

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.340 of 2018
and C.M.P.No.9471 of 2018

1.R.Santha
2.R.Manjunath
3.R.Santhosh

... Appellants/Plaintiffs

Vs.

1.M.B.Ramakrishnan
2.J.K.Jawarappa
3.M.S.Sheela

.. Respondents/Defendants

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 19.03.2018 made in A.S.No.29 of 2014 on the file of the Sub Court, Udhagamandalam, reversing the judgment and decree dated 30.06.2014 made in O.S.No.28 of 2000 on the file of the District Munsif Court, Udhagamandalam.

For Appellants : Mr.R.Sunil Kumar

For 3rd Respondent: Mr.L.Mouli for caveator

J U D G M E N T

Second Appeal is filed against the judgment and decree dated 19.03.2018 made in A.S.No.29 of 2014 on the file of the Sub Court, Udhagamandalam, reversing the judgment and decree dated 30.06.2014 made in O.S.No.28 of 2000 on the file of the District Munsif Court, Udhagamandalam.

2.The appellants are plaintiffs and respondents are defendants in O.S.No.28 of 2000 on the file of the District Munsif Court, Udhagamandalam. The appellants filed the said suit for permanent injunction restraining the respondents 2 and 3 from interfering with the peaceful possession and enjoyment of the suit property by the appellants until the respondents 2 and 3 worked out their remedy, if any by due process of law. According to the appellants, the suit property is ancestral joint family property of the appellants 2 and 3, their brother R.Prakash and first respondent. The first respondent is father of the appellants 2 and 3, first appellant is their mother and one R.Prakash is their another brother and they are in joint

possession of the suit property along with the first respondent and cultivating the same. The revenue records are standing in the name of the first respondent. The appellants are paying kisth and chitta extract stands in the name of the first respondent. The appellants are joint owners along with the first respondent. While so, on 23.01.2000, when the appellants were cultivating the suit property, the respondents 2 & 3 and husband of the third respondent tried to dispossess the appellants from the suit property. The appellants resisted the same and again, the respondents 2 and 3 and husband of the third respondent tried to take possession of the suit land. They are very influential persons and appellants are not in a position to resist the illegal acts of the respondents 2 and 3. The respondents 2 and 3 have no right over the suit schedule property and if any sale executed in favour of either second respondent or third respondent, they have to take possession of the land alleged to have been purchased by them from and out of the suit property only under due process of law.

3.The respondents 1 and 2 remained exparte. The third respondent filed written statement and denied all the averments made in the plaint. She denied that the suit property is joint family property of appellants 2 and 3, their another brother Prakash and first respondent. She denied that the revenue records stood in the name of the first respondent and kisth has been paid by the appellants in the name of the first respondent. According to the third respondent, the suit property belongs to the first respondent as per the partition deed dated 15.04.1988 registered as document No.601/1988 on the file of the Sub-Registrar, Ooty. The first respondent in order to discharge debts of the family borrowed for educational expenses of his minor children and also to improve the other properties, sold 50 cents of the suit property to the second respondent by sale deed dated 17.10.1988 registered as document No.768 of 1988. From that date onwards, the second respondent was in possession and enjoyment of the said property as absolute owner. The second respondent sold the property purchased by him to the third respondent by the deed of sale dated 18.06.1999 on the file of the Sub-Registrar, Ooty. From that date onwards, the third respondent is in possession and enjoyment of the said property. The name of the third respondent was mutated in the revenue records and she has paid necessary kisths for the same. The appellants and first respondent are aware of all the transactions and the exclusive possession of the third respondent in the property purchased by her. In view of the same, she denied the contention of the appellants that entire suit property belongs absolutely to them. The third respondent has also denied that the first respondent was drunkard and was not taking care of the family. The third respondent also denied that on 23.01.2000, the respondents 2 and 3 and her husband tried to dispossess the appellants. From the date of purchase by

third respondent, she is in possession and enjoyment of the portion of the suit property as owner. She denied that the sale by the first respondent is not binding on the appellants. The suit for bare injunction without prayer for declaration is unsustainable in law. The suit for injunction against co-owner is misconceived and not maintainable and prayed for dismissal of the suit.

4. Based on the pleadings, the learned trial Judge framed necessary issues. Before the learned trial Judge, first appellant examined herself as P.W.1, one Kirankumar & Subramani were examined as P.W.2 & P.W.3 and marked 13 documents as Exs.A1 to A13. The third respondent examined one K.Somasundaram, the Stamp Tahsildar as D.W.1 and examined herself as D.W.2 and marked 10 documents as Exs.B1 to B10.

5. The trial Court considering the pleadings and oral and documentary evidence, decreed the suit.

6. Challenging the said judgment and decree dated 30.06.2014 made in O.S.No.28 of 2000, the third respondent filed A.S.No.29 of 2014 on the file of the Sub Court, Udhagamandalam.

