

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 30.09.2019
PRONOUNCED ON : 21.10.2019
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN
A.S.No.781 of 2012
and
CMP No.7487 of 2019

Vijayakumar

...Appellant/Plaintiff

Vs.

1. Saraswathi Ammal
2. Sivakumar
3. Amsaveni
4. Srinivasa Perumal

...Respondents/Defendants

Prayer: First Appeal filed under Section 96 of Civil Procedure Code, against the judgment and decree dated 29.02.2012 in Original Suit No.15 of 2010 on the file of the Additional District Judge (Fast Track Court No.2), Cuddalore.

For Appellant : Mr.R. Selvakumar
For Respondents: Mrs. Hema Sampath, Senior Counsel
for Ms. R. Meenal.

JUDGMENT

Aggrieved over the judgment and decree dated 29.02.2012 passed in Original Suit No.15 of 2010 on the file of the Additional District Judge (Fast Track Court No.2), Cuddalore, the plaintiff has preferred the first appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for partition and permanent injunction.

4. The case of the plaintiff, in brief, is that the first defendant is the plaintiff's mother and the plaintiff's father / the husband of the first defendant, namely, Thulasinga Padayachi purchased the vacant site with his own funds in the name of his wife, namely, the first defendant, out of sentimental grounds and subsequently, a house was built in the vacant site by the plaintiff along with his brother and hence, the house belongs to the plaintiff and his brother. There was borkiam in the

property that was discharged by the plaintiff by paying his own amount. The plaintiff has been residing with his family in the eastern portion of the suit property and the first defendant was in the occupation of the western portion of the suit property. The plaintiff is the co-sharer in respect of the suit property and the suit property was always treated as joint family property and on account of the misunderstanding which has arisen between the plaintiff and the first defendant and the plaintiff's wife, the first defendant had been harassing the plaintiff to vacate the suit property and hence, the plaintiff had filed a suit in O.S.No.419/2009 against the first defendant on the file of the Principal District Munsif Court, Cuddalore, for permanent injunction and the same is pending. The second defendant is the younger brother of the plaintiff and the third defendant is the sister of the plaintiff. The first defendant has no status to purchase the suit property with her own financial resources. The defendants 2 and 3 had poisoned the mind of the first defendant and they seem to have entered into a speculative transaction with the fourth defendant and any transaction made by the first defendant in favour of the fourth defendant in respect of the suit property will not bind the plaintiff's 1/3 share in the suit property and thus the plaintiff is entitled to 1/3 share in the same. Any transaction made by the first defendant with the fourth defendant is not valid and enforceable and it is only the plaintiff who had been paying the house tax for the house put up in the suit property. The fourth defendant being an influential person, is making a false claim over the suit property and attempting to interfere with the plaintiff's possession and enjoyment of the same and hence, according to the plaintiff, he has been necessitated to lay the suit against the defendants for appropriate reliefs.

5. The defendants 1 to 3 resisted the plaintiff's suit contending that the suit laid by the plaintiff is not maintainable either in law or on facts. The first defendant was originally residing with her father and her father was a police head constable and the first defendant's husband was not possessed of any property. First defendant's father-in-law had three wives and he was owning a thatched house and settled the same in favour of his son Annadurai born through his third wife and therefore, thereafter, the first defendant's father-in-law did not own any immovable property. Likewise, the first defendant's husband also was not possessed of any immovable property and was also unemployed. The first defendant's husband was subsequently given employment in a company at Chennai and out of the meagre income earned from the same, he was unable to maintain his family. On noticing the abovesaid condition of the

first defendant's family, her father had taken her to Cuddalore and he arranged a mess in favour of the first defendant and the first defendant was running the mess and able to save income out of the same and thereafter, she also started another mess in a place nearby belonging to a muslim and her husband was not helpful and not assisting her in running the said mess and out of the income derived from the mess, the first defendant purchased a vacant site and thereafter, alienated the same and out of the income derived therefrom, purchased the suit site and also put up the construction thereon and the first defendant's daughter was engaged as a nurse and out of the amount advanced by the third defendant as well as her own income, the terraced portion was put up in the suit property and therefore, neither the plaintiff nor the first defendant's husband and the second defendant contributed any amount for the construction put up in the suit property and therefore, they are not entitled to claim any share in the same, on the other hand, the plaintiff, out of his own income, had purchased two plots and the second defendant had also purchased a plot and put up the construction and it is only the first defendant who had celebrated the marriage of the plaintiff and the second defendant out of her income. Inasmuch as the plaintiff requested permission to reside in the portion of the suit property, the first defendant granted the permission and taking advantage of the same, the plaintiff is laying a false claim over the suit property without any basis. Inasmuch as the first defendant has become old and unable to raise income, she had chosen to alienate the suit property and accordingly alienated the same and therefore, the plaintiff is not entitled to claim any reliefs as prayed for and the suit is liable to be dismissed.

