



S.A(MD)No.539 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.07.2024

Pronounced on : 01.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.539 of 2017

and

C.M.P(MD)No.11670 of 207

Iraniyayee (Died)

1.Thangapapu

2.Meiyathan

... Appellants/Respondents/
Defendants

Vs.

Achimuthu

... Respondent/Appellant/
Plaintiff

PRAYER :-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 18.11.2013 passed in A.S.No.82 of 2012 on the file of the I Additional Sub Court, Thiruchirapalli reversing the judgment and decree dated 27.01.2012 passed in O.S.No.631 of 1992 on the file of the Principal District Munsif Court, Thiruchirapalli and allow the Second Appeal.

For Appellants : Mr.K.Sekar

For Respondent : Mr.R.Subramanian



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JUDGMENT

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This Second Appeal is preferred against the judgment and decree dated 18.11.2013 passed in A.S.No.82 of 2012 on the file of the 1st Additional Sub Court, Thiruchirapalli, reversing the judgment and decree dated 27.01.2012 passed in O.S.No.631 of 1992 on the file of the Principal District Munsif Court, Thiruchirapalli.

2. The appellants are the defendants and the respondent is the plaintiff in O.S.No.631 of 1992 on the file of Principal District Munsif Court, Thiruchirapalli. The respondent/plaintiff has filed the suit for permanent injunction restraining the defendants, their men, servants, agents or anybody claiming under them from encumbering or alienating the suit property in any manner whatsoever.

3. For the sake of convenience, the parties referred as plaintiff and defendants as arrayed in O.S.No.631 of 1992 on the file of the Principal District Munsif Court, Thiruchirapalli.



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4. Case of the plaintiff:

The suit property is a house bearing Door No.6A. There is another adjacent house bearing Door No.6. Both houses are situated at Malligaipuram, Thennur, Trichy. Both houses were in possession and enjoyment of the plaintiff's grandfather Marimuthu and thereafter the plaintiff's father. Now the plaintiff is in possession and enjoyment of the property. By such long possession, the plaintiff and his predecessors in title perfected their right by adverse possession. The deceased 1st defendant was the daughter of Sandana Moopan, who was the brother of Marimuthu, the grandfather of the plaintiff. The 1st defendant had no issues and no shelter and requested the plaintiff for stay. Hence, a panchayat was convened and she was permitted to live in the suit property bearing Door No.6A till her life time without any right to encumber or alienate the property. Considering the relationship the plaintiff accepted the decision of the panchayat. The deceased 1st defendant was attempting to alienate the suit property. After her death, the defendants 2 and 3 were impleaded and they also high-handedly attempted to deal with the suit property by alleging that the 1st defendant Kazhuvathal executed a Will dated 27.02.1992 in their favour



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bequeathing the suit property. They have no title or right to do anything in respect of the suit property. Hence, the suit is filed.

5. Case of the Defendants:-

The 1st defendant Kazhuvathal's parents were in continuous possession and enjoyment of the suit property from the year 1920 by virtue of registered sale deed dated 04.08.1920. Afterwards, the 1st defendant was in possession and enjoyment of the said house bearing Door No.6A in SF.No. 745 of Malligaipuram, Thennur, Trichy by paying house tax and all revenue records stood in the name of the 1st defendant. The averments that the 1st defendant was permitted to live in the suit property from 1965 as per panchayat decision and that the plaintiff also accepted the same are utter false. The 1st defendant had absolute right over the suit property. The 1st defendant was being maintained by the defendants 2 and 3, she executed a registered Will, dated 27.02.1992 in their favour bequeathing the suit property. The plaintiff has no title over the suit property. Hence, the suit is liable to be dismissed.



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6. Before the trial Court the following issues were framed:

"(1) Whether the suit property is belonged to the plaintiff or defendant?

(2) Whether as per Panchayat held in 1965, the plaintiff gave possession of the suit property to the defendant?

(3) Whether the defendant has right to encumber or alienate the suit property?

(4) Whether the plaintiff is entitled to the relief of permanent injunction?

(5) To what other relief the plaintiff is entitled to?"

7. During trial, on the plaintiff's side, P.W.1 to P.W.3 were examined and Ex.A.1 to Ex.A.6 were marked. On the defendants' side D.W.1 to D.W.6 were examined and Ex.B.1 to Ex.B.21 were marked.

