



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1530 of 2008

1.H.R.Gnanaprakash
2.H.R.Gunasekaran

...Appellants / Appellants /
Defendants

Vs.

R.Ruckmaniammal

...Respondent / Respondent /
Plaintiff

Prayer : The second appeal has been filed under Section 100 of C.P.C. against the judgment and decree dated 31.01.2008 passed in A.S.No.65 of 2007 on the file of the Subordinate Judge, Udhagamandalam, The Nilgiris, confirming the judgment and decree dated 22.08.2007 passed in O.S.No.138 of 2005 on the file of the District Munsif, Udhagamandalam, The Nilgiris.

For Appellants : Mr.T.R.Sathyamohan

For Respondent : No appearance

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 31.01.2008 passed in A.S.No.65 of 2007 on the file of the Subordinate Court, Udhagamandalam, The Nilgiris, confirming the judgment and decree dated 22.08.2007 passed in O.S.No.138 of 2005 on the file of the District Munsif Court, Udhagamandalam, The Nilgiris.

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

3.Considering the pleas and the materials placed on record, both oral and documentary by the respective parties, it is found that the suit has come to be laid by the plaintiff against the defendants for the relief of permanent injunction.

4.The defendants in O.S.No.138 of 2005 are the appellants in the second appeal.

5.According to the plaintiff, she is the absolute owner of the premises known as "Mahalakshmi Nilayam" more fully



described in the plaint schedule and by way of the sale deed dated 14.12.1977, undivided 2/5th share in the suit property had been acquired by the plaintiff's elder sister and the plaintiff and the balance 3/5th undivided share in the suit property had been acquired by the plaintiff and her elder sister by way of the release deed dated 27.05.1981 and thus, according to the plaintiff, her sister the deceased Sundariammal and she became the absolute owner of the suit property and as her elder sister and her husband H.Rajan had no issues, H.Rajan had married the plaintiff as the second wife and on the demise of Sundariammal, it is only the plaintiff, who had succeeded to the undivided 1/2 share of her sister in the suit property and accordingly, enjoying the same. The defendants are the plaintiff's sons and managing the lodge in the suit property on behalf of the plaintiff and however, they have been evading to pay the income derived from the lodge in the suit property and despite the repeated demands to handover the possession of lodge in the suit property, the defendants are attempting to act against the interest of the plaintiff and forced her to execute a settlement deed qua the suit property in their favour and also attempted to assault the plaintiff so as to grab the suit property and hence, the plaintiff was necessitated to lodge a police complaint against the defendants and the defendants had also endeavoured to disturb the plaintiff's possession and enjoyment of the suit property one way or the other and hence, according to the plaintiff, she has been necessitated to lay the suit against the defendants for the relief of permanent injunction.

6.The defendants resisted the plaintiff's suit mainly contending that the suit property among other properties had been purchased by Kartha of the joint family viz. H.Rajan, the father of the defendants. Neither the plaintiff nor her sister had any independent income to purchase the suit property and other properties. Though the properties had been acquired in the names of the plaintiff and her sister, the properties were always considered, treated and enjoyed as the joint family properties and the plaintiff has never been in the possession and enjoyment of the suit property at any point of time and it is false to state that the plaintiff had inherited the undivided 1/2 share of her sister as claimed in the plaint and the case of the plaintiff that the defendants had been running the lodge in the suit property on behalf of the plaintiff is false and the plaintiff is not entitled to receive any income from the suit property as claimed in the plaint. The defendants and their brothers are the paramount owners of the suit property and taking care of the same as well as the other properties and inasmuch as the plaintiff has no exclusive right, title, possession and enjoyment of the suit property, according to the defendants, the suit laid by plaintiff is not maintainable and liable to be dismissed.



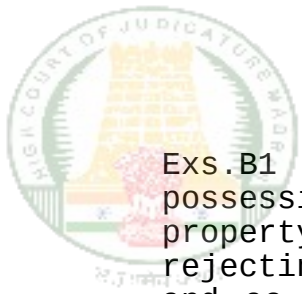
7. In support of the plaintiff's case, PW1 was examined and Exs.A1 to A6 were marked. On the side of the defendants, no oral evidence has been examined and Exs.B1 to B3 were marked.