6. The fourth defendant resisted the plaintiff's suit contending that the suit property is the absolute property of the first defendant and the same originally belonged to Thirumalai Padayachi by way of a sale deed dated 21.04.1956 and Thirumalai Padayachi sold the same in favour of the first defendant by way of a sale deed dated 12.04.1979 and thereafter, it is only the first defendant who had been in the possession and enjoyment of the suit property as the lawful owner thereof and she had agreed to convey the suit property in favour of the fourth defendant and pursuant to the same, the first defendant and the fourth defendant entered into a sale agreement on 02.11.2009 and in continuation of the same, the fourth defendant purchased the suit property for a valid consideration on 21.01.2010 and obtained the possession of the suit property and enjoying the same by obtaining the patta, paying house tax, etc., and thus it is only the fourth defendant, who is the absolute owner of the suit property and hence, the plaintiff is

not entitled to seek any claim of share in the suit property. The suit property is not the joint family property of the plaintiff's family as put forth in the plaint and that he is not a party in O.S.No.419 of 2009 and the plaintiff has no cause of action to lay the suit and the suit is liable to be dismissed.

7. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial court for consideration.

- 1) Whether the suit property is the separate property of the first defendant?
- 2) Whether the plaintiff is entitled to obtain 1/3 share in the suit property?
- 3) Whether the plaintiff is entitled to claim the reliefs as prayed for?
- 4) To what relief the plaintiff is entitled to?

8. In support of the plaintiff's case P.Ws.1 and 2 were examined and Exs.A1 to A10 were marked. On the side of the defendants, D.Ws.1 and 2 were examined and Exs. B1 to B15 were marked.

9. 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 plaintiff's suit. Aggrieved over the same, the present first appeal has been preferred by the plaintiff.

10. The following points arise for determination in this first appeal.

1. Whether the plaintiff is entitled to obtain the partition and separate possession of 1/3 share in the suit property as claimed in the plaint?
2. Whether the plaintiff is entitled to obtain the relief of permanent injunction against the fourth defendant as prayed for?
3. Whether the suit property is the separate and absolute property of the first defendant?
4. Whether the fourth defendant has lawfully purchased the suit property from the first defendant as claimed by him?
5. To what relief the plaintiff/appellant is entitled to?
6. To what relief the defendants are entitled to?

11. The Petition has been filed under Order 41 Rule 27 of CPC.

The petitioner/plaintiff has put forth the case that in the first week of March 2019 when he visited his mother-in-law's house, he had discovered certain facts and according to him, he married his wife Revathy on 15.11.1998 and on 05.01.1999, his mother / the first defendant, had written a letter to his wife's sister stating that his parents-in-law had cheated her by falsely giving some other birth state for his wife though she had been born in moolam star and only on seeing the said letter, he could realise the hatred and ill-will that his mother had developed against him and his wife and on account of the demise of his father soon after his marriage, according to him, on the abovesaid premise, the defendants 1 to 3 had been harassing him in all possible ways to dispossess him out of the suit property and hence, according to him, he had been necessitated to lay the complaint against them with the police and on account of the defendants' close proximity with the police department, no action had been taken and inasmuch as the documents pertaining to the same had been discovered by him only recently and the same are very essential for sustaining his case, according to him, he has been necessitated to file the petition for the reception of the said documents as additional evidence in the first appeal and hence the petition.

The first respondent / defendant resisted the abovesaid petition contending that the application is very belated and only with a view to prejudice the mind of the court, the petition has been laid by the petitioner/plaintiff and the documents produced by him have no relevance to the facts and issues and the letter projected by him has not been addressed to the petitioner/plaintiff and hence he is not entitled to file the same and the contents of the letter, would not, in any manner, change the character of the suit property. The police complaint projected had been preferred after the institution of the suit and therefore, according to the first defendant, the documents projected as additional evidence have no relevance for deciding the issues involved in the matter and also not maintainable in law, accordingly, prayed for the dismissal of the petition.

The point that arises for consideration in C.M.P. No.7487 of 2019 is, "whether the petition is entitled for acceptance?"

