

IN THE HIGH COURT OF JUDICATURE AT MADRAS

|             |              |
|-------------|--------------|
| RESERVED ON | DELIVERED ON |
| 22~03~2019  | 04~04~2019   |

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

S.A.No.449 of 2012

1.R. Pappa Naicker (Deceased)  
2.Rangasamy ... Appellants/Respondent/Plaintiff

Versus

1.P.Chinnaswami  
2.P/Rengappa  
3.S.Renugammal  
4.P.Chinna Muthu Naicker (Died)  
... Respondents 1 to 4 / Appellants 1 to 4 /  
Defendants

5.Nagammal

(RR5 to 7 brought on record as  
LRS of the deceased R4 vide Court  
order dated 11/06/2014 made in  
MP 1 to 3 of 2014 in S.A 449/12)

6.Palanisamy  
7.Chinnammal  
8.P.Chinnammal

(RR8 to 10 brought on record as  
LRS of the deceased)

9.Anandhakumar  
10.Susila  
11.Muthayee ... Respondents 5 to 11

Second Appeal filed under Section 100 C.P.C. against the judgment and decree of Sub Judge, Namakkal in A.S.No.161 of 2007 dated 28.07.2011 reversing the Judgment and Decree in O.S.No.189 of 2005 of District Munsif cum Judicial Magistrate, Paramathi dated 18.04.2007.

For Appellants .. Mr.N. Manoharan

For Respondents .. Mr.S. Saravanakumar  
for M/s.I. Abrar Md.Abdullah  
for R2,3,5 and 7

R4 & R6 (died)

R1, R8 to R11 - No appearance

#### JUDGMENT

Aggrieved over the finding of the First Appellate Court allowing the appeal setting aside the judgment of the trial Court granting permanent injunction, present second appeal came to be filed.

2. The brief facts leading to file this Second Appeal is as under:

2.(a) The suit properties originally owned by one Rankappa Naicker and Palani Naicker. The Plaintiff has purchased the suit properties from Rankappa Naicker on 11.04.1962. Similarly, he has also purchased from one Palani Naicker on 13.09.1982. From the date of the above purchase the Plaintiff is in absolute possession of the property and enjoyment of the same and also paying kist receipts. The defendants have no right whatsoever in the suit properties. Patta, Chitta and Adangal also in the name of the Plaintiff. Defendants are third parties to the suit properties. They are neighbouring land owners. The Defendants 1 and 2 threatened the Plaintiff to sell the property and thereby on 14.12.2005 all the Defendants trespassed into the suit property. However, their attempt was thwarted. Hence, the Plaintiff filed the suit.

3. Defendants filed written statement denying entire allegation stating that the suit properties are the lands in Survey Nos.22/1 and 22/2 of Ramadevam Village, Malipatty. one Muthayi Ammal was owner of the properties in Survey No.22. From the said Mauthayi Ammal one Kondappa Naicker and one Rangappa Naicker purchased the entire properties in Survey No.22. Kondappa Naicker had two sons viz., 1)Rangappa Naicker and 2) Palani Naicker. Plaintiff is the grandson of said Rangappa Naicker. Defendants 1 and 2 are the sons of Palani Naicker. Similarly, Rangappa Naicker had three sons viz., 1)Chennappa Naicker 2) Periamuthu Naicker and 3) Chinnamuthu Naicker. One of the sons of the Rangappa Naicker namely Periya Muthu Naicker sold his share in the property to his brothers Chennappa Naicker and Chinnamuthu Naicker. Accordingly Chennappa Naicker and Chinnamuthu Naicker each entitled for 1/4th share in Survey

No.22. Third Defendant has purchased 1/4th share on 23.08.2004 in Survey No.22/1 and 22. According to the defendants the Plaintiff is entitled to 1/4th share in the suit property. Defendants 1 and 2 together are entitled to 1/4th share, 3rd Defendant is entitled to 1/4th share and 4th defendant is entitled to 1/4th share in the suit properties. The properties have not been partitioned. When the matter stood thus, the plaintiff has obtained revenue records in his name for Survey Nos.22/1, 22/2 without the knowledge of the Defendants. The same are not binding on the Defendants. Hence, prayed for dismissal of the suit.