8. After hearing both and considering evidence of both sides, the learned Principal District Munsif, Tiruchirappalli concluded that the plaintiff is not entitled to the relief of permanent injunction and dismissed the suit by passing judgment and decree dated 27.01.2012.



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9. Aggrieved by the judgment and decree in O.S.No.631 of 1992 on the file of Principal District Munsif Court, Thiruchirapalli, the plaintiff preferred the Civil Appeal in A.S.No.82 of 2012 on the file of the 1st Additional Sub Court, Thiruchirapalli. The first Appellate Court after hearing both passed judgment dated 18.11.2013 by allowing the appeal in A.S.No.82 of 2012 and reversed the judgment and decree passed in O.S.No. 631 of 1992 and decreed the suit of the plaintiff.

10. Challenging the judgment and decree of the I Appellate Court, the plaintiff preferred this Second Appeal and the same has been admitted on 19.03.2018 by framing the following substantial questions of law:-

"(1) Whether a decree can be granted solely on the basis of Panchayat decision which is neither authenticated nor proved?

(2) Whether without proving the title or possession mere bare injunction from alienating or encumbering the suit property would lie?

(3) Whether the first appellate Court is correct by saying that the defendant failed to ask for declaration of title?



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(4) Whether the 'Will' alleged to have been executed by the 1st defendant is proved in accordance with law?"

11. The learned counsel for the appellants/defendants submitted that the plaintiff has no title over the suit property. The plaintiff claims adverse possession which impliedly means, the plaintiffs admitted the title of the defendants. The relief sought by the plaintiff is a permanent injunction against the defendants not to alienate the suit property and so, the suit itself is not maintainable in law. It is the case of the plaintiff that the 1st defendant was permitted to reside in the suit property as per the decision held by the panchayat in Ex.A.3, dated 10.10.1965. Ex.A.3 is not a valid or authenticated document. Moreover, there is no description of the property mentioned in that Ex.A3. But, the 1st defendant purchased the suit property by virtue of a registered sale deed dated 04.08.1920, which is marked as Ex.B.18. The 1st defendant had executed Ex.B.19 registered Will dated 27.02.1992 in favour of the defendants 2 and 3. In that Will also, there is specific mention of Ex.B.18 - Sale Deed. So, the 1st defendant derived legal title from her father and she was legally entitled to execute a Will. The trial Court has correctly appreciated the evidences and concluded that the plaintiff



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has not established Ex.A.3. Even there are no names of Panchayatdars mentioned in Ex.A.3. The ownership of the property was not transferred from the 1st defendant to the plaintiff. To prove the Will, the defendants examined their witnesses and they also categorically deposed supporting the case of the defendants. The defendants examined D.W.4 and D.W.5 who are the attestors to the Will. The plaintiff has taken the new plea that there was a family arrangement (குடும்ப ஏற்பாடு) but, there is no such pleading in his plaint. It is a settled proposition of law that no injunction can be granted against true owner. But, the first Appellate Court wrongly came to the conclusion relying on the Panchayat decision which is against the dictum laid down by the Hon'ble Supreme Court. The Hon'ble Supreme Court deprecated the practice of khap panchayat in other words 'katta panchayat' held by the village man. The first Appellate Court failed to appreciate the evidence that except the illegal Ex.A.3, there is no other documentary evidence adduced by the plaintiff to prove his possession or title to the suit property. But, the first Appellate Court misconstrued the facts and reversed the finding of the trial Court and decreed the suit for permanent injunction against the defendants who are real owners of the suit property. Therefore, the Second Appeal may be allowed. In support of his argument, the learned



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counsel for the appellant/plaintiff has relied on the citation reported in **1959 Supp (1) SCR 426 (H.Venkatachala Iyengar /v/ B.N.Thimmajamma and Ors.)**