Point Nos.1 to 4 in A.S.No. 781 of 2012 and point in C.M.P. No.7487 of 2029

12. The relationship between the plaintiff and the defendants 1 to 3 is not in dispute. Even as per the case of the plaintiff, the suit property, particularly the vacant site, had been purchased only in the name of his mother by his father Thulasinga Padayachi. According to the plaintiff, Thulasinga Padayachi had purchased the vacant site in the name of the first defendant out of sentimental grounds. Further according to the plaintiff, the house had been put up by him and his brother in the suit site. It is also further pleaded by the plaintiff that he is in the occupation of a portion of the suit property, i.e., on the eastern side and the first defendant is in the occupation of western side of the suit property. On the abovesaid main pleas, the plaintiff has projected the claim of right over the suit property and thereby contended that he is a co-sharer in respect of the suit property along with the defendants 1 and 2 and thereby entitled to obtain 1/3 share in the suit property. Therefore, according to the plaintiff, the first defendant is not entitled to create any encumbrance in respect of the suit property in connivance with the fourth defendant. Any transaction the first defendant had with the fourth defendant qua the suit property is not valid and binding upon the plaintiff and put forth the case that the fourth defendant is making a false claim over the suit property and attempting to dispossess him from the suit property and hence according to the plaintiff, he has been necessitated to lay the suit against the defendants, in toto, for appropriate reliefs.

13. The defendants resisted the plaintiff's suit contending that the first defendant's husband Thulasinga Padayachi had no source and means to acquire the suit property and he was not possessed of any immovable property and he was also not employed and according to them, the first defendant was running a mess and out of the income derived from the same, she purchased the suit property and put up the construction thereof with her income as well as the income advanced by her daughter who was engaged as a nurse and therefore, according to the defendants, it is only the first defendant who is the absolute owner of the suit property and neither the plaintiff nor the second defendant is entitled to claim any share or title over the suit property and accordingly, the case had been put forth by the defendants that the first defendant had alienated the suit property in favour of the fourth defendant for a valid consideration and pursuant to the same, it is only the fourth defendant who has

acquired a valid title to the suit property and enjoying the same by obtaining the patta, paying house tax, etc., and therefore, according to the defendants, the plaintiff is not entitled to claim any right or share over the same and the suit is liable to be dismissed.

14. Admittedly, the title deed stands in the name of the first defendant. Now, according to the first defendant, it is she, who had acquired title to the same out of her own income and therefore, the plaintiff is not entitled to claim any share or right over the same. On the other hand, the plaintiff would put forth the case that it is only his father who had purchased the vacant site of the suit property in the name of the first defendant on sentimental grounds and it is he (the plaintiff) who had put up the house in the suit property along with his brother, namely, the second defendant. In short, the plaintiff has taken the plea of benami in respect of the purchase of the suit property in the name of the first defendant.

15. The defendants have taken the plea that the first defendant's husband Thulasinga Padayachi has no means to purchase the suit property and was not possessed of any immovable property and was unemployed and not able to maintain his family with the meagre income he had been receiving for a certain period and according to them, the first defendant was running a mess and out of the income derived from the mess business, she had acquired the suit property and therefore, it is only the first defendant who has lawful title to the suit property.

16. In the light of the abovesaid defence version, when it is found that the title deed in respect of the suit property admittedly stands in the name of the first defendant and the plaintiff has only taken the plea of benami, it is for the plaintiff to establish that it is his father who had acquired the suit property on his own in the name of the first defendant on sentimental grounds as pleaded by him. However, the plaintiff has not come forward with the clear case in the plaint as to whether his father was possessed of sufficient properties or employed and earning considerable income and had the capacity to acquire the suit property on his own. With reference to the abovesaid case, nothing has been pleaded in the plaint other than very vaguely stating that the suit vacant site had been purchased by his father with his own funds in the name of the first defendant out of sentimental grounds. Furthermore, even

during the course of trial, the plaintiff has not placed any material to hold that his father was possessed of any ancestral property or had acquired any independent property on his own and was having sufficient solvency and means to acquire the suit property. In this connection, the plaintiff examined as P.W.1 has admitted that he has no document to evidence that his father was possessed of ancestral property or other property and also would state that he does not know whether his father had acquired any property at Cuddalore, whether he had sold the same to the third parties and though he would claim that his father had acquired a vacant site at Sami Pillai Nagar, no document has been projected by him pointing to the same and similarly when P.W.2 examined on behalf of the plaintiff has also not been able to place any material worth acceptance to hold that the plaintiff's father was possessed of any ancestral property or independent property and had the capacity to acquire the suit property and in such view of the matter, when with reference to the claim of the plaintiff that it is only his father who had acquired the vacant site out of his own funds, there is no acceptable material on the part of the plaintiff, in such view of the matter, when admittedly, the suit property had been acquired in the name of the first defendant and when the recitals contained in the title deed points that the sale consideration for the acquisition of the same has been passed on only by the first defendant, in such view of the matter, as rightly held by the trial court, the plaintiff has miserably failed to establish that it is his father who had acquired the suit property out of his own funds in the name of the first defendant out of sentimental grounds.

