

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.809 of 2014 and
M.P.No.1 of 2014

G.Chandrammal

...Appellant/Plaintiff

Vs.

1. M.Dakshinamoorthy
2. R.Arumugam
M.Gopal (died)

... Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the Sub Court, Gudiyattam, Vellore District dated 25.02.2014 in A.S.No.45 of 2012, reversing the judgment and decree of the District Munsif, Gudiyattam, Vellore District dated 04.09.2012 in O.S.No.21 of 2008.

For Appellant : Mr.K.A.Ravindran

For Respondents: Mr.D.A.Sugumar (for R1)

J U D G M E N T

The plaintiff in O.S.No.21 of 2008 whose suit for injunction was decreed by the trial Court, upon its reversal by the appellate Court in A.S.No.45 of 2012, has come up with this second appeal.

2. The suit was laid by the plaintiff/appellant contending that she had purchased the property pursuant to a decree for specific performance granted in O.S.No.396 of 1990 and the sale Deed was executed in her favour on 30.10.2010 by the learned Sub Judge, Gudiyattam in E.P.No.87 of 1999. Pursuant to the said purchase, the revenue records have also been mutated in the name of the plaintiff and the plaintiff has been in continuous possession and enjoyment of the property. Since the defendants who happen to be the sons of the sister of the vendor attempted to interfere with the possession of the plaintiff, the plaintiff had come up with the suit, seeking permanent injunction.

3. The suit was resisted by the 1st defendant contending that the suit itself is not maintainable. It is also contended that the suit property along with other properties belonged to one Panchalaiaammal, his maternal grandmother. It is claimed that the said Panchalaiaammal had executed two settlement deeds under Exs.B3 and B4 in favour of his mother Maragathammal on 23.11.1980 and 27.11.1980, settling certain properties along with the right in the Well and right to irrigation. Though the said Panchalaiaammal had executed another settlement deed in favour of his mother's sister Kuppammal on 11.02.1981, she cancelled the same under Ex.B2 dated 11.05.1981. It is also claimed that Maragathammal namely the mother of the 1st defendant filed a suit for partition in O.S.No.17 of 1988 and the same was decreed granting, half share in the property left behind Panchalaiaammal including the suit properties. It is the further claim of the 1st defendant that Maragathammal had also instituted a suit for injunction against the vendor of the plaintiff viz., Kuppammal and the said suit was also decreed in her favour. Therefore, according to the 1st defendant, the plaintiff was never in possession and enjoyment of the property and the decree in O.S.No.360 of 1990 will not bind either on Maragathammal or 1st defendant. The 3rd defendant filed a separate written statement contending that he is in possession of the property through a kind of an arrangement with the plaintiff.

4. At trial, the plaintiff was examined as PW1 and two other witnesses were examined as PW2 and PW3. Exs.A1 to A8 were marked. On the side of the defendants, 1st defendant was examined as DW1. Exs.B1 to B9 were marked.

5. Upon consideration of the evidence on record, the trial Court granted a decree for permanent injunction in respect of the suit property except those properties that are covered by Exs.B3 and B4, settlement deeds executed by Panchalaiaammal in favour of Maragathammal, the mother of the 1st defendant. Aggrieved, the 1st defendant preferred an appeal in A.S.No.45 of 2012.

6. The appellate Court on a reappraisal of evidence, concluded that the plaintiff has not proved her possession and enjoyment of the property on the date of the suit. The appellate Court also took note of the fact that the suit for partition was pending on the date of the agreement as well as on the date of the suit namely O.S.No.396 of 1990 filed by the plaintiff. The preliminary decree for partition has been granted and the same has not been questioned by the parties. The fact that a suit for injunction filed by Maragathammal against Kuppammal in O.S.No.865 of 1999 was decreed, was also taken into account by the appellate Court. Considering the

documentary evidence, particularly in the form of judgment and decree of the Civil Courts, in prior proceedings, the appellate Court concluded that the 1st defendant and Maragathammal are actually co-owners along with Kuppammal and the decree in O.S.No.396 of 1990 instituted by the plaintiff will not be binding on Maragathammal and the 1st defendant. On the said conclusion, the lower appellate Court found that at best, the plaintiff can be termed as a co-owner who acquired the undivided share from her vendor Kuppammal and invoked the principle that there cannot be an injunction against a co-owner. Thus, the lower appellate Court has reversed the decree for injunction granted by the trial Court and dismissed the suit. Aggrieved, the plaintiff has come up with this second appeal.

7. Notice of motion was ordered on 04.08.2014. Pursuant to the said notice, Mr.D.A.Sugumar, learned counsel appeared for the 1st respondent. Respondents 2 and 3 have been given up since they remained exparte before the Courts below. Mr.K.A.Ravindran, learned counsel appeared on behalf of the appellant.

8. Mr.K.A.Ravindran, learned counsel appearing for the appellant would vehemently contend that the lower appellate Court was not right in reversing the Judgment and decree of the trial Court, particularly when the plaintiff claimed her share under the decree granted by the competent Court, the Sale Deed executed by the said Court and the Revenue records are also mutated in the name of the plaintiff. Mr.Sugumar, learned counsel appearing for the 1st respondent would submit that the lower appellate Court has arrived at just conclusions on the evidence available and such factual findings cannot be interfered with in Second Appeal.

9. I have considered the submissions of the the learned counsel appearing on either side.

10. Admittedly, the suit agreement which was the subject matter of O.S.No.396 of 1990 has been entered into during the pendency of the partition suit in O.S.No.17 of 1988. The partition suit has now been decreed granting half share to Maragathammal, the mother of the 1st defendant. The said decree has not been challenged. There is also a decree for injunction against the vendor of the plaintiff in O.S.No.865 of 1999. The decree for injunction has also not been challenged. Of course, Mr.K.A.Ravindran, learned counsel for the appellant/plaintiff would contend that the plaintiff is not a party to the proceedings, admittedly, the present plaintiff acquired a right or interest in the property only on the execution of the Sale deed by the Court on 30.10.2000. The suit in O.S.No.865 of 1999 was instituted prior to the execution of the Sale Deed. Therefore, the plaintiff cannot contend that the decree in

O.S.No.865 of 1999 would not bind on her. Once the partition suit is decreed and the right of Maragathammal, the mother of the 1st defendant to a share in the property is declared, then, the agreement entered into between the plaintiff and Kuppammal cannot be enforced for the entirety of the property. At best, the plaintiff can acquire an undivided ½ share in the suit properties. The remedy of the plaintiff is to pursue the partition suit and seek separate possession of the share which would have been allotted to Kuppammal.

11. The lower appellate Court was justified in concluding that the plaintiff who has become the co-owner along with the 1st defendant and Maragathammal, cannot seek a relief of permanent injunction against them. Therefore, I do not see any question of law much less substantial question of law, to enable me to entertain this second appeal. The appeal therefore fails and it is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Sub Court,
Gudiyattam,
Vellore District.
2. The District Munsif,
Gudiyattam,
Vellore District.

Copy to

The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.K.A.Ravindran, Advocate Sr.20686
+1cc to Mr.D.A.Sugumar, Advocate Sr.20723

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