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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.08.2021

PRONOUNCED ON : 09.08.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

S.A. No.1202 of 2006

and

MP No.1 of 2006

1. H.Sundaram
2. Saroja
3. S.Sujatha @ Singari
4. Karthik @ Santhosh ... Appellants

versus

1. M.Ravi
2. Kaliammal
3. Mala
4. Radha ... Respondents

Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree in A.S. No.26 of 2006, dated 14th July, 2006 on the file of the Subordinate Judge, Nilgiris, Udagamandalam as confirmed by the judgment and decree in O.S. No.109 of 1999 dated 8th February, 2006 on the file of the District Munsif Court, Coonoor.

For Appellants : Mr.S.L. Sudarsanam

For Respondents : Mr.N.Damodaran

JUDGMENT

(Heard Video Conference)

This Second Appeal has been filed challenging the concurrent findings of the Courts below.

2. The appellants are the defendants in the suit O.S. No.109 of 1999 on the file of the District Munsif Court, Coonor and the respondents are the plaintiffs.

3. The suit was filed for permanent injunction to restrain the defendants from interfering with the plaintiffs peaceful possession and enjoyment of the suit schedule property measuring 3 ½ cents in R.S. No.694/1 of Ketty Village, Coonoor Taluk, The Nilgris District.

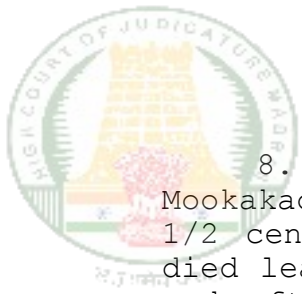


4. In the forthcoming paragraphs, the respective parties are described as per their litigative status in the suit.

5. The case of the plaintiffs is that they are the absolute owners of the suit schedule property. According to them, the Late first plaintiff's father Sevanan alias Meena Sevanan became entitled to the land measuring 5 cents in RS No.694/1 of Ketty Village, Coonoor Taluk, Nilgris District and an exclusive enjoyment patta was also granted for the said property in favour of Meena Sevanan after re-survey and settlements of lands which was carried out during early 1980's. After the death of the said Sevanan alias Meena Sevanan, his son Late S. Mathan, the first plaintiff in the suit inherited the same. According to the plaintiffs, S.Mathan sold an extent of $1\frac{1}{2}$ cents out of 5 cents to R.Sokkan by way of registered sale deed dated 28.10.1999 which has been marked as Ex.A5. According to the plaintiffs, R.Sokkan has also put up a building on the land purchased by him from the Late first plaintiff. According to the plaintiffs after the sale of $1\frac{1}{2}$ cents, the plaintiffs are now the owners of the remaining $3\frac{1}{2}$ cents of land in RS No.694/1, which is the suit schedule property and according to them they are in exclusive possession and enjoyment of the same. According to the plaintiffs, the defendants started interfering with their peaceful and enjoyment of the suit schedule property during the first week of November 1989, which necessitated them to file the subject suit O.S. No.109 of 1999 before the District Munsif Court, Coonoor.

6.However, it is the case of the appellants / defendants as seen from their written statement that the plaintiffs are not the exclusive owners of the suit schedule property as according to them, the plaintiffs and the defendants are the co-owners. According to them the plaintiffs and defendants are joint owners of 0.84 acres in Survey No.788 of Ketti Village, which were earlier acquired by their common ancestor namely Bellan and the said Bellan died intestate leaving behind him his only son Kakkamallan, who also died intestate leaving behind his sons viz., Mookakadan, Suri Nandhi, Kongan and Bellie and the first appellant / first defendant is the grand son of Mookakadan and the first respondent / first plaintiff is the grand son of Kongan and the second defendant comes under the branch of Mathan.

7. It is further contended by the defendants that out of total extent of 0.84 acres in Survey No.788 of Ketti village, both the sons of Bellan namely Nandhi and Mathan were entitled to 42 cents each and after the death of Nandhi, his only son Kakkamallan inherited 42 cents and he died, leaving behind his sons namely Mookakadan, Suri Nandhi, Kongan and Bellie, each entitled to $10\frac{1}{2}$ cents out of the said 42 cents in the said survey number.



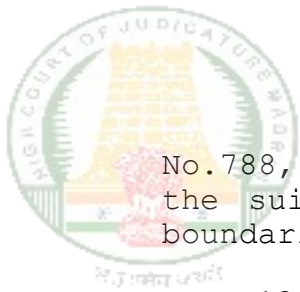
8. It was further contended by the defendants that Mookakadan was in possession and enjoyment of his share of 10 1/2 cents in S. No.788 of Ketti Village till his death and he died leaving behind his only son Hutchan to succeed his property and after the death of Hutchan, his two sons namely Raju and Sundaram, the first appellant / first defendant herein succeeded to the said estate and each of the sons of Hutchan are entitled to 5 cents and Sundaram, the first respondent / first defendant herein is entitled to his share of 5 cents and he has been in possession and enjoyment of the said property.