17. As held by the trial court, the plaintiff having failed to establish his case of benami and merely because the plaintiff has laid the suit against the first defendant in O.S.No.419/2009 on the file of the Principal District Munsif Court, Cuddalore, it cannot be presumed that the plaintiff has the valid claim of title to the suit property.

18. From the materials placed on record, it is found that the first defendant, as the lawful owner of the suit property, had conveyed the same in favour of the fourth defendant for a valid consideration and following the purchase, it is only the fourth defendant, who has been paying the house tax in respect of the suit property and when with reference to the abovesaid case projected by the defendants, when the defendants had marked the various house-tax receipts standing in the name of the first defendant and the fourth defendant as well as the payment

of electricity charges in respect of the suit property and the obtainment of patta in respect of the suit property in the name of the fourth defendant, in all, it is found that inasmuch as the fourth defendant has validly acquired title to the suit property from the first defendant, it is found that the revenue documents have been mutated in the name of the fourth defendant in respect of the suit property. In the light of the abovesaid factors, as rightly held and determined by the trial court, it is found that it is only the first defendant, who had a valid claim of title to the suit property and on the conveyance of the same by her in favour of the fourth defendant, it is found that the fourth defendant has acquired the valid claim of title to the suit property. In such view of the matter, the claim of share or title over the suit property on the part of the plaintiff is found to be totally mis- conceived and unsustainable in the eyes of law.

19. The plaintiff would mainly put forth the case that he is residing in a portion of the suit property and according to him, his enjoyment of the suit property would only go to show that he is the co-sharer in respect of the suit property. According to the defendants, at the request of the plaintiff, he had been permitted to occupy the portion of the suit property. Though the plaintiff would claim that he and his brother, namely, the second defendant had put up the house construction in the suit property, however, pointing to the same, absolutely, there is no material worth acceptance on the part of the plaintiff. The plaintiff has also not endeavoured to examine the second defendant, his brother, in support of his case. In fact, the second defendant has challenged the abovesaid case projected by the plaintiff. To evidence that the plaintiff has title to the suit property, absolutely, there is no reliable and valid document in favour of the plaintiff and therefore, the documents marked as Exs.A2 to A4, by themselves, would not, in any manner, advance the claim of title of the plaintiff qua the suit property.

20. The plaintiff's counsel would contend that the defendants have miserably failed to establish their plea of granting of permission to him to occupy the portion of the suit property. No doubt, the defendants have not established clearly as to when the permission had been granted to the plaintiff to occupy the portion of the suit property. However, considering the relationship between the parties, when it is found that the plaintiff is the son of the first defendant, in such view of the matter, in view of the abovesaid close relationship, it is found

that the first defendant would have permitted the plaintiff to occupy the portion of the suit property and on that premise, as contended by the first defendant, the plaintiff cannot be allowed to raise the claim of title to the suit property by challenging the claim of the first defendant to the same. Even assuming for the sake of arguments, the defendants have failed to establish their case of according permission to the plaintiff to occupy the portion of the suit property, in any event, when from the materials placed on record, when it is found that it is only the first defendant and the fourth defendant who had acquired a valid title to the suit property, in such view of the matter, the plaintiff cannot be allowed to contend that he has a valid claim of title to the suit property on the mere factor that his possession over the suit property has been admitted by the defendants. The defendants, by their conduct, having rescinded the permission granted to the plaintiff to occupy the suit property thereafter, it is found that the plaintiff's occupation of the suit property could only be termed as unlawful, therefore, the plaintiff cannot be allowed to squat in the suit property endlessly projecting a false claim of title to the suit property.

21. The plaintiff has projected certain documents as additional evidence in support of his case. He would rely upon the letter sent by the first defendant to his wife's sister. Admittedly, the letter has not been addressed to the plaintiff. Therefore, the plaintiff would not be competent to speak about the same. Be that as it may, as rightly contended by the first defendant's counsel, the contents of the said letter would not, in any manner, alter the character of the suit property and therefore, in my considered opinion, the letter projected by the plaintiff as additional evidence, would not, in any manner, serve the case of the plaintiff or vitiate the claim of title to the suit property projected by the defendant. Similar is the case of the police complaint put forth by the plaintiff as additional evidence. When the alleged police complaint is found to have come into existence after the institution of the suit, the same would not serve any purpose to sort out the issues involved in the matter. Even, admittedly, as per the case of the plaintiff, no action had been taken by the police pursuant to the same.