12. Per contra, the learned counsel for the respondent/plaintiff argued that the plaintiff's grandfather was the absolute owner of the suit property. The 1st defendant was the daughter of one Sandana Moopan, who was the brother of the plaintiff's grandfather. The 1st defendant was a spinster and on her request, she was permitted to reside in the suit property till her life time as per the decision of Ex.A.3. The 1st defendant stated that she executed a Will dated 27.02.1992 in favour of the defendants 2 and 3, who were looking after her. The Will was executed under suspicious circumstances. The defendants 2 and 3 are in no way related to the 1st defendant. After demise of 1st defendant, the defendants 2 and 3 were impleaded as parties to the suit as per Ex.A.19 - Will. The plaintiff established the Ex.A.3 – Muchalikka, but the Will relied on by the defendants was not proved. The plaintiff is the legal heir of the 1st defendant under Section 15(2)(a) of the Hindu Succession Act. The scribe and attestors of Will are not alive. The wives of the attestors were examined as DW4 and DW5, who deposed that



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they have seen the copy of the Will. The signatures of attestors are proved by persons who are acquainted with the signatures as per Section 69 of the Evidence Act. Further, the defendants have not filed any written statement independently and they have also not filed any memo adopting the written statement filed by the 1st defendant. As per provision of Order 8 Rule 5 of the Civil Procedure Code, the defendants have to specifically deny the pleadings otherwise it would be deemed to be admitted as held by the **Hon'ble Supreme Court in 2024 INSC 164 (Thangam and Another /vs/ Navamani Ammal)**. The plaintiff established Ex.A.3 of the year 1965. As per Section 90 of the Evidence Act, there would be a presumption regarding the execution of document which was executed 30 years back, which is only a family arrangement. As per Ex.A3, the 1st defendant has no right to alienate the suit property. Though the plaintiff has no title he is claiming only injunction and the first Appellate Court appreciated the evidences and correctly came to the conclusion that the plaintiff is entitled to injunction. The first Appellate Court has correctly decreed the suit by reversing the finding of the trial Court. The question of law could not be decided in favour of the appellants/defendants. Therefore, this Second Appeal may be dismissed. In support of his argument, the learned counsel for the defendants has relied



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on the citation reported in AIR 1959 SC 443 (H.Venkatachala Iyengar vs. B.N.Thimmajamma and Ors.) and 2024 Neutral citation INSC 164 (Thangam and Anr. vs. Navamani Ammal).

13. Heard the arguments of both sides and perused the material records of the case.

14. The relationship between the plaintiff and the 1st defendant Kazhuvathal was admitted. The plaintiff mainly relied on the Ex.A.3 panchayat decision and as per Ex.A3 decision, the 1st defendant was permitted to live in the suit property till her life time without any alienation. The plaintiff contended that since the document is more than 30 years the execution of the document cannot be questioned as per Section 90 of the Evidence Act. On perusal of Ex.A3, it is not clear for which property the Panchayat was held as there is no property description and even the name of the panchayatdars were not mentioned as rightly held by the trial Court. It is the definite case of the 1st defendant that the suit property was purchased by her father through a registered sale deed under Ex.A.18, dated 04.08.1920 and after the death of her father, the 1st defendant became the absolute owner



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of the suit property as she is the only daughter. On perusal of material records, the evidence of plaintiff as P.W.1 and other witnesses P.W.2 and P.W.

3 would prove that the 1st defendant is entitled to the suit property. They categorically deposed as “தாவா சொத்து பிரதிவாதி கழுவாத்தாளுக்கு சொந்தமானதுதான்.....”. While the plaintiff claims Ex.A.3 as thirty years old document, Ex.A.18 is of the year 1920 which is even previous in nature. So, the plaintiff's case that the suit property originally belonged to him is not established. Further, it is settled law that khap panchayat has no legal status. The Hon'ble Supreme held in various cases that the khap panchayatars can not take the law into their hands and cannot assume the character of the law implementing agency and that authority has not been conferred upon them under any law and the decision given by the khap panchayat has no legal value in the eye of law.

15. In W.P(Civil)No.231 of 2010, the Hon'ble Supreme Court held that khap panchayat is not authenticated and legal one. In **Arumugam Servai /v/ State of Tamil Nadu (2011) 6 SCC 405** referring the **Lata Singh's** case it is held on the following terms.

“We have in recent years heard of ‘khap



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panchayats' (Known as katta panchayats in Tamil Nadu) which often decree or encourage honour killings or other atrocities in an institutionalized way on boys and girls of different castes and religion, who wish to get married or have been married or interfere with the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly stamped out...."