9. Similarly according to the defendants, the other son of Hutchan namely Raju was also entitled to 5 cents and he died leaving behind his three sons namely Sokkan, Chandran and Sudevan and similarly the grandfather of Mathan / the first plaintiff, namely Kongan, became entitled to 10 cents of land. The said Kongan, son of Kakkamallen, died intestate leaving behind his three sons namely Kallan, Joghee and Sevanan @ Meena Sevanan to succeed his estate and the three sons of the said Kongan sold among other properties, the said 10 cents of land in S. No.788 of Ketti Village by virtue of a sale deed dated 02.12.1912 and registered as document No.281/1912 on the file of the Sub-Registrar, Coonoor (Ex.B1). Hence, the defendants contended that neither the first plaintiff nor the other plaintiffs have any share in S.No.788 of Ketti Village and after execution of the said sale deed, dated 02.12.1912, the said property was transferred to various purchasers under Exhibits B-2, B-3, B-4 and B-5 sale deeds and finally came to the hands of one Marimuthu.

10. Before the Trial Court, ten documents were filed on the side of the plaintiff, which were marked as Exs.A1 to A10 and the second plaintiff (M.Ravi) was examined as a witness (PW1). On the side of the defendants, 22 documents were filed, which were marked as Exs.B1 to B22 and the first defendant was examined as a witness (DW1).

11. The Trial Court after framing issues and after trial passed a judgment and decree dated 03.02.2006 in O.S. No.109 of 1999 decreeing the suit in favour of the plaintiffs by giving a finding that the subject matter of the properties under Exs. B1 to B7, documents of title relied upon by the defendants pertain to Survey No.806 measuring an extent of 28 1/2 cents and two cents with building in Survey No.788 of Ketti village, Coonoor Taluk and does not relate to the suit schedule property measuring 3 1/2 cents in Survey No. 788 of Ketti village, Coonor Taluk.

12. The Trial Court has also given a finding that the boundaries in respect of the land measuring two cents in Survey



No.788, which the defendants rely upon does not also pertain to the suit schedule property, which is having totally different boundaries.

13. The Trial Court in its judgment also gave a finding that the sale deed dated 28.10.1999 (Ex.A5) executed by the first plaintiff in favour of one R.Sokkan who is none other than the own brother's son of the 1st defendant for the land measuring 1½ cents in Survey No.788 which corresponds to R.S. No.694 /1, is a validly executed sale deed. The Trial Court has given a categorical finding based on the evidence available on record that the suit schedule property in the present suit and suit schedule property under Exs.B7 and B8 and the subject matter of sale under Exs.B1 to B5 are entirely different though situated in the old Survey No.788, which originally consisted of 94 cents.

14. The Trial Court has given a categorical finding that the property described in Exs.B1 to B7 and the suit schedule property are distinct and situated in different places and hence the defendants are not co-owners and further held that the suit is also not barred by the principles of resjudicata.

15. Aggrieved by the judgment and decree dated 03.02.2006 passed in O.S. No.109 of 1999, the defendants in the suit preferred a regular appeal before the Subordinate Court, Uthagamandalam, Nilgiris District in A.S. No.26 of 2006.

16. The Lower Appellate Court also confirmed the findings of the Trial Court and dismissed the appeal filed by the defendants. Aggrieved by the judgment and decree dated 14.07.2006 passed in A.S. No.26 of 2006, the defendants have preferred this Second Appeal.

17. This Court admitted the Second Appeal on 30.11.2006 by formulating the following substantial question of law :

1. Whether the lower court is right in holding that the burden of proof to prove the case lies with the Defendants instead of the Plaintiffs?

2. Is the lower court right in granting permanent injunction against the co-owner of the property especially when the rights of the Defendants are not disputed?

18. Heard Mr.S.L.Sudarsanam, learned counsel for the appellants and Mr.N.Damodaran, learned counsel for the respondents.

Submissions of the learned counsels :

19. The learned counsel for the appellants drew the attention of this Court to the documents which were marked as



Exhibits before the Trial Court and in particular, he referred to Ex.A1, which is the Chitta extract dated 25.10.1999 and would submit that the said document makes it clear that the suit schedule property was jointly owned by the forefathers of the plaintiffs as well as the defendants. According to him, the plaintiffs and the defendants being their respective descendants have become the co-owners of the suit schedule property. According to him, as per settled law being co-owners, no injunction can be granted against the other co-owner. According to him, the Trial Court and the Lower Appellate Court has concurrently committed an error by granting permanent injunction as prayed for by the plaintiffs in the suit against the defendants.

20. The learned counsel for the appellants would further submit that the plaintiffs having not proved their title over the suit schedule property through documentary evidence, are not entitled for grant of permanent injunction. According to him, when there is a cloud over the title of the plaintiffs over the suit schedule property, a bare injunction suit is not maintainable without seeking the relief of declaration. According to him under Section 102 of the Indian evidence Act, the burden is on the plaintiffs to prove the tile over the suit schedule property which they have miserably failed to do so before the Courts below.