8. On an appreciation of the materials placed on record, both oral and documentary and the submissions put forth by the respective parties, the Courts below were pleased to decree the suit in favour of the plaintiff as prayed for. Aggrieved over the same, the second appeal has been preferred by the defendants.

9. When the matter is taken up for hearing, there is no representation for the respondents. The respondents being called and remaining absent, set exparte.

10. The case has been projected by the plaintiff claiming that she is the absolute owner of the suit property. Per contra, according to the defendants, the suit property is the joint family property and the plaintiff has not entitled to claim the exclusive title to the suit property and in the panchayat held, the plaintiff is held to be entitled only to receive the income from the suit property and it is only the second defendant, who had been running the lodge and the plaintiff has never been in the possession and enjoyment of the suit property and the plaintiff had not interfered with their possession and hence, the suit laid by the plaintiff is liable to be dismissed.

11. Considering the materials placed on record, it is found that when Exs.A1 & A2, the title deeds pertaining to the suit property are found to be in the names of the plaintiff and her sister and when it is further noted that considering the documents marked as Exs.A3 to A5, it is only the plaintiff, who has been enjoying the suit property by paying tax, water charges etc., and accordingly, the defendants being the sons of the plaintiff, it is further noted that the defendants are enjoying the lodge in the suit property only on behalf of the plaintiff and controverting the abovesaid documentary evidence projected on the part of the plaintiff, the defendants have not placed any acceptable and reliable documents to evidence that they have any valid right or title over the suit property and as held by the Courts below merely from Exs.B1 to B3 and the plaintiff having admitted her signature only in the abovesaid documents and when the plaintiff has disowned the contents of the said documents, merely from Exs.B1 to B3 documents we cannot infer or hold that the defendants had acquired a valid title to the suit property as put forth by them. The defendants having failed to establish their claim of title to the suit property in any manner and when the defendants have also not entered into the witness box to explain and establish as to how they claim title to the suit property and enjoying the suit property independently in their own right and as above pointed out,



Exs.B1 to B3 by themselves would not confer any valid title, possession and enjoyment of the defendants qua the suit property, the Courts below are found to be justified in rejecting the defence version and upholding the plaintiff's case and as averred by the plaintiff, the defendants being the sons of the plaintiff taking advantage of the plaintiff's weakness are found to be endeavoring to grab the suit property from the plaintiff one way or other and accordingly, the defendants have endeavoured to disturb the plaintiff's possession and enjoyment of the suit property, in such view of the matter, the plaintiff is entitled to maintain the suit for the relief of permanent injunction against the defendants. Even assuming for the sake of arguments that the plaintiff is only one of the coowners of the suit property as sought to be projected by the defendants' counsel during the course of arguments, as the coowner, the plaintiff is entitled to maintain the suit for permanent injunction against the intruders or trespassers, who are interfering with her possession and enjoyment of the suit property.

12.The reasonings and conclusions of the Courts below for upholding the plaintiff's case being found to be based on the proper appreciation of the materials placed on record and purely on factual matrix and when they are not shown to be in any manner perverse, illogical and irrational, in my considered opinion, no substantial question of law is found to be involved in this second appeal.

In conclusion, the judgment and decree dated 31.01.2008 passed in A.S.No.65 of 2007 on the file of the Subordinate Judge, Udhagamandalam, The Nilgiris, confirming the judgment and decree dated 22.08.2007 passed in O.S.No.138 of 2005 on the file of the District Munsif, Udhagamandalam, The Nilgiris, are confirmed. Resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

sms

Copy To

1.The Subordinate Judge,
Udhagamandalam,
The Nilgiris.



2.The District Munsif,
Udhagamandalam,
The Nilgiris.

+1cc to Mr.T.R.Sathiyamohan, Advocate SR.No.11959

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GMR(CO)
RVM(22/09/2021)