IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.03.2018

PRONOUNCED ON : 27.03.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.2112 of 2003

1.M.Singaram
2.A.Shanmugham
3.S.Perumal
4.D.Ravi
5.G.Sundaramurthy ... Appellants

Vs.

1.B.Amaravathi
2.V.Rangaswami ... Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 10.10.2001 passed in A.S.No.34 of 1999 on the file of the Subordinate Court, Ranipet, modifying the Judgment and Decree dated 12.07.1999 passed in O.S.No.71 of 1997 on the file of the District Munsif cum Judicial Magistrate, Arcot.

For Appellants : Mr.K.Thangavelu
For Respondents : No representation/No appearance set exparte (vide Order dt.14.03.2018)

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JUDGMENT

This second appeal is directed against the Judgement and Decree dated 10.10.2001 passed in A.S.No.34 of 1999 on the file of the Subordinate Court, Ranipet, modifying the Judgment and Decree dated 12.07.1999 passed in O.S.No.71 of 1997 on the file of the District Munsif cum Judicial Magistrate Court, Arcot.

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2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff, in brief, is that she is the absolute owner of the plaint schedule property, having purchased the same from one Rukkuammal W/o. Kannan Gounder by way of a registered sale deed dated 21.02.1997 and since then, it is only the plaintiff, who has been in possession and enjoyment of the suit property and also irrigating the land through the Well source belonging to her husband situated in S.No. 67/4, on the extreme west of the suit property and prior to the plaintiff's purchase, her vendor Rukkuammal had been in possession and enjoyment of the suit property for more than 50 years by paying kist to the Government etc., and Rukkuammal had also mortgaged the suit property to her husband and subsequently, the said mortgage had been discharged and the patta stood in the name of Rukkuammal and after the plaintiff's purchase, the patta had been transferred in the name of the plaintiff and thus, it is only the plaintiff, who has title, possession and enjoyment of the suit property. While so, the defendants, taking hostile attitude towards the plaintiff with an ulterior motive, attempted to interfere with the plaintiff's possession and enjoyment of the suit property from May, 1997 and in this connection, the plaintiff had also issued notice

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to the defendants and police complaint has also been lodged and the defendants sent a reply containing false allegations and left with no other alternative, according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts and it is only the defendants, who are in possession and enjoyment of the suit property and the suit property originally belonged to one Amirthammal, who died intestate on 01.11.1971 leaving behind her 5 sons viz., Munusamy, Ariyappan, Raman, Govindan and Duraisami and one daughter viz., Rukammal and accordingly, her sons and daughter succeeded to the property i.e. the suit property and accordingly, Rukammal had only 1/6 share in the suit property and further, Rukammal had entered into a contract of sale and executed a sale agreement in respect of her 1/6 share in favour of the second defendant on 07.12.1995 for a sale price of Rs.5,000/- and delivered the possession of 1/6 share in the suit property to the second defendant on the date of the sale agreement and thus, it is only the second defendant, who is in possession and enjoyment of the suit property and Rukammal is not entitled to convey the suit property to the plaintiff by way of the sale deed projected in the plaint and as she has no title to the suit property on the date of the sale and hence, the sale deed projected by the plaintiff is *void ab initio* and invalid, the plaintiff

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has no right, title or interest and also not in possession and enjoyment of the suit property as claimed in the plaint and hence, the plaintiff is not entitled to obtain the reliefs sought for and the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs1 & 2 were examined and Exs.A1 to 34 were marked. On the side of the defendants, DW1 was examined and no document has been marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the suit laid by the plaintiff. On appeal, the first appellate Court, on an appreciation of the materials placed on record, was pleased to confirm the dismissal of the suit of the trial Court as regards as the relief of declaration sought for by the plaintiff. However, reversed the refusal of the relief of permanent injunction of the trial Court and instead granted the relief of permanent injunction in favour of the plaintiff protecting her possession on the footing that she should not be disturbed except under due process of law and accordingly, disposed of the first appeal. Aggrieved over the same, the present second appeal has been laid.

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8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

> ***" (i) The Court below having found that the first respondent /Plaintiff if at all is entitled to one-sixth share in the suit property along with appellants to be finalised by instituting a partition suit is right in granting and injunction against the appellants?***
>
> ***(ii) Having negatived the relief of declaration and having further held that first respondent is entitled to if at all to one sixth share whether the Court below is legally right in granting injunction in favour of the first respondent against the other joint owners?***
>
> ***(iii) Whether the Court below is right in relying on Exs.A-11 and A-23 which admittedly came into existence after the mis-understanding arose between the parties and after the issues of notice to the appellants by the first respondent/plaintiff's counsel to come to the conclusion that first respondent/plaintiff is in possession of the property?"***

