

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2019

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.1566 of 2005
and CMP.No.20286 of 2005

1.Veerappan (died)

.... Appellant/1st Appellant /1st Plaintiff

2.Valliammal

3.Annakodi

4.Gobalakrishnan Appellants

(Appellants 2 to 4 are brought on record as L.Rs of the deceased sole appellant viz.,Veerappan, Vide Court Order dated 04.07.2019 made in CMP.No.16029/2017 in S.A.No.1566/2005)

Vs

1.Lingappan

2.Valliammal

3.Ponnal

4.Vadivel @ Elango

5.Devaraj

6.Selvi

7.Dhanalakshmi

8.Guruval

9.Murugan

.... Respondents / Respondents, 2nd Appellant /Defendants,
2nd Plaintiff

Prayer :- Second Appeal filed under Section 100 of the Civil Procedure Code, preferred against the judgment and decree in A.S.No.262/1999 dated 04.12.2000 on the file of the Principal District Judge, Erode, confirming the judgment and decree in O.S.No.219 of 1995, dated 16.03.1999 on the file of the District Munsif cum Judicial Magistrate, Perundurai.

For Appellants : Mr.S.Vinoth Kumar
for Mr.G.Arul Murugan

For Respondents : Mr.V.P.Sengottuvel [R1 & R5]

JUDGMENT

This is a suit for bare injunction, which came to be dismissed successively by the Courts below. There are two plaintiffs in the suit, of who, the first plaintiff has preferred

this appeal and the second plaintiff was arrayed as ninth respondent. Subject to this, parties would be referred to by their rank before the Tribunal.

2.1 The first plaintiff is the appellant. The suit properties belonged to a certain Kali Vannaan. His wife is Nagammal and they have four sons. The suit was laid by two of his sons, alleging that the suit properties which were purchased in the name of Kali Vannaan under Ext.A13, sale deed dated 28.10.1957 and Ext.A14, sale deed dated 21.12.1963, were purchased out of joint efforts of Kali Vannaan and all his four sons. However, when they tendered evidence, this fact was not adequately established.

2.2 The suit was resisted by Kali Vannaan and adopted by his other two sons who are arrayed in the suit as defendants 2 and 3. Kali Vannaan would contend that the properties are his self-acquisition, that the plaintiffs being his sons, are only permitted to occupy two of the houses of his properties, and that he had executed a Will in favour of defendants 2 and 3, for life and thereafter to their residuary legatees, who are the defendants 7 and 8 herein (grandchildren born through the defendants 2 and 3).

3. The dispute went for trial, before which, both the parties adduced oral and documentary evidences. The Will executed by the first defendant Kali Vannaan is marked as Ext.B27. It is a registered Will and it is proved by D.W.2, one of the attesting witnesses.

4. The trial Court has held that the plaintiffs have not proved that they have contributed funds for the purchase of the suit properties and accordingly, dismissed the suit. This line of reasoning was adopted by the first appellate Court as well.

5. This second appeal was admitted on the following substantial questions of law :

" 1. Have not both the Courts below committed an error of law in not holding that the prima facie case was established by the appellant and shifting the burden to the respondents to establish the suit properties as their separate properties ?

2. Have not both the Courts below committed an error of law in holding that the appellant does not establish his case of the suit properties as joint family properties by acceptable evidence?

3. Have not the Courts below committed an error of law in holding that the suit for injunction is not maintainable without a prayer for declaration?"

5.1 Heard both the counsels. On the question of title, this Court is in concurrence of the findings of the Courts below that the suit properties absolutely belongs to Kali Vannaan. And, as to the genuineness of the Will executed by Kali Vannaan is concerned, this Court again finds that the finding on the same by the Courts below is correct.