21. The learned counsel for the appellants also drew the attention to the findings of the Courts below and would submit that the said findings are erroneous and suffers from perversity and not given based on the materials and evidence available on record.

22. Per contra, the learned counsel for the respondents would submit that the suit schedule property is the absolute property of the plaintiffs. He would further submit that the plaintiffs ownership of the suit schedule property has been recognised by the defendants, since the plaintiffs had already sold 1 ½ cents out of the five cents in old Survey No.788 which corresponds to new Survey No.694/1 to R.Sokkan under a sale deed dated 28.10.1999, which has been marked as Ex.A5 before the Trial Court. He has further submitted that the said sale deed dated 28.10.1999 (Ex.A5) remains unchallenged before any Court of law. He would further submit that R.Sokkan is none else than the first defendant's nephew (own brother's son).

23. The learned counsel for the respondents also drew the attention of this Court to Exs.B1 to B8, which were marked as Exhibits on the side of the appellants / defendants and would submit that the said property is totally different from the suit schedule property. He would submit that property described in



Exs.B7 and B8 and the suit schedule property are distinct and situated in different places.

24. He then drew the attention of this Court to the findings of the Trial Court as well as the Lower Appellate Court and would submit that only based on materials and evidence available on record, the Courts below have concurrently held that the plaintiffs are exclusively enjoying the suit schedule property and are in possession of the same having inherited the same from their forefathers. Therefore, they cannot be treated as co-owners of the defendants. He would submit that a categorical finding has been given by the Courts below that the documents produced by the defendants which were marked as Exs.B1 to B8 does not relate to the suit schedule property. Hence, he would submit that when the plaintiffs have proved their title over the suit schedule property and have established that the defendants are not their co-owners, the Courts below were right in granting the relief of permanent injunction in their favour. He would further submit that the factual issues raised by the defendants were correctly considered by the Courts below and there is no substantial question of law involved in this Second Appeal.

Discussion :

25. This Court has perused and examined the materials and evidence available on record.

26. The subject matter of the property under Exs.B1 to B5, documents of title pertain to Survey No.806 measuring an extent of 28 ½ cents and two cents with building in Survey No.788, Ketti Village, Coonoor Taluk, The Nilgiris District. The subject matter of the suit O.S. No.92 of 1976 under Exs.B6 and B7 also pertains to Survey No.806 measuring an extent of 28 ½ cents and two cents in Survey No.788 and two buildings situated therein. While describing the boundaries of two cents in old Survey No.788, which corresponds to new Survey No. 694 /1, the boundaries are described as follows :

North By : House of Hudson;
South By : T.K.Dhadhan House;
East By : T.K.Dhadhan House and
West By : House of Korakallan

27. When compared with the above mentioned boundaries for the two cents of land in old Survey No.788, corresponds to new Survey No.694/1 with the boundaries mentioned in the sale deed, dated 28.10.1999 (Ex.A5) executed by the Late first plaintiff in favour of R.Sokkan, it will be clearly noticed that the land belonging to the plaintiffs which is the suit schedule property is totally different from the land measuring two cents in re-survey No.788, which corresponds to new Survey No.694/1, though both the properties fall under the same survey number.



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28. The schedule of the suit schedule property as well as its boundaries are as follows :

Registration District	:	The Nilgiris
Registration Sub District:		Coonoor
Village	:	Ketty
R.S. No.	:	694/1
Total Extent	:	0.02.0 Acres or 5 cents
Extent owned, possessed and enjoyed by the Plaintiffs and for which injunction is sought:0.03 1/2 Acre (3 1/2 cents)		

29. The Trial Court and the Lower Appellate Court in its concurrent findings have correctly examined the documents which were marked as Exhibits on both sides and only thereafter have come to the conclusion that the suit schedule property is exclusively possessed by the plaintiffs having inherited the same from their forefathers, whereas the documents produced by the defendants which were marked as Exs.B1 to B8 pertain to a different property and are distinct and are situated in different places. Therefore, this Court after perusing and examining the evidence available on record is in agreement with the findings of the Courts below and does not find any infirmity in the said finding. Therefore, the defendants cannot claim to be co-owner of the suit schedule property. The plaintiffs have also discharged their burden under Section 102 of the Indian Evidence Act by letting in oral and documentary evidence for the purpose of getting their relief of permanent injunction as sought for in the suit and the Courts below have rightly granted the said relief in their favour. When the plaintiffs have been able to prove their ownership and possession, the necessity to file a suit for declaration will not arise. The issues raised by the appellants in this Second Appeal are factual issues which have been adequately and correctly considered by the Courts below as there are no debatable questions of law involved in this Second Appeal and there is no merit in the same. The substantial questions of law formulated by this Court at the time of admission of this Second Appeal are answered against the appellants and accordingly this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



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To

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1. The Subordinate Judge, Udagamandalam.

2. The District Munsif, Coonoor.

Copy to: The Section Officer,
Vernacular Records,
High Court, Madras.

+1cc to Mr.M.Damodaran, Advocate, S.R.No.39084

S.A. No.1202 of 2006

JP-II(CO)
CB(21/10/2021)