7. The learned First Appellate Judge framed necessary points for consideration. The learned First Appellate Judge independently considering the materials available on record, judgment of the trial Court and judgments relied on by the learned counsel appearing for the parties, allowed the First Appeal holding that the suit property is individual property of the first respondent and appellants have failed to prove that they are in possession and enjoyment of the suit property.

8. Against the said judgment and decree dated 19.03.2018 made in A.S.No.29 of 2014, reversing the judgment and decree dated 30.06.2014 made in O.S.No.28 of 2000, the present Second Appeal is filed by the appellants/plaintiffs.

9. The respondents 1 and 2 remained exparte before the trial Court as well as in the First Appellate Court. The third respondent filed caveat and is represented by counsel. Both the learned counsel for the appellants as well as third respondent consented for Second Appeal itself being heard and decided on merits.

10. The learned counsel for the appellants contended that the learned First Appellate Judge by wrong application of Section 8 of the Hindu Succession Act held that the suit property is individual property of the first respondent. The First Appellate Court failed to see that the appellants are in joint possession of the suit property and cultivating the same as Hindu joint family. The joint possession is proved by the appellants by producing chitta and adangal. The suit property is co-parcenary

property and Section 8 of the Hindu Succession Act is not applicable. The learned First Appellate Judge erred in holding that the appellants have impliedly admitted the sale in favour of the respondents 2 and 3. On the other hand, in the plaint, the appellants have specifically denied the said sale. The First Appellate Court failed to see that the alleged sale deeds executed in favour of the respondents 2 and 3 were not produced before the Court by the third respondent. The First Appellate Court reversed the judgment of the trial Court on presumption that normally an immovable property on the date of sale will be handed over to the purchaser. The First Appellate Court wrongly placed onus on the appellants to prove that the suit property is ancestral joint family property and the same is not sold for the benefit of the minors and other family members. The alleged sale by the second respondent in favour of the third respondent in the absence of earlier document of title in favour of the second respondent and without patta is contrary to Sections 5 and 6 of the Tamil Nadu Patta Pass Book Act, 1983. The respondents 2 and 3 have failed to prove that the second respondent was in possession of the suit property from the year 1988 and third respondent from the year 2000. They have not produced any document to show that the second respondent was in possession of the suit property from the year 1988 and third respondent from 18.06.1999 i.e. from the date of her purchase.

11. Per contra, the learned counsel for the third respondent contended that the suit property was purchased by father of the first respondent. After death of father of the first respondent, first respondent and widow of his brother partitioned the larger extent among themselves by the deed of partition dated 15.04.1988 and the suit property was allotted to the first respondent. In view of Section 8 of the Hindu Succession Act, the property allotted to the first respondent is his individual property. The appellants 2 and 3 and another son of first respondent R.Prakash do not have any interest or right in the suit property. It is not joint family property and appellants were not in possession of the suit property as members of the joint family. The first respondent sold the property to the second respondent only for the benefit of his minor children and sale in any event is binding on the minors and the appellants 2 & 3. The appellants have not produced any evidence to show that the first respondent was drunkard and was not taking care of the family. The sale deed in favour of the third respondent is kept pending with regard to payment of stamp duty. The third respondent has examined D.W.1 Stamp Tahsildhar to prove this fact and marked a copy of the sale deed dated 18.06.1999 as Ex.B5. The appellants were aware of the sale deeds in favour of the respondents 2 and 3 and without setting aside the said sale deeds and without seeking the relief of declaration of title, the appellants are not entitled to maintain the suit for bare injunction. The trial Court failed to

appreciate the revenue records produced by the third respondent to prove her possession in proper perspective and erroneously decreed the suit. The First Appellate Court by appreciating the facts and law properly allowed the First Appeal and dismissed the suit and prayed for dismissal of the Second Appeal.

12. Heard the learned counsel for the appellants as well as third respondent.

13. The substantial question of law to be decided in the present Second Appeal is as follows:

"Whether the appellants are entitled to decree of injunction based on their claim that they are in possession of the suit property and second respondent is not in possession of the suit property from the year 1988 and subsequently, the third respondent is not in possession of the property from the date of her purchase i.e. 18.06.1999. "

14. The appellants filed the suit for permanent injunction restraining the respondents 2 and 3 from interfering with the appellants' peaceful possession and enjoyment of the suit property until the respondents 2 and 3 worked out their remedy, if any by due process of law. The respondents 2 and 3 and husband of the third respondent tried to interfere and dispossess the appellants from the suit property on 23.01.2000 and on the next day also.

15. According to the appellants, the suit property is joint family property, they are in joint possession of the property along with the first respondent and they are cultivating the property jointly. They contended that Ex.A1 sale deed, by which their paternal grand father purchased the suit property along with larger extent and Ex.A2 partition deed dated 15.04.1988, by which the suit property was allotted to their father, first respondent herein. From the date of Ex.A2, they are the coparceners. Their father is drunkard and was not maintaining the family and suit property. The alleged sale deed dated 17.10.1988 executed by the first respondent in favour of the second respondent and sale deed dated 18.06.1999 executed by second respondent in favour of the third respondent are not binding on the appellants. The respondents 2 and 3 are never in possession of the property. To substantiate this contention, the appellants have produced Exs.A3 to A9 i.e. chitta extract, certificate issued by Village Administrative Officer, Udhagamandalam, kisth receipts, enjoyment certificate issued by the Village Administrative Officer, Udhagamandalam and family card.

