

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.11.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. NO.1412 OF 2014
& M.P.NO.1 OF 2015

1.P.Rajeswari
2.P.Venkatesan .. Appellants/Plaintiffs

Versus

1.K.Veerammal
2.P.Sumathi
3.D.Chandramohan
4.P.Gunasekaran .. Respondents/Defendants

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 [r] of the Code of Civil Procedure, against the order and decreetal order passed in I.A.No.11 of 2014 in O.S.No.2 of 2014 dated 16.04.2014 on the file of the District Court, Thiruvavur and to set aside the same.

For Appellants : Mr.S.Baskara
For Respondents-1 to 3 : Mr.A.Saravanan
For Respondent-4 : Not served

J U D G M E N T
सत्यमेव जयते

The Civil Miscellaneous Appeal is directed against the impugned order passed in I.A.No.11 of 2014 in O.S.No.2 of 2014 dated 16.04.2014 in and by which the interim relief of temporary injunction initially granted against the defendants not to interfere with the peaceful and joint possession of the suit property on the ground that when the plaintiffs had filed the suit for declaration of the suit properties with the consequential prayer to set aside the settlement deed dated 06.12.2013 executed by the first defendant in favour of the second defendant settling the property, house and ground bearing Door Nos.4, 4A, 4B, 4C, Kanagambal Koil Street, Mannargudi, comprised in T.S.No.3173, land measuring 4534 sq.ft and building 1000 sq.ft. in ground floor and 900 sq.ft. in the first floor,

namely, first schedule property, was refused in the impugned judgment.

2.The plaintiffs/appellants had filed the suit for declaration of the A-Schedule properties with the consequential prayer to set aside the purchase in the name of the first defendant, benami with the sole and absolute property of Kamatchi Thevar and consequently declare the title of the plaintiffs of the said lands as per the oral partition dated 10.02.2013 between the plaintiffs and the defendants 1 and 2 and also to set aside the settlement deeds dated 06.12.2013 executed by the first defendant in favour of the second defendant and 10.12.2013 executed by the first defendant in favour of the third defendant as null and void and to pass a preliminary decree for partition dividing the properties as shown in the prayer and permanent injunction restraining the defendants 3 and 4 from interfering with the peaceful possession and enjoyment of the plaintiffs suit properties.

3.Learned counsel for the plaintiffs/appellants would submit that the first plaintiff is the daughter-in-law and the second plaintiff is the son of the first plaintiff and also grandson of the first defendant, while so, the second defendant is the daughter of the first defendant. Since the defendants have taken a stand in their written statement that a portion of the property has been settled in favour of the second defendant/daughter of the first defendant and the remaining suit properties Survey No.404/11, 404/12 have been sold away by the first defendant, grand mother, namely, Veerammal, wife of late Kamatchi Thevar in favour of the third defendant by various sale deeds dated 10.12.2013.

4.Learned counsel for the plaintiffs/appellants would further submit that since the deceased Kamatchi Thevar, husband of the first defendant, father-in-law of the first plaintiff, grandfather of the second defendant was owning lands in Survey No.184/B1, B12, B19, B20, B22, B23, 185/C15 and C16 morefully described in Schedule - I came to be allotted to the share in the family partition registered on 15.06.1978 bearing Document No.835 of 1978 at the Office of the Sub-Registrar, Madukkur. Subsequently, by a Parivarthani Pathiram dated 21.08.1984 bearing Document No.622 of 1984, a portion in the house site measuring 6 2/3 cents in Survey No.180/A4B/2 and 9 1/3 cents in Survey No.180/A6 were exchanged between Kamatchi Thevar and one Govindasamy Thevar and Kamatchi Thevar got lands measuring 16 cents in Survey No.175B/15. A tiled house was also constructed in the second plaintiff's father, Pandian used to reside there

till his marriage along with his paternal uncle. Pandian, son of the deceased Kamatchi Thevar and the first defendant married the first plaintiff and two male children were born to them. However, Pandian died intestate on 14.11.1998. Later on, his father Kamatchi Thevar died intestate at Singapore on 25.06.2000. After sometime, the second son of Pandian, namely, Vignesh also died on 01.09.2006 and the plaintiffs are the surviving legal heirs of Pandian.

5.It is also the claim of the plaintiffs / appellants that the suit properties were purchased by the late Kamatchi Thevar in the name of his wife Veerammal as benami and the sale consideration was also paid from the income from the properties in the name of Kamatchi Thevar. However, the possession of the said lands were only with Pandian and after his death, the plaintiffs are in absolute possession, enjoyment, occupation and cultivation of the properties. This apart, the defendants 1 and 2 are also residing permanently in Singapore that shows that the plaintiffs are in physical possession. While so, when the suit properties are admitted to be interfered by the defendants 3 and 4, the plaintiffs filed the suit for injunction. Although, the Trial Court has granted interim injunction, subsequently vacated the same, such an approach is unfair and unjustified for the simple reason that when the defendants 1 and 2 are admittedly not in India and they are living in Singapore, it has to be construed that the plaintiffs are in physical possession of the same, therefore, it is pleaded, the defendants 3 and 4 cannot interfere with the suit properties under the guise of sale deed said to have been executed by the first defendant. But this Court is not able to find any merits in the contentions. A perusal of the impugned reasoning given by the Trial Court that whether the suit properties have been purchased by the late Kamatchi Thevar as benami in the name of his wife, namely, the first defendant and whether the first defendant has bonafidely executed the sale deed in favour of the defendants 3 and 4, have to be gone into at the time of trial are in order, therefore, I do not find any merits.

6.When the prayer has been made by the plaintiffs for declaration of the sale deed and settlement is null and void, the Trial Court has rightly considered the fact that the contentions made by the learned counsel for the plaintiffs/appellants that when admittedly the first defendant, grand mother, namely, Veerammal, wife of late Kamatchi Thevar has been living all along in Singapore away from the suit property, it has to be construed that the plaintiffs 1 and 2, who are the daughter-in-law and grandson of the first defendant are in physical possession cannot be accepted unless the entire evidence of both parties are gone into in the final trial.

7.Hence, this Court is not able to accept the submissions made by the learned counsel for the plaintiffs/appellants to interfere with the impugned judgment in the light of the reasoning given by the Trial Court in the impugned order. Therefore, this Civil Miscellaneous Appeal fails and is dismissed. No costs. Consequently, connected miscellaneous petition is closed. It is for the Trial Court to take up the suit and agitate the matter without being influenced by any of the observation made by this Court.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The District Judge, Thiruvarur.

+1cc to M/S.S.Baskaran, Advocate, S.R.No.64854

+1cc to M/S. A.Saravanan, Advocate, S.R.No.64848

C.M.A. NO.1412 OF 2014
& M.P.NO.1 OF 2015

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