4.The Trial Court based on the revenue records decreed the suit on the ground that at the relevant point of time the defendants have not produced any documents. Whereas the First Appellate court received additional documents and held that the property is joint properties of the co-sharers. Hence, dismissed the suit filed for bare injunction. As against which the present appeal filed by the Plaintiff.

5. The appeal is not admitted so far. Heard the learned counsel appearing for the appellant. The learned counsel appearing for the appellant submitted that under Ex.A.1 dated 11.4.1962 one of the sons of Kondappa Naicker viz., Rangappa Naicker sold the property in Survey No.21/2, 22/1 and 22/2 his share in respect of the share towards the plaintiff. Similarly on 13.9.1982 under Ex.A.2 one Palani Naicker, another son of Kodappa Naicker sold his share in survey No.22/2A, 22/C and half share in the well. Under Ex.A.3 Patta No.249 issued in the name of Pappa Naicker for survey Nos.22/1A, 22/1C, 22/1D and 22/2B. The revenue records clearly show that the plaintiff ever since the date of purchase is in exclusive possession of the property. similarly Ex.A.4, Ex.A.6 and Ex.A.7 Patta and Certificate of the V.A.O. respectively clearly prove that the plaintiff is in exclusive possession of the property. Similarly Ex.A.9 is patta in favour of the defendant D.W.3. Ex.A.10 patta in relating to survey No.249.

6. Though it is the contention of the learned counsel, that though the Plaintiff has purchased properties in Survey Nos.22/2A, 22/2C and well in No.22/2B, 21/2, 22/1 under Exs.A.1 and A.2 the resurvey proceedings the plaintiff was allotted to Survey Nos.22/1A, 22/1C, 22/1D, 22/2A, 22/2B and 22/2C. Similarly Survey No.21 with sub divisions were allotted to Defendants 1 and 2. Hence, Patta was separately given. Whereas under Ex.A.11 one Pappa Naicker D.W.2 sold his share in the suit property in favour of three brothers in respect of Survey Nos.21/2G, 21/2I and 22/1G. The above properties not related to suit properties. Ex.A9 and Ex.A.10 pattas clearly show that the parties are in exclusive possession in respect of their

respective survey numbers. Therefore, it is the contention of the learned counsel appearing for the appellant even assuming that the property is undivided and all the co-sharers have a right, when the co-sharer established their exclusive possession, and UDR proceeding have taken long back, they are entitled to seek injunction against other co-sharers. Hence submitted that the First Appellate Court has not considered revenue records and simply dismissed the suit on the ground that the injunction is not maintainable against co-owners. Hence, prayed for allowing the appeal. Whereas the learned counsel appearing for the respondent/defendants submitted that the revenue records were obtained fraudulently behind the screen of the defendants. The Plaintiff is having only 1/4 share in the entire suit entre survey field Nos.22 and 21. Merely on the basis of convenient enjoyment of parties, it cannot be said that they are in exclusive possession, the properties have not partitioned. The Plaintiff has suppressed even the relationship in the plaint. The First Appellate Court rightly held that the property is joint property. The Plaintiff is having only 1/4th share in the suit properties. Therefore, he cannot maintain suit for bare injunction against the other co-owners. Hence submitted that the judgment of the First Appellate Court does not require any interference.

7. I have perused the plaint, written statement and documents. The suit has been laid for injunction in respect of 1/4th share in Survey No.22/1 and 22/2 and also share in the well situated in the Survey No.22/2B. The suit itself filed for claiming injunction in respect of 1/4th share in the above survey number. The boundaries has not been given. The properties have not been properly identified. It is well settled that any suit is filed in respect of the immovable properties, Properties have to be identified with specific boundaries and the description of the property must sufficiently to identify the properties and boundaries also to be clearly stated in the plaint as per Order 7 Rule 3 of C.P.C. The Plaintiff has filed suit for injunction of his 1/4th share in the suit property. No boundaries whatsoever mentioned in the suit property. The relationship of parties are not in dispute. Originally, the property is owned by one Muthayi ammal under Ex.B1 dated 10-04-1934 one Rangappa Naicker and Kondappa Naicker jointly purchased the suit properties. Kondappa Naicker had two sons viz., Rangappa Naicker and Palani Naicker. Similarly, Rangappa Naicker had three sons viz, Chennappa Naicker, Periyamuthu Naicker and Chinna Muthu Naicker. One of the sons of the Rengappa Naicker viz., Chennappa Naicker had three sons Muthu Naicker, Palani Naicker and Pappa Naicker. 4th Defendant is one of the sons of Rangappa Naicker. 1st and 2nd Defendants are the sons of Palani Naicker, who is the son of Kondappa Naicer. One of the sons of Chennappa Naicker, viz.,

