

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.11.2016

PRONOUNCED ON : 08.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.39 of 2011

Balasubramaniam

Vs.

... Appellant

Uma

... Respondent

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 02.11.2009 made in A.S.No.21 of 2009 on the file of the Sub Court, Mannargudi, confirming the judgment and decree dated 05.08.2008 made in O.S.No.35 of 2007 before the District Munsiff Court, Valangaiman.

For Appellant : Mr.M.V.Krishnan

For Respondent : Mr.R.Rajaramani

J U D G M E N T

Impugning the judgment and decree dated 02.11.2009 made in A.S.No.21 of 2009 on the file of the Court of Subordinate Judge,

Mannargudi, confirming the judgment and decree dated 05.08.2008 made in O.S.No.35 of 2007 before the District Munsiff Court, Valangaiman, the defendant has preferred this Second Appeal.

2.Suit for permanent injunction.

3.The averments contained in the plaint are in brief as follows:

The suit property and other properties measuring to an total extent of 6 acres and 61 cents belonged to plaintiff's father Sivaprakasam absolutely and the plaintiff's father was engaged in Pannai cultivation and he died on 02.10.1998, leaving behind his legal heirs namely his wife Indrani, daughters Senthamarai, Amutha, Uma(plaintiff) and as such the legal heirs of Sivaprakasam are entitled to succeed to his properties including the suit property and accordingly the suit property and the other properties of Sivaprakasam were enjoyed by his legal heirs under Pannai cultivation. The plaintiff's mother and sisters had also mortgaged the suit property and the other properties with State Bank of India,

Tiruvaiyar and obtained a loan and the suit property and the other properties are in possession and enjoyment of the plaintiff and the other legal heirs of Sivaprakasam. In as much as the other legal heirs of Sivaprakasam are not in station, the plaintiff has been necessitated to file the suit alone against the defendant. The defendant without any authority is attempting to interfere with the plaintiff's possession and enjoyment of the suit property. The defendant is owning lands adjacent to the suit property on the western side and his efforts to seek lease of the suit property failed and accordingly aggrieved over the same the defendant attempting to interfere with the plaintiff's possession and enjoyment of the suit property and hence the suit.

4.The averments contained in the written statement in brief are as follows:

The suit is not maintainable either in law or in facts. The suit property originally belonged to Sivaprakasam and he was enjoying the property under Pannai cultivation. After the death of Sivaprakasam, all his legal heirs including the plaintiff had executed a Sale Agreement in favour of the defendant agreeing to sell the suit property for Rs.20,520/- on 08.05.1994 and as the Survey Number was not correctly given in the Sale agreement, another

Sale Agreement dated 03.05.2001 was executed for higher sale consideration for Rs.29,760/- and in the second Sale Agreement also, the plaintiff is a party and at the time of the Sale Agreement dated 08.05.1994, the possession of the suit property was handed over to the defendant and accordingly under Sale Agreement dated 03.05.2011, the plaintiff and the other legal heirs of Sivaprakasam agreed to convey the suit property to the defendant at any time on demand. Thus the defendant is enjoying the suit property by paying kist etc in the name of Sivaprakasam and also obtained a loan from the Sugul Cane Mills. The plaintiff is not in the suit village and on that ground alone, the plaintiff's suit for permanent injunction is liable to be rejected. In as much as the defendant had been given possession of the suit property under the Sale Agreement above mentioned, there is no question of the defendant's trespassing into the suit property. The plaintiff has laid the suit without impleading the other co- owners. Hence, the plaintiff is not entitle to seek the relief sought for and the suit is liable to the dismissed.

5.In support of the plaintiff's case, PW1 to 3 were examined. Exs.A1 to 4 were marked. On the side of the defendants, DW1 to DW4 were examined. Ex.B1 to B18 were marked. Ex.X1 to X3 were also marked. On a consideration of the oral and documentary

evidence adduced by the respective parties, the trial Court was pleased to decree the suit as prayed for and the same was also confirmed by the first Appellate Court as against which, the present Second Appeal has been instituted by the defendant.

6.It is admitted that the suit property originally belonged to Sivaprakasam. It is also admitted that Sivaprakasam died on 02.10.1998, leaving behind his wife Indrani and daughters Senthamarai, Amutha and Uma(plaintiff). It could therefore be seen that after the death of Sivaprakasam, his legal heirs above mentioned are entitled to succeed to his estate and thus it could be seen that the plaintiff and the other legal heirs of Sivaprakasam are the owners of the suit property.