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9. The plaintiff has laid the suit seeking the reliefs of declaration and permanent injunction. As far as the relief of declaration sought for by the plaintiff on the footing that she has title to the suit property by way of a sale deed dated 21.02.1997, the same has been disbelieved by the Courts below by giving acceptable and convincing reasons. As rightly determined by the Courts below, the plaintiff, at the foremost, has not established that her vendor had a valid title to the suit property for entitling her to convey the same to the plaintiff by way of the above said sale deed dated 21.02.1997. On the otherhand, materials placed on record disclose that the suit property originally belonged to Amirthamammal, who died intestate leaving behind her five sons and one daughter viz., Rukammal. Rukammal is stated to be the vendor of the plaintiff. Thus seen, it is found that as rightly contended by the defendants, at the most, the daughter Rukammal would be entitled to claim only 1/6 share in the suit property and not more than that. In such view of the matter, the claim of the plaintiff that she has obtained a valid title to the suit property by way of the purchase of the same from Rukammal by way of the sale deed dated 21.02.1997 has been rightly discountenanced by the Courts below. Equally, the Courts also found that the alleged sale agreement projected by the defendants as regards the obtainment of 1/6 share of Rukammal in the suit property is false and the same has also been not accepted by the Courts below, inasmuch as the

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defendants had failed to establish the same by producing acceptable and reliable evidence. It is thus found that the Courts below rightly found that the plaintiff has failed to establish her valid claim of title to the suit property and the first appellate Court proceeded to hold that at the best, the plaintiff could only lay a claim of 1/6 share in the suit property by way of her alleged purchase by way of the sale deed dated 21.02.1997 and accordingly, opined that the plaintiff has to work out her remedy with reference to the same by laying the suit for partition.

10. Be that as it may, the relief of declaration sought for by the plaintiff has been rightly negatived by the Courts below. As against the said determination, the plaintiff has not preferred any appeal independently nor filed any cross objection in this appeal preferred by the defendants.

11. The trial Court, while discussing the merits of the case, proceeded to hold that the plaintiff is found to be in possession and enjoyment of the suit property based on Exs.A11 & A23. Ex.A11 is the kist receipt and Ex.A23 is the patta. The first appellate Court also concurred with the abovesaid findings of the trial Court and accordingly, holding that the plaintiff is in possession and enjoyment of the suit property, held that her possession should not be disturbed unless she is evicted from the suit property under due process of law and accordingly,

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granted the relief of permanent injunction in favour of the plaintiff. Impugning the same, the present second appeal has been preferred.

12. As rightly argued by the defendants' counsel, the determination of the Courts below that the plaintiff is in possession and enjoyment of the suit property based on Exs.A11 and A23 is found to be fallacious and unacceptable. Even as per the case of the plaintiff, misunderstanding arose between the parties, in respect of the title, possession and enjoyment of the suit property way back from May, 1997. In such view of the matter, when it is found that the document marked as Ex.A11 has come to surface only during that point of time and further, Ex.A23 patta has emanated, after the exchange of notices, particularly, after the misunderstanding arose between the parties, it is seen that based on Exs.A11 & A23, we cannot safely conclude that the plaintiff is in legal possession and enjoyment of the suit property as claimed by her. When, as per the first appellate Court, the plaintiff, at the best, would be entitled to claim 1/6th share in the suit property and not more than that and when it is equally found that the defendants are resultantly the co-owners in respect of the suit property, it does not stand to reason as to how the first appellate Court or even as the case may be, the trial Court also proceeded to hold, as if the plaintiff is in possession and enjoyment of the suit property legally based on Exs.A11 & A23, when the said documents are found to have come into existence after the controversy had arisen

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between the parties as regards the subject matter and when it is further noted that the plaintiff is admittedly having no title to the suit property as claimed by her, it is found that based upon Exs.A11 & A23, we cannot come to the conclusion that the plaintiff is legally in possession and enjoyment of the suit property as claimed by her. As rightly argued by the defendants' counsel, even assuming for the sake of arguments that the plaintiff is entitled to claim only 1/6 share in the suit property as determined by the first appellate Court, the defendants being the other co-owners, it is found that the plaintiff cannot be granted the relief of permanent injunction as against the other co-owners who also claim to be in possession and enjoyment of the suit property. Equally, when it is noted that the Courts below had proceeded to hold that the plaintiff is found to be in possession and enjoyment of the suit property based on Exs.A11 & A23 and when as above seen, those documents had emanated after the misunderstanding arose between the parties concerned, it is seen that based upon the above said two documents as well as the other documents projected by the plaintiff, we cannot come to the conclusion that the plaintiff is legally in possession and enjoyment of the entire suit property as claimed by her and in such view of the matter, the relief of permanent injunction being an equitable relief cannot be extended in favour of the plaintiff, when it is found that she has failed to establish both her title to the suit property as well as the possession and enjoyment thereof as claimed in the plaint and in such view of the

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matter, it is noted that the first appellate Court has erred in granting the limited relief of permanent injunction in favour of the plaintiff as abovenoted and hence, the said determination of the first appellate Court cannot be allowed to sustain any further. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.

13. At the end, the Judgment and decree of the trial Court dated 10.10.2001 passed in A.S.No.34 of 1999 on the file of the Subordinate Court, Ranipet are set aside as far as the grant of limited relief of permanent injunction by it in favour of the plaintiff and resultantly, the Judgment and Decree dated 12.07.1999 passed in O.S.No.71 of 1997 on the file of the District Munsif cum Judicial Magistrate, Arcot, are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

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Internet : Yes / No
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To

1.The Subordinate Court, Ranipet.
2.The District Munsif cum Judicial Magistrate, Arcot.
3.The Section Officer, V.R.Section, High Court, Madras.

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T.RAVINDRAN, J.

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Pre-Delivery Judgment made in S.A.No.2112 of 2003

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