The Hon'ble Supreme Court further held in (2011) 6 SCC 405 (Arumugam Servai /v/ State of Tamil Nadu) in paragraph No.47 as follows:

"47. The 'khap Panchayats' or such assembly should not take the law into their hands and further cannot assume the character of the law implementing agency, for that authority has not been conferred upon them under any law."

16. Hence, the trial Court has correctly come to the conclusion that Ex.A.3 has no legal sanctity and the first Appellate Court has erred in holding that it is valid in eye of law. Except Ex.A.3, there is no document or material to show the plaintiff's case that the 1st defendant was permitted to



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reside in the suit property till her life time. But, the 1st defendant established that her father purchased the suit property under Ex.A.18 registered sale deed and she is the owner of the suit property, which is also admitted by the plaintiff in his evidence.

17. The next contention of the plaintiff is that the 1st defendant had not executed any Will and Ex.A.19 - Will was executed under suspicious circumstances as the defendants 2 and 3 are not related to the 1st defendant. The Will was executed on 27.02.1992. The attestors of the Will admittedly died. The wives of the attestors were examined as D.W.4 and D.W.5 who clearly deposed that their respective husbands died and they knew their signatures and the signatures found in the Will are that of their husbands. As per settled proposition, the Will is proved. Even otherwise, since the testator herself admitted in the written statement that she executed a Will in favour of the persons who were subsequently impleaded, nothing more is needed to prove its recitals. Moreover, it is her absolute property and she is entitled to bequeath the same.



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18. Further, the plaintiff argued that as the 1st defendant was died as spinster, he is only legal heir to her under Section 15(2)(a) of the Hindu Succession Act. He has not taken such plea in the suit. The plaintiff filed the suit for permanent injunction against the 1st defendant restraining her from alienating or encumbering the suit property as per Ex.A.3 panchayat decision, which has no legal sanctity. The plaintiff admitted that he has no title over the suit property and also possession of the same. The 1st defendant's ownership is admitted by the plaintiff side. It is settled proposition of law that "no title or possession, no injunction". Hence, without title or possession, the prayer in the suit against the 1st defendant, who is the original owner of the suit property, not to encumber or alienate will not lie. Therefore, the suit is also not maintainable.

19. The plaintiff has come to Court seeking relief. So he is bound to establish his case. The law does not expect the opposite litigant to prove his/her stand. Therefore, the first Appellate Court is not correct in observing that the defendants failed to ask for declaration of title. But, on perusal of materials records particularly as per Ex.A.18 and Ex.A.19, the defendants proved their title over the suit properties. The defendants 2 and 3 were



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impleaded as LR's of the deceased 1st defendant, this factum was not denied or not challenged by the plaintiff as correctly held by the trial Court. As the plaintiff failed to prove his *prima facie* title to the property then he cannot entitle to get an injunction in any manner.

20. In the above facts and circumstances, the trial Court has correctly and properly appreciated the evidences adduced on both sides and correctly dismissed the suit. Whereas the first Appellate Court misconstrued the facts and evidences of both sides and wrongly came to the conclusion that the plaintiff had proved his case, reversing the finding of the trial Court. Therefore, this Court has no hesitation to interfere with the finding of the first Appellate Court that the respondent/plaintiff has proved his case as per unauthenticated and illegal Ex.A.3 - Muchalikka. Hence, the questions of law framed in this Second Appeal are answered in favour of the appellants/defendants. Thus, this Second Appeal succeeds.

21. In the result, the Second Appeal is allowed. The judgment and decree dated 18.11.2013 passed in A.S.No.82 of 2012 on the file of the 1st Additional Sub Court, Thiruchirapalli, reversing the judgment and decree



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dated 27.01.2012 passed in O.S.No.631 of 1992 on the file of Principal District Munsif Court, Thiruchirapalli is set aside. The judgment and decree passed by the trial Court in O.S.No.631 of 1992 is restored and the suit in O.S.No.631 of 1992 is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

01.10.2024

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
VSD

To

- 1.The I Additional Sub Court,
Thiruchirapalli.
- 2.The Principal District Munsif Court,
Thiruchirapalli.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
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