5.2. The only other aspect that remains to be decided is whether plaintiffs are in possession and if so, their possession is a settled possession, in order, they may be entitled to have their possession protected by a decree of prohibitory injunction. On the aspect of possession, it has to be stated that Kali Vannaan in his written statement has stated that both the plaintiffs are in permissive possession of the separate house properties, which implies, the possession of plaintiffs 1 and 2 are not unlawful possession, but a possession that emanates from a lawful permission. It is also seen from the record that both the plaintiffs have produced necessary tax receipts over a period of time to indicate the lawful nature of their possession. This implies that the possession of the plaintiffs are neither illegal nor unlawful, and given the duration of the possession, it has to be stated that they are in settled possession.

6. Now the defendants by virtue of the title over the property cannot take the law into their hands and evict the plaintiffs from the buildings that are in their physical possession. Therefore, the possession of the plaintiffs needs to be protected by virtue of a decree of injunction. Here, this Court is not in agreement with the findings of the Courts below that the plaintiffs are not entitled to a decree of injunction, since they do not have title to the property.

8. Hence, only 3rd of the three substantial questions of law as framed are decided in favour of the plaintiffs/appellants and the rest are decided against them.

9. In conclusion, this appeal is allowed and there shall be a decree for prohibitory injunction restraining the defendants from disturbing the possession of the plaintiffs, till they are dispossessed as per law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To:

1.The Principal District Judge
Erode.

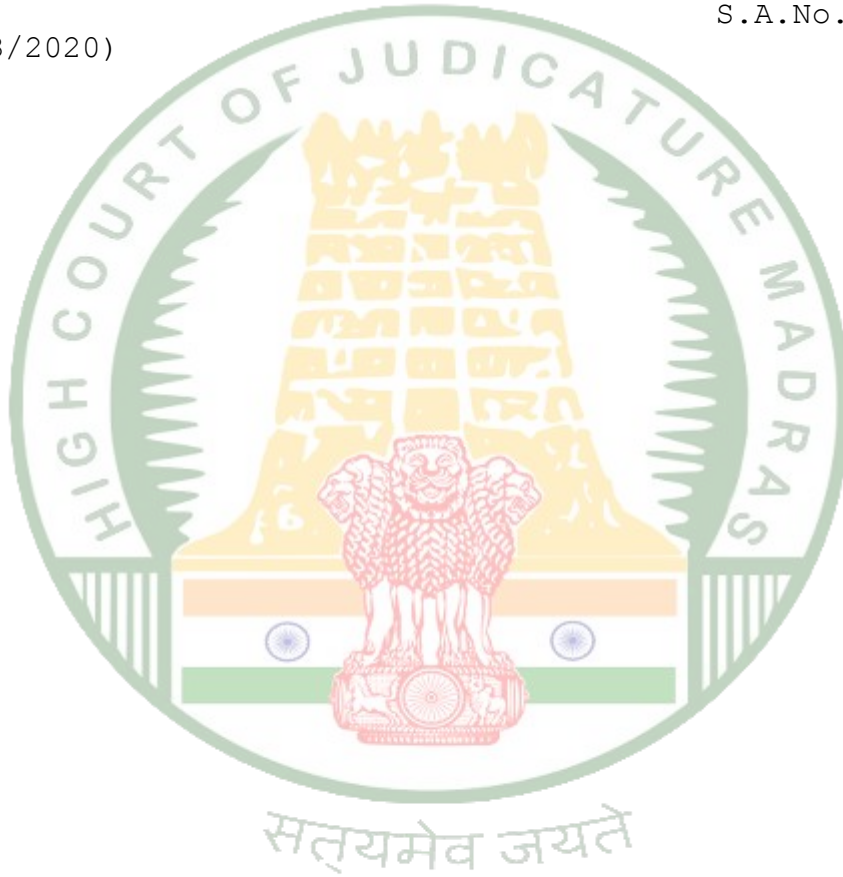
2.The District Munsif cum Judicial Magistrate
Perundurai.

3.The Section Officer
VR Section, High Court, Madras.

+lcc to Mr.G.Arul Murugan , Advocate SR.No. 66453

S.A.No.1566 of 2005

A.SK(05/03/2020)



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