16. From the materials available on record, it is seen that the second respondent did not take any steps to get patta transferred in his name after his purchase. Similarly, the third respondent has not produced any chitta or adangal to show that

the second respondent was in possession from the year 1988 till he sold the property to third respondent on 18.06.1999 and has not produced any document to show that he was cultivating the same and the same was reflected in chitta and adangal. The third respondent produced and marked Exs.B1, B6 to B10/chitta extract, kisth receipts, copy of proceedings of Tahsildar, Udhangamandalam and certificate issued by the Village Administrative Officer, Udhangamandalam. Exs.B1, B6 and B8 are dated 02.02.2000, which shows that the respondents 2 and 3 have not taken any steps to get the revenue records mutated in their name from the year 1988 and the third respondent failed to produce any document to prove the possession of the second respondent from the year 1988 till 18.06.1999, till he sold and subsequently, her possession from that date. The third respondent failed to produce the sale deed executed by the second respondent in her favour. Without considering the recital in the said sale deed, the learned First Appellate Judge presumed that on the date of sale deed, possession of the immovable property would be handed over to the purchaser. The said conclusion is erroneous and it is only based on presumption. The appellants have filed the said suit only for permanent injunction restraining the respondents 2 and 3 from interfering with their peaceful possession and enjoyment of the suit property until the respondents 2 and 3 worked out their remedy, if any by due process of law. The appellants have produced revenue records to show that they are in possession of the suit property. Further, the second respondent purchased only 50 cents and sold the same to third respondent. They have failed to prove that from the larger extent, they took possession of 50 cents. In view of the above facts, the judgment of the First Appellate Court is liable to be set aside and it is hereby set aside. The judgment and decree passed by the trial Court dated 30.06.2014 is restored to file. The substantial question of law is answered accordingly.

17.In the result, the Second Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-

Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

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To

1.The District Munsif, Udhangamandalam.

2.The Subordinate Judge, Udhagamandalam.

Copy to

The Section officer

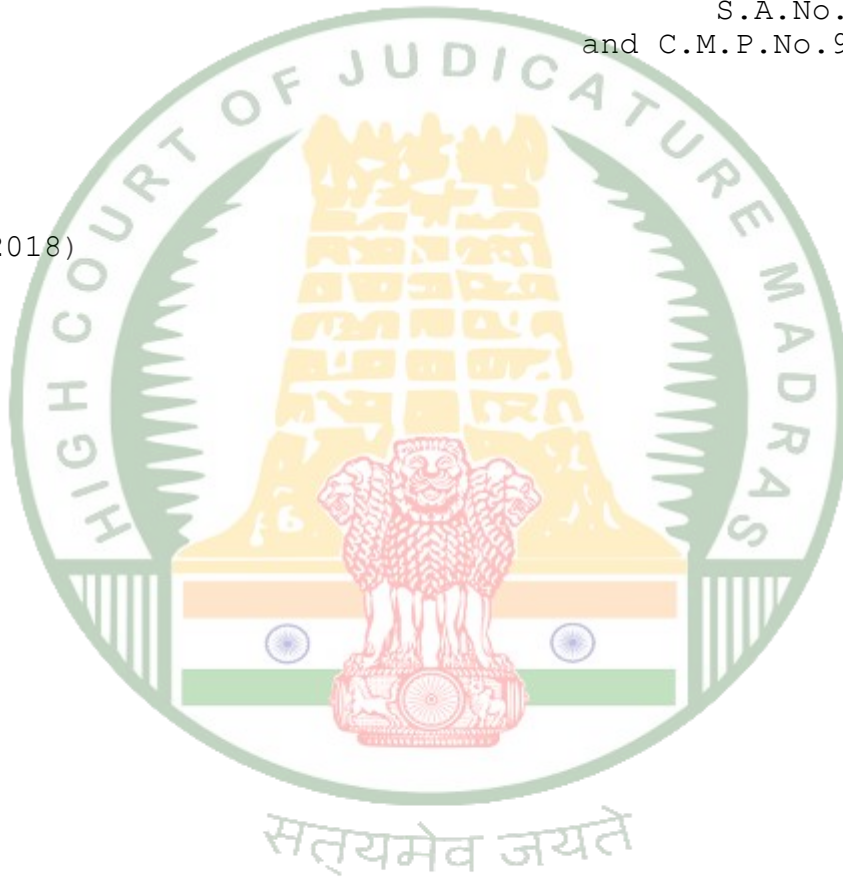
VR Section, High Court, Madras 104

+1 CC to Mr.R. Sunil Kumar, Advocate sr 40301

+1 CC to Mr.L. Mouli, Advocate sr 40279.

S.A.No.340 of 2018
and C.M.P.No.9471 of 2018

RJ(CO)
SP(03/08/2018)



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