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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.No.1624 of 2008

and

C.M.P.No.2077 of 2008

Madhavasudharasanam

...Appellant

versus

Kaliaperumal

...Respondent

Second Appeal filed to set aside the judgment and decree dated 28.03.2002 in A.S.No.163/2000 & Cross Appeal in the Court of Additional District Judge-cum-Chief Judicial Magistrate, Cuddalore confirming the judgment and the decree in O.S.No.22/97 on the file of the Sub Court, Panruti and dated 22.11.2000.

For Appellant : Ms. R. Meenal

For Respondent : No appearance

JUDGMENT

The unsuccessful plaintiff is the appellant before this Court challenging the judgment and decree of the Courts below in and by which his relief claimed for permanent injunction has been negatived.

2. The facts upon which the appellant is before this Court are as follows:

Plaintiff's Case:

3. It is his case that the suit properties were his ancestral properties. Under a registered partition deed dated 16.03.1969 the plaintiff's father, his mother and brother had partitioned the property and the 'B' Schedule property therein was allotted to his father. The appellant, his father and his only brother constituted a hindu undivided family and were enjoying the suit property jointly.

4. Meanwhile, a suit was filed by St. Joseph School,



Thirupapuliyur on the file of the Subordinate Judge, Cuddalore to recover the amount that was due to the School by plaintiff's father. The suit was decreed and the appellant's father's 1/3rd share was brought to sale in execution. Even at that time, it is the case of the plaintiff that the property remained undivided. Thereafter, one Annamalai had purchased the properties in Court auction. However, the said Annamalai had not got the property purchased by him divided by metes and bounds and the appellant would also state that the delivery of 1/3 rd share pleaded by the said Annamalai is false. It is the case of the appellant that Annamalai had never taken physical possession of the property purchased by him. The said Annamalai had sold a portion of the property purchased by him to the defendant and the defendant after the purchase started to interfere with the peaceful possession and enjoyment of the suit property by the plaintiff, thereby constraining the appellant to file the suit in question namely O.S.No.22 of 1997 on the file of the Sub Court, Panruti.

Defendant's Case:

5. The defense to the above suit was that the respondent's vendor Annamalai had purchased not only the 1/3rd share in the suit property but also other items in the auction held on 16.03.1989 which was confirmed in E.P.No.59 of 1988 on the file of the Sub Court, Cuddalore.

6. The said Annamalai had taken possession of his 1/3rd share through process of court on 8.07.1990. The 1/3rd share purchased by Annamalai was carved out from the larger extent with the help of a Taluk Surveyor in the presence of plaintiff, his brother and father. The portion which was allotted to Annamalai is an 1/3rd share on the western side in the 1st and 3rd item and middle portion in the 2nd item and the eastern portion in the 4th item. From the date of the said allotment, Annamalai was in exclusive and absolute possession and enjoyment of that portion.

7. The respondent's case is that by reason of this allotment Annamalai was in exclusive possession and enjoyment of 1 acre 47 cents out of the total extent of 4.48 acres in the 1st item, 17 cents out of 53 cents in the Second item; 12 cents out of 38 cents in the 3rd item; 74 cents out of 2.22 acres in the 4th item. Thus, the defendant had purchased an extent of 2.50 acres in all the four survey numbers with specific boundaries on 17.07.1995 under two registered sale deeds.



8. The respondent would submit that after his purchase, he had been in possession of the said property and also got the revenue records mutated in his name. He had also been paying kist in respect of the properties from the fasli year 1405. The respondent had also taken out a plea that the suit was not maintainable since the defendant is a co- owner and there cannot be an injunction against the co-owner.

Trial Court:

9. The Trial Court had framed an issue as to whether the plaintiff was entitled to the relief of permanent injunction.

10. The plaintiff had examined himself as P.W.1. One Malayyan as P.W.2, Samikkannu as P.W.3 and marked Ex. A.1 alone. On the side of the defendant, the defendant had examined himself as D.W.1 and the original auction purchaser as D.W.2. Exs. B.1 to B.13 were marked on the side of the respondent.

11. The learned Subordinate Judge, Panruti by judgment and decree dated 22.11.2000 dismissed the suit.

Appellate Court:

12. Challenging the said judgment and decree, A.S.No.163 of 2000 was filed on the file of the Additional District Judge cum Chief Judicial Magistrate, Cuddalore. The learned judge also confirmed the judgment and decree of the Trial Court and challenging the same, the appellant is before this Court.

Submission:

13. Ms. Meenal, learned counsel for the appellant would submit that the defendant has not proved that the property had been partitioned by metes and bounds and that he is in possession of the same. On the contrary, it is the plaintiff who is in possession and enjoyment of the said suit property and the possession of the appellant has been confirmed by P.W.2 and P.W.3. She would submit that the Courts below having found that respondent has not proved his case of division of the property ought to have granted the decree for injunction.

14. Heard the counsel and perused the papers.

Discussion:



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15. The Courts below have clearly held that the auction purchaser Annamalai has been allotted property in each of the items of the property and possession has been handed over through court in execution proceedings.

16. This factum has been admitted by the plaintiff. Therefore, Annamalai, auction purchaser become the co-owner in respect of the suit property and he had sold the portion of the same to the defendant, the respondent herein. Therefore, the respondent has also become the co-owner.

17. It is the a well-settled principle of law that there cannot be injunction against the co-owner. The respondent and his predecessor in title are co-owners in the suit schedule property. Therefore, the Courts below have rightly dismissed the suit for bare injunction.

18. I do not find any substantial question of law for consideration in the above Second Appeal. Therefore, the Second Appeal stands dismissed. Consequently, the Miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrn

To

1.The Additional District Judge-cum-Chief Judicial Magistrate,
Cuddalore

2.The Sub Court, Panruti

+1cc to M/s.R.Meenal, Advocate, S.R.No.29131

S.A.No.1624 of 2008
and
C.M.P.No.2077 of 2008

GSM(CO)
SB(28/10/2021)