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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2021

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SECOND APPEAL NO.1111 OF 2012

AND

MP NO.1 OF 2012

1.A.Duraisamy
2.Rajammal Duraisamy
3.S.Pattappan
4.V.P.Somasundaram
5.R.Mahindran
6.N.K.Sivashanmugam ... Appellants/Respondents/Plaintiffs

Vs.

1.K.P.Saravanan
S.Ramachandran (died)
2.Saraswathi
3.S.Ramya
4.Minor Nihitha ... Respondents/Appellants/Defendants
Rep.by.Guardina S.Ramya

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 17.08.2012 passed in AS No.58/2012 on the file of I Additional Sub Court, Erode, reversing the judgment and the decree dated 06.08.2011 passed in OS No.117/2007 on the file of District Munsif's Court, Gobichettipalayam.

For Appellants : Ms.Hema Sampath
Senior Counsel for Ms.R.Meenal

For Respondents : Mr.N.Manokaran

J U D G M E N T

Aggrieved over the reversal of the decree granted in favour of the appellants, this Second Appeal has been preferred.

2. For the sake of convenience, the parties are called with respect to their status in the Suit.



The plaintiffs are the appellants. The defendants are the respondents. Originally, the plaintiffs filed a Suit for declaration of title and perpetual injunction restraining the defendants from interfering with their peaceful possession. According to the plaintiffs, the Suit Schedule properties originally belonged to one Maravannan. The said Maravannan has acquired the properties. After the demise of said Maravannan, his legal heirs sold the suit properties by way of a registered Sale Deed dated 12.06.1995 for a valid consideration in favour of the plaintiffs and handed over possession to them.

3. According to the defendants, the plaint averments are false and the property does not belong to Maravannan's family. But, it is an ancestral property, which belonged to M.Chennivannan, the father of the Maravannan. From Chennivannan, his sons namely Karuppavannan and Maravannan have inherited the properties and all the properties lying in S.No.350 sold without boundaries as common properties. The plaintiffs purchased certain properties from the common properties without any boundaries and defendants also purchased the properties in the very same survey number without any boundaries. Since it was sold as a common land, without boundaries, or without partition by metes and bounds, the plaintiffs are not entitled to take possession of the property or claim possession and thereby, claim of injunction restraining the defendants is not maintainable. When the property held by the co-shares is not divided by metes and bounds, there cannot be any grant of injunction and the plaintiffs must have approached this Court for partition rather than for grant of declaration. Therefore, the declaration and injunction Suit filed by the plaintiffs is not maintainable.

4. The Trial Court has framed appropriate issues and after analysing the oral and documentary evidence has decreed the Suit in favour of the plaintiffs.

5. On appeal, the appellate Court considered that the Sale Deed vide Ex.A14, which was executed without any specific boundary that too in common. Further, after the sale of 42 ½ cents to the plaintiffs vendors ancestors still remains 84 ½ cents belonged to the joint family. There is no account with respect to that portion of the property with specific boundaries. As long as the subsequent sale deeds by which, the said Maravannan and Nagavannan acquired the properties vide Exs.A10, A14 and A16 goes without boundaries and purchased in common, it shall be considered that common property and the



plaintiffs have not proved their possession over the specific properties and therefore, they are not entitled to the relief of injunction sought for by them. Further, the whole extent of the property owned by several co-owners. Without impleading them, the suit is liable to be dismissed for non-joinder of parties and accordingly, the appellate court reversed the decree granted by the Trial Court and dismissed the suit. The plaintiffs have preferred the above Second Appeal and the same was admitted on 21.11.2012 on the following substantial questions of law:-

(1) Whether in law the lower Appellate Court was right in not adverting to the clear admissions of the 1st defendant as D.W.1 regarding the title and possession of the appellants and their predecessors in title?

(2) Whether in law the lower Appellate Court was right in reversing the decree of the trial Court on issues not pleaded or framed before the trial Court?

(3) Whether in law the lower Appellate Court was right in relying on Ex.B17 dt. 12.06.1995 sale agreement in favour of the respondents which was executed on the same date of Ex.A6 sale to the appellants and in spite of D.W.1's admission that he was present at the time Ex.A6 was registered?