7.According to the plaintiff, the defendant being the adjacent land owner attempting to interfere with the possession and enjoyment of the suit property of the plaintiff and the other legal heir of Sivaprakasam. His efforts to seek lease of the suit property became futile and in as much as the other legal heirs of Sivaprakasam are not in station, the plaintiff has been necessitated to institute the suit that against the defendant for permanent injunction.

8.Per contra, it is the case of the defendant that the legal heirs of Sivaprakasam had agreed to convey the suit property to him on 08.05.1994 and accordingly on that date, a Sale Agreement was executed between them and the defendant for a sum of Rs.20,520/- and pursuant to the above said Sale Agreement, the suit property was handed over to the defendant and consequently, the suit property has been in the possession and enjoyment of the defendant. Further, according to the defendant in as much as the Survey Number has not been correctly mentioned in the above said sale Agreement, another sale agreement dated 03.05.2001, was executed for higher sale consideration of Rs.29,760/-. The plaintiff and the others legal heirs of Sivaprakasam are bound to convey the suit property to the defendant at any time on demand and in as much as the suit property has been in the possession and enjoyment of the defendant under the sale agreement, the plaintiff having not established her possession, the suit is liable to be rejected.

9.As adverted to earlier, the defendant having admitted that the original owner of the suit property being Sivaprakasam, on his demise, it could be seen that his legal heirs, including the plaintiff

are entitled to succeed to his estate. Now, the defendant claims to be in possession and enjoyment of the suit property under the Sale Agreement dated 08.05.94. It is admitted that Sivaprakasam died on 02.10.1998 and his death certificate has been marked as Ex.A1. Therefore, when the legal heirs of Sivaprakasam are entitled to succeed to his property, only on his death, it does not stand to reason as to how the case of the defendant that his legal heirs had agreed to convey the suit property to him on 08.05.1994 could be accepted. Therefore, on the face of it, it could be seen that the alleged Sale Agreement projected by the defendant, marked as Ex.B12, is invalid and it could also be seen that the defendant had concocted the said document as if he had obtained the same from the lawful owners of the suit property. It could therefore, be seen that the case of the defendant that pursuant to the above said sale agreement, he had been put in possession of the suit property by the executants of Ex.B12, cannot be countenanced in the eyes of law.

10. Similarly the case of the defendant that in as much as the survey Number of the suit property has been not correctly mentioned in Ex.B12, another sale agreement has been executed between the legal heirs of Sivaprakasam and the defendant on

03.05.2001, marked as Ex.B13, also cannot be accepted straightaway. The plaintiff has not admitted the execution of Ex.B13. No step has been taken by the defendant to establish either the plaintiff or the other legal heirs of Sivaprakasam had executed the said sale Agreement in favour of the defendant. The defendant has not cared or taken steps to examine the other legal heirs of Sivaprakasam to prove the genuineness of Ex.B13 and further as seen earlier has also not established that the plaintiff has joined in the execution of Ex.B13 alongwith the other legal heirs of Sivaprakasam.

11.Be that as it may when it is found that the suit has been laid by the plaintiff in the year 2007, when according to the defendant, the legal heirs of Sivaprakasam had executed a sale agreement agreeing to convey the suit property to him under Ex.B13 or much earlier under Ex.B12, in the year 1994, it is inexplicable as to why the defendant has thereafter not taken any step to complete the agreement by taking the sale deed from the legal heirs of Sivaprakasam, pursuant to Ex.B12 or B13, as the case may be. Till date, the defendant has not moved his little finger to get a proper legal conveyance from the legal heirs of Sivaprakasam in respect of the suit property either under Ex.B12 or

Ex.B13.

12. Therefore, as rightly found by the Courts below, in as much as the sale agreements projected by the defendant, marked as Ex.B12 & 13, are not true and valid documents and as they have become time barred if they are to be accepted as true, it could be seen that the defendant has not evinced any interest to get a legal conveyance in respect of the suit property from the lawful owners.

13. When according to the defendant, he had been parted with the possession of the suit property by the legal heirs of Sivaprakasam under Ex.B12, when on the date of Ex.B12, the legal heirs of Sivaprakasam have no title to the suit property, it cannot be accepted that pursuant to the said agreement, the legal heirs of Sivaprakasam had handed over the possession of the suit property to the defendant. It has not been explained by the defendant as to why he had not obtained the sale agreement from the lawful owner namely Sivaprakasam on 08.05.94. In this back ground, if we analyse the case of the defendant, it could be seen that as found by the Courts below the defendant has projected his defence based upon the concocted and false documents to establish that he has been in possession and enjoyment of the suit property.

