

**IN THE HIGH COURT OF JUDICATURE AT MADRAS****Dated : 30.11.2018****Coram****The Honourable Ms.Justice P.T.ASHA****S.A.No.705 of 2018****and****C.M.P.No.20858 of 2018**

1.M.P.Natarajan  
2.M.P.Mani  
3.M.P.Krishnasamy  
4.M.P.Varadharajan  
5.Jayammal  
6.Senthilkumar  
7.Sivakumar  
8.Kavitha

...Appellants

Versus

Deivakunjarai Ammal @  
Karuppayammal

...Respondent

This Second Appeal is filed under Section 100 of C.P.C praying to set aside the judgment and decree passed in A.S.No.2 of 2013 dated 05.06.2018 on the file of the Sub Court at Gobichettipalayam, Erode District in reversing the judgment and decree made in O.S.No.364 of 2008 dated 23.07.2012 on the file of the District Munsif Court at Gobichettipalayam, Erode District.

For Appellants : Mr.P.R.Balasubramanian

For Respondent : Mr.K.Myilsamy

**J U D G M E N T**

The above Second Appeal arises against the judgment and decree passed by the learned Subordinate Judge, Gobichettipalayam, Erode District in A.S.No.2 of 2013 dated 05.06.2018, in and by which the learned Judge had reversed the judgment and decree passed by the learned District Munsif, Gobichettipalayam in O.S.No.364 of 2008 dated 23.07.2012.

**Plaintiffs' case:**

2. The plaintiffs in the suit are the appellants in the above Second Appeal. The suit O.S.No.364 of 2008 is filed for bare injunction. The case of the plaintiffs is that on 03.09.1975, the plaintiffs' brother Nagappan and themselves had purchased the suit property from one Janaki Ammal. The fourth plaintiff's wife Radhamani had a share in the lands in Survey No.1200/5 and the defendant had no share in the suit properties, despite which she had clandestinely got the Revenue Records transferred in her name. On 25.10.2008, the defendant had attempted to trespass into the plaintiffs' peaceful possession and enjoyment of the suit property which was successfully blocked by the plaintiffs and therefore, left with no other alternative, the plaintiffs had come forward with the instant

suit.

**Defendant's case:**

3. The defendant had filed a Written Statement in which she would contend that there was an earlier suit for partition filed by her in O.S.No.383 of 1970 in which the vendor of the plaintiffs was the 16th defendant. This suit was decreed on 29.09.1979, as against which no Appeal has been preferred by the plaintiffs' vendor. Only the defendant's brother and his son had filed A.S.No.234 of 1983 on the file of this Court which was dismissed on 12.12.1996. After the dismissal of the First Appeal, the defendant had filed an Interlocutory Application in I.A.No.1074 of 2001 for passing of final decree and the said Application was also allowed and the Commissioner was appointed to divide the properties. Suppressing all these facts, the plaintiffs had come forward with this frivolous suit for injunction. The defendants therefore sought for the dismissal of the said suit.

**Trial Court & Appellate Court:**

4. The Trial Court held that the plaintiffs are in lawful possession of the suit properties and therefore, they are entitled to possession. This was taken on Appeal in A.S.No.2 of 2013 on the file of the Sub Court, Gobichettipalayam, Erode District. The learned Subordinate

Judge, Gobichettipalayam had reversed the said judgment and decree by contending that there cannot be an injunction against the co-owner and that apart, final proceedings having been allowed and the parties been allotted their share and therefore, there is no necessity for allowing the subsequent suit. Challenging this reversing judgment and decree, the plaintiffs have come before this Court.

5. Heard Mr.P.R.Balasubramanian, learned counsel for the appellants and Mr.K.Myilsamy, learned counsel for the respondent.

6. From the records, it is clear that the rights of parties to various shares has already reached finality in the suit O.S.No.383 of 1970 and the shares of each party have been demarcated by the Advocate Commissioner. These details have been burked by the plaintiffs in order to file a suit for bare injunction. The plaintiffs should come to Court with clean hands without suppressing facts and showing that balance of convenience is in their favour. In the instant case, by suppressing the factum of the earlier decree, the plaintiffs are guilty of suppressing the material facts to the Court. That apart, since allotment of the various shares has been effected in the final decree proceedings and the decree that has been obtained by the defendant in that suit cannot be set at naught by the plaintiffs by obtaining a

later decree for injunction. The Appellate Court has correctly reversed the judgment and decree of the trial Court and dismissing the suit filed by the plaintiffs. I do not find any substantial question of law much less a substantial question of law in this Second Appeal.

7. In the result, this Second Appeal is dismissed and the judgment and decree passed by the learned Subordinate Judge, Gobichettipalayam, Erode District in A.S.No.2 of 2013 dated 05.06.2018 is confirmed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

**30.11.2018**

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**P.T.ASHA, J.,**

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To

1.The Sub Court,  
Gobichettipalayam,  
Erode District.

2.The District Munsif Court,  
Gobichettipalayam,  
Erode District.

**S.A.No.705 of 2018**



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