub Court, Puducherry.
2. The Principal District Munsif, Puducherry.
3. The Section Officer, VR Section,
Madras High Court, Chennai.



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R. HEMALATHA, J.

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