22. In the light of the abovesaid position, the additional documents projected by the plaintiff are found to be totally not relevant for settling the issues involved in the matter. Furthermore, the plaintiff has also not projected sufficient

cause for not placing the said documents before the trial court and in such view of the matter, the petition for the reception of additional evidence is found to be not satisfying the requirements of Order 41 Rule 27 of CPC. In all, the petition for the reception of additional evidence is not entitled for acceptance.

23. In the light of the abovesaid discussions, I hold that the plaintiff is not entitled to obtain the partition and separate possession of 1/3 share in the suit property as put forth in the plaint. I further hold that the plaintiff is not entitled to obtain the relief of permanent injunction against the fourth defendant as claimed in the plaint. I hold that the suit property is the separate and absolute property of the first defendant and further hold that the fourth defendant has acquired a valid claim of title to the suit property from the first defendant. Accordingly, the point numbers 1 to 4 in the first appeal and the point in CMP No. 7487 of 2019 are answered against the plaintiff and in favour of the defendants.

Point Nos.5 and 6

24. For the reasons aforesaid, the judgment and decree dated 29.02.2012 passed in Original Suit No.15 of 2010 on the file of the Additional District Judge (Fast Track Court No.2), Cuddalore, are confirmed and resultantly, the first appeal is dismissed with costs. C.M.P. No.7487 of 2019 is dismissed. Consequently, connected miscellaneous petition, if any, is also closed.

Sd/-

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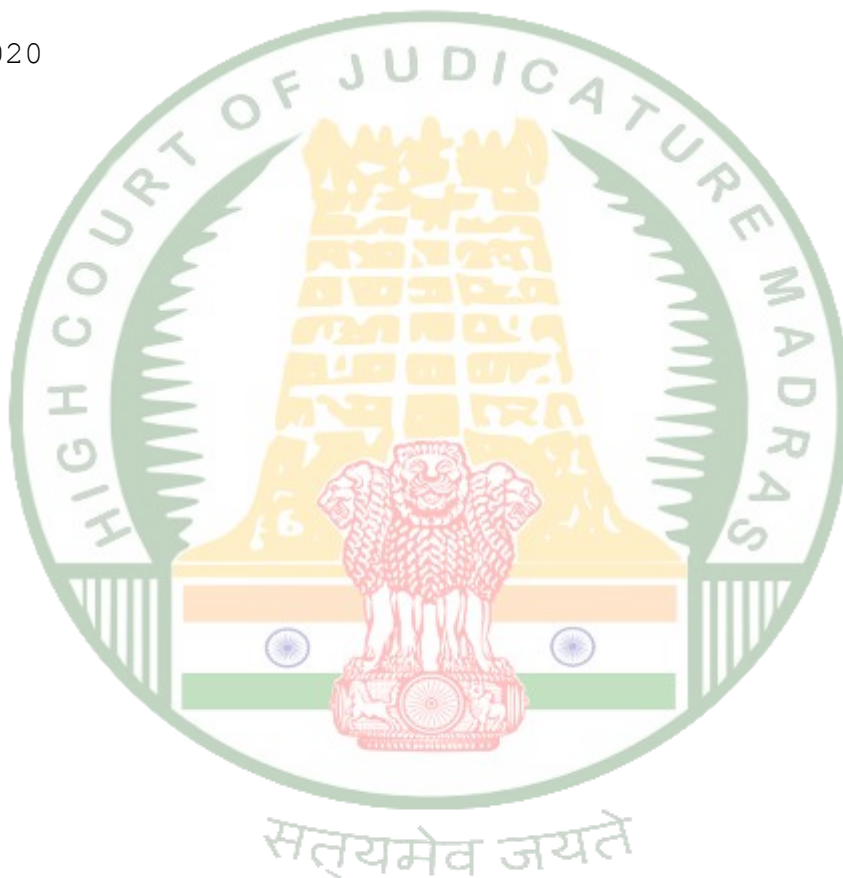
1. Additional District Judge
(Fast Track Court No.2),
Cuddalore.

2. The Section officer,
V.R. Section, High Court,
Madras

+1 cc to Mr.R.Selvakumar Advocate sr87585
+1 cc ot M/s.R.Meenal Advocate sr87891

A.S.No.781 of 2012

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