14. Some kist receipts have been marked on the side of the defendant as Ex.B1 to 10. The Court below have given convincing reasons for rejecting Ex.B1 to 10 and rightly held that on the basis of those documents the possession of the defendant in respect of the suit property cannot be upheld. Further, as found by the Courts below that if the defendant's case that he had taken the sale agreements from the legal heirs of Sivaprakasam in respect of the suit property under Ex.B12 & B13 is true, why he has been making the efforts to record his name as a tenant or take the suit property in lease, thereafter has also not been explained by the defendant. Therefore, it could be seen that the defendant had taken inconsistent stand and also projected false and concocted documents with the view to grab the suit property from the lawful owners. As rightly found by the Courts below, the efforts of the defendant to record his name as a cultivating tenant in respect of the suit property also ended in vain.

15. It is argued by the learned counsel for the defendant that the plaintiff has laid the suit on her own, without impleading the co-owners and on that sole ground, the plaintiff's suit can be rejected. However, the above contention does not merit acceptance. Even as

per the averments contained in the plaint, it is stated that in as much as the other co-sharers are not in station and as the defendant has attempted to interfere with the lawful ownership and possession and enjoyment of the suit property, the plaintiff being one of the co-owners, has been necessitated to file the suit against the defendant. The above reasoning of the plaintiff for laying the suit alone is found to be convincing. That apart, it could be seen from the evidence of DW4, as admitted by him, during the cross examination, it is only the plaintiff, who has been engaged in the cultivation of the suit property, after the death of Sivaprakasam. Such being the position, the contention of the learned counsel for the defendant that the plaintiff has failed to establish her possession and enjoyment of the suit property cannot be accepted. That apart, the defendant has also not established that the other legal heirs of Sivaprakasam are not interested to prosecute the suit and therefore did not join in the litigation alongwith the plaintiff. The same has not been established by the defendant by examining the other legal heirs of Sivaprakasam.

16.If according to the defendant, barring the plaintiff the other legal heirs of Sivaprakasam are not interested to prosecute the suit, nothing prevented the defendant for examining them in

support of his defence. However, as found earlier, even though the defendant has claimed to have been taken the sale agreements from the legal heirs of Sivaprakasam under Exs.B12 & B13 and also has pleaded that he has paid the entire sale consideration, no explanation is forthcoming as to why he has not evinced interest to get the sale deed executed from the lawful owners.

17.In support of his defence that the non impleading the other co-owners of the suit property would disentitle the plaintiff to claim relief, the defendant's counsel placed reliance upon the decision reported in (**AIR 1965 SC 271**), **Kanakarathanammal Vs. V.S. Loganatha Mudaliar and another**. However, as rightly put forth by the learned counsel for the plaintiff, the above decision would not be applicable to the facts and circumstances of the case on hand. Further, as adverted to earlier, the plaintiff has given convincing reasons for not impleading the other co-owners in the suit. That apart as one of the co-owners, as rightly argued, the plaintiff is entitled to protect the interest of the other co-owners during their absence and accordingly it could be seen that in as much as the defendant attempted to interfere with the possession and enjoyment of the suit property by its lawful co-owners, the plaintiff being one of them, has accordingly laid the suit praying for

permanent injunction against the defendant.

18.As adverted supra, the Courts below have correctly found that the defendant is not in possession and enjoyment of the suit property and the documents pressed into service by him would not be useful to sustain his case. In as much as the suit property is in the possession and enjoyment of the lawful owners namely, the plaintiff and the other co-owners, accordingly, it could be seen that the findings of the Courts below that the plaintiff is entitled to maintain the suit for permanent injunction cannot be faulted in any manner.

18.For the reasons aforestated, sans any substantial question of law being involved in this Second Appeal, I hold that the Second Appeal is not entitle for acceptance and accordingly, the Second Appeal is dismissed. No costs.

08 .11.2016

Index: Yes/No
Internet:Yes/No

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T.RAVINDRAN.J.,
Dn

To

- 1.The Sub Court,
Mannargudi.
- 2.The District Munsif Court,
Valangaiman.

S.A.No.39 of 2011

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