5. Heard the rival submissions.

6. From the perusal of the materials placed before this Court, it is noted that the fight is between the purchasers of the properties from two branches of the family. Originally, Chennivannan purchased an extent of 1 Acre 5 $\frac{3}{4}$ cents of land by way of registered sale deed. He had two sons namely, Karuppavannan and Maravannan. After that, there is no clear detail as to the partition of properties between the two sons namely, Karuppavannan and Maravannan. But, there are lot of documents marked by both the sides to show that the said Maravannan has purchased several other properties in his individual name. In fact, he has purchased the property from his brother Karuppavannan and his sons wherein, it is stated that they do not have any specific share or right over the properties after it's conveyance. Apart from this, there were several deeds executed by Karuppavannan and his sons individually vide several documents. For example, Ex.A37 is the mortgage deed executed by



Kumaravannan S/o. Karuppavannan wherein, he executed a usufructuary mortgage in respect of his property possessed by him in S.No.350 in favour of one Rangasamy Gounder, wherein it is clearly mentioned that he has handed over the possession of the land and house in favour of the mortgagee and has undertaken to repossess it on discharge of debt.

7. From the documents marked, it is clearly noted that each of the legal heirs of Karuppavannan has mortgaged their properties and handed over possession of their specific property in favour of the mortgagees. The properties purchased by Maravannan vide Exs.A10, E11, A14 and A16 were acquired by him in his individual capacity. In so far as those properties are concerned, they are the self acquired properties of Maravannan. From the exhibits marked before the Court, it can be easily inferred that each and every purchaser has enjoyed the property and is having exclusive possession of the same. In that event, the finding of the lower appellate court that it was purchased in common and there is no division of status or division of property or identity of property cannot be accepted. For example, the usufructuary mortgage executed by the sons of Karuppavannan, they have handed over possession of the house and land. From the other documents, it can be seen that there are lot of houses built in the property. When individual houses are built, it shows that the purchasers of the properties are having possession of the new properties. Therefore, the finding of the lower appellate court that the properties are undivided properties and enjoyed by the legal heirs of Chennivannan and their successors in common cannot be accepted. Likewise, the contention that the purchasers were also enjoying without any division by metes and bounds cannot also be accepted.

8.Mr.N.Manokaran, learned counsel for the respondents relied on the following judgments in support of his contention:-

(i) Judgment of the Hon'ble Supreme Court in RAMDAS VS. SITABAI AND OTHERS [2009 (7) SCC 444]. The relevant portion of the judgment is extracted as follows:-

"19. In view of the aforesaid position there could be no dispute with regard to the fact that an undivided share of co-sharer may be a subject matter of sale, but possession cannot be handed over to the vendee mutual settlement or by a decree of the court."

(ii) Judgment of this Court in T.P.KATHIRESAN (DIED) AND OTHERS VS. R.RAMADASS (DIED) AND OTHERS [2020 (5) MLJ 748].



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The relevant portion of the judgment is extracted as follows:-

"27. From the above decisions, the position of law that emerges is that the purchaser of an undivided interest in coparcenary property cannot demand possession or retain possession against other shares. His right is to sue for partition and seek allotment. To use the words of the Hon'ble Supreme Court his right to possession would date from the period when a specific allotment was made in his favour. Therefore, unless it is shown that allotment of a specific property was made in favour of the said purchaser of an undivided interest, he would not have the right to get possession of the property."

(iii) Judgment of this Court in EXECUTIVE OFFICER, ARULMIGU CHOKKANATHA SWAMY KOIL TRUST, VIRUDHUNAGAR VS. CHANDRAN & OTHERS [2017 (1) L.A. 856]. The relevant portion of the judgment is extracted as follows:-

"30. As noted above, one of the issues framed, as to whether the suit is bad for non-joinder of necessary party. The said issue was answered against the plaintiff and it was held that suit is bad for non-joinder of Janaki Ammal a necessary party, whose name was recorded against Survey No.188/2. Without adverting to the said findings of the trial court and the Appellate Court, the High Court has erroneously decreed the suit of the plaintiff."

The above said judgments relied on by the learned counsel appearing for the respondent will not apply to the case on hand.