Pappa Naicker appears to have sold his shares to his own brothers under Ex.A.11. Thereafter, above property has been purchased by D.W.3 under Ex.A.8. The Plaintiff has appeared to have purchased the property from one of the sons of Kondappa Naicker under Ex.A.1. Under Ex.A.1 he has purchased 6/10 share in the Survey No.21/2, 1/2 share in survey No.22/1 another 1/2 share in Survey No.22/2. Under Ex.A.1, he has purchased only undivided share in the entire suit properties.

8. Similarly under Ex.A.2 he has purchased undivided share from one Palani Naicker another son of Kondappa Naicker. He has purchased around 78 cents in Survey No.22/A, 35 cents in survey No.22/2C, half share in the Well in Survey No.22/2B. The documents Ex.A.1 and Ex.A.2 make it clear that he has purchased Survey No.21/2, 22/2, 21/1 and 22/1, 22/2, 22/2B, 22/2A and 22/2C. Thereafter, it appears that patta was granted in his name during the re-survey proceedings in the year 1982 in respect of the suit properties for survey Nos.22/1A, 22/1C, 22/1D, 22/2A, 22/2B and 22/2C, though he has purchased the property in different survey number.

9. It is the contention of the plaintiff that Ex.A3,A9,A10 Pattas stand in his name. Patta Number was given 249 in respect of survey No.22/1A, 22/1C, 22/1D, 22/2A, 22/2B and 22/2C. Though he relied upon revenue records to show the patta issued in his name in respect of the above survey numbers, whereas the suit property details of re-survey number never found place. He has sought Injunction generally in respect of Survey No.22/1, 22/2. The Defendants No.3 also purchased some shares from one Chennappa Naicker, Muthu Naicker and Palani Naicker under Ex.A.8. The Plaintiff has purchased the certain shares of one Rangappa Naicker and Palani Naicker. Defendantst 1 and 2 are the sons of Palani Naicker. Rangappa Naicker another joint purchaser had 1/2 share in the suit property. Said Rangappa Naicker had three sons viz., Chennappa Naicker, Peria Muthu Naicker and Chinna Muthu Naicker derived half share of Rangappa Naicker in the suit property. One of the sons of Rangappa Naicker namely Peria Muth Naicker sold his share to his two brothers. They in turn sold the property to the Defendant No.3 under Ex.B.8. The above documents makes it very clear that the plaintiff and defendants are co-sharers in the suit property. Merely because the revenue records were obtained based on the convenient enjoyment that may not be the ground to presume that the plaintiffs and defendants are in exclusive possession in respect of the shares. As long as the properties are not divided among the co-sharers and the property being an agricultural land merely based on the revenue records injunction cannot be granted against the other co-sharers. Therefore, the First Appellate Court finding that the defendants also co-owner

of the property does not require any interference. It is for the plaintiff to establish their right by filing separate suit for partition and division of the properties and exclusive possession by metes and bounds. The suit has been filed for 1/4 share in two suit fields. Merely on the basis of the revenue records, injunction cannot be granted. Accordingly, Ex.A.6 and Ex.A.7 mere certificate issued by the V.A.O.cannot be the basis for proving exclusive possession. Hence, this Court does not find any error or illegality in the findings of the First Appellate Court. There is no substantial Question of law involved in this Second Appeal.

10. Accordingly, the Second Appeal is dismissed. It is for the parties to work out their rights by filing appropriate suit for partition and for division of the property. No costs.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,  
Namakkal.
2. The District Munsif cum Judicial Magistrate,  
Paramathi.
3. The Section Officer,  
VR Section, High Court, Madras.-104.

+1cc to M/S.n.Manokaran, Advocate Sr.32984

+1cc to M/S.I.Abrar Md.Abdullah, Advocate Sr.33561

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S.A.No.449 of 2012

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srg 11/04/2019