9. Furthermore, it is noted that the Ex.B17 is a sale agreement dated 12.06.1995. The first defendant, who deposed as D.W.1 during his cross examination, would categorically state that they have registered the sale agreement on 12.06.1995. Thereafter, they have registered the sale only after a period of 12 years. It is very important to note that on the date of registration of the sale agreement, from their vendors, the plaintiffs have registered the sale in the very same Registrar's office. In the morning, the sale agreement was registered and in the evening, the sale deed was registered. D.W.1 would further depose that they have acted as Mediators / agents / brokers of



the vendors and they have sold the properties to which, they have got sale agreement. They have not given any complaint to the police nor have taken any legal action for execution of the sale deed with regard to the same property. Neither they have approached their vendors to take steps to recover the properties and hand over to them. Further, they have taken legal advice from a lawyer and inspite of that they have not taken any steps. Further, he would state that he has not filed any suit for partition, against the plaintiffs for possession of the suit properties. Further, they have purchased the property without verifying the parent deeds.

10. From the above deposition, it is very clear that the defendants had definite knowledge about the sale executed by the descendants of Maravannan in favour of the plaintiffs, yet they have not taken any steps challenging the sale for a period of 12 years. Apart from that, he would further depose that the mortgages executed by the sons of Karuppavannan in favour of third parties is known to him and that the sale of properties in favour of Maravannan vide Ex.A14 by Karuppavannan, Kumaravannan and Rangasamy are also known to him. This statements would clearly show that the defendants were very much aware of the sale of the suit properties in favour of Maravannan and the enjoyment of the properties by the legal heirs of Karuppavannan in their individual capacity and the mortgages and usufructuary mortgages made by them. In spite of having knowledge, the defendants have not taken any step for establishing their legal rights over the suit properties. But they have made a prime admission after a period of 12 years by registering the sale in their favour vide Ex.B21 and they have attempted to transfer the patta in their name. In fact, the proceedings of the Tahsildar, which is marked as Ex.A20 would go to show that the defendants were not in possession and the possession is in favour of the plaintiffs and therefore, the application for transfer of patta was dismissed, which clearly shows that the plaintiffs were in possession and it is not that the property was enjoyed as a common property by all the purchasers and they were having right as co-owners over an undivided property. On the other hand, the materials go to show that junior person, who purchased the property in S.No.350 without specific boundaries were in fact enjoying it individually in accordance with the extent of the land purchased by them. In that event, the other purchasers of lands in S.No.350 may not have common right or title over the property. It shall be construed as an individual right by the conduct of Karuppavannan and Maravannan, it can be easily inferred that the division of status as give as early as in 1940's where they started acquiring lands and selling lands in their individual capacity. Further, the legal heirs of Karuppavannan have mortgaged the property in their individual



capacity and handed over possession of a definite property, which were sold by them.

11. Therefore, the finding of the lower appellate court that it is a common land without specific boundaries and common enjoyment cannot be accepted and therefore, the further finding that the suit is bad for non-joinder of parties also cannot be accepted. Therefore, specific admission made by the first defendant as D.W.1 that he was aware of the registration of the sale deed in favour of the plaintiff and their possession from then on and also the conduct of the descendants of Karuppavannan in mortgaging their individual property and handing over possession clearly establishes that possession was handed over to the respective parties on sale or mortgage. The very recital in the sale deeds that the possession was handed over thereon proves that they were in possession of specific properties and there is no requirement of filing a suit for partition for dividing the property. Therefore, the question of law No.1 that the lower appellate court was not right in adverting to the clear admission of the first defendant with regard to the title and possession of the plaintiffs and their predecessor is answered in favour of the appellants, consequently, the question of law No.2 is also answered in favour of the appellants.

12. In so far as the question of law No.3 is concerned, it is a clear case that the defendants had clear knowledge about the sale deed executed in favour of the plaintiffs on 12.06.1995 and on the very same day they got a sale agreement registered. D.W.1's admission makes it explicit that they have not taken any action for a period of 12 years after having knowledge of the conveyance of the properties. The admission of the D.W.1 amounts to clear admission under Sections 17 and 21 of the Indian Evidence Act and therefore, it will bar the defendants raised in the plea of title or possession against the plaintiffs. Therefore also, the questions of law are answered in favour of the appellants and thereby, the Second Appeal is allowed and the suit is decreed as prayed for. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

TK



To

1. The I Additional Sub Judge
I Additional Sub Court
Erode.
2. The District Munsif
District Munsif Court
Gobichettipalayam.

Copy to:
The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to M/s.R.Meenal, Advocate, S.R.No.38401

+1cc to Mr.M.Manokaran, Advocate, S.R.No.38557

SECOND APPEAL NO.1111 OF 2012

NRL (CO)
SU(16/05/2022)