



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.06.2022

Pronounced on : 30.06.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

S.A.No.855 of 2002

and

C.M.P.No.6722 of 2002

- 1.Munusamy
- 2.Kesavan
- 3.Govindan @ Govindasamy
- 4.Narayanan

...Defendants /Appellants / Appellants

Vs

- 1.E.P.Poosami (died)
- 2.E.P.Krishnasamy
- 3.E.P.Mohanraj (died)
- 4.E.P.Bhoopalan
- 5.E.P.Munirathinam
- 6.E.P.Govindasamy
- 7.Poosanam
- 8.Samasivam
- 9.Senthamarai
- 10.Parvathi
- 11.Manivasagam
- 12.Gnanasekaran
- 13.Kribanandan

...Plaintiffs / Respondents / Respondents



RR7 to 9 brought on record as legal representatives of the deceased R1 vide Court order dated 22.04.2021 made in C.M.P.No.268 to 273 of 2013 in S.A.No.855 of 2002 (AQJ).

RR10 to 13 brought on record as legal representatives of the deceased R3 vide Court order dated 22.04.2021 made in C.M.P.Nos.268 to 273 of 2013 in S.A.No.855 of 2002 (AQJ).

The Second Appeal filed under Section 100 of CPC, against the judgment and decree made in A.S.No.14 of 2000 dated 27.11.2001 on the file of the Sub Court, Vellore confirming the judgment and decree made in O.S.No.625 of 1993 dated 30.11.1999 on the file of the District Munsif Court, Vellore.

For Appellants	: Mr.A.Gowthaman
R1 and R3	: Died
For R2, R4, R5 & R6	: Mr.T.Dhanyakumar
For RR7 to 13	: Not ready in notice

**JUDGMENT**

WEB COPY The defendants in O.S.No.625 of 1993 on the file of the Principal District Munsif Court, Vellore, who had suffered an adverse decree in the suit and also an adverse judgment in their subsequent appeal in A.S.No.14 of 2000 before the Sub Court at Vellore, are the appellants herein.

2. Pending the Second Appeal, the 1st and 3rd respondents had died and the legal representatives of the 1st respondent were brought on record as 7th to 9th respondents and the legal representatives of the 3rd respondent were brought on record as 10th to 13th respondents.

O.S.No.625 of 2003 (The Principal District Munsif Court, Vellore):-

3. The said suit was filed by the plaintiffs / respondents herein seeking permanent injunction restraining the defendants therein / appellants herein from interfering with peaceful possession and enjoyment of the suit properties. The suit properties were dry lands in Elavambadi, Vellore Taluk measuring 0.11.0 hectares in S.No.170/5 and 0.14.5 hectares in S.No.170/6. The plaintiffs claimed that their father and the father of the defendants,



Arjunan were brothers and constituted a joint family. There were several properties. The plaintiffs filed O.S.No.1226 of 1972 before the Principal District Court at Vellore against the father of the defendants and their grandmother for partition and separate possession. A preliminary decree was passed granting 1/3rd share in the suit properties mentioned in O.S.No.1226 of 1972 on 14.12.1977. Thereafter, a final decree was passed on 23.03.1982. They had also filed an execution petition in E.P.No.318 of 1988 to be put in possession and the same was also allowed on 13.02.1989. Pursuant to such final decree, the properties were actually divided and the plaintiffs were put in possession of their share which properties are the suit properties in the instant suit. They claimed to be in possession and to be cultivating the lands. They claimed interference by the defendants. They further claimed that the interference by the defendants was in violation of the decree granted and therefore, they filed the suit seeking permanent injunction.

4.In the written statement the defendants denied the claim that the father of the plaintiffs and their father, Arjunan were brothers. The defendants claimed that the father of the plaintiffs Ponnusamy was the son



of Easal whereas, their father Arjunan, was the son of Ravan. It was also claimed that they were not parties to the suit in O.S.No.1226 of 1972 and therefore claimed that the decree passed therein was not binding on them. It was also claimed that the plaintiffs were not in possession of the suit mentioned land and that the suit had been filed suppressing material facts and that the plaintiffs had not come to Court with clean hands. It was also specifically stated that the plaintiffs were not entitled for any injunction. They claimed that the suit should be dismissed.

5.On the basis of the aforementioned pleadings, the following issues had been framed by the Trial Court.

“1.Whether the plaintiffs were entitled to permanent injunction with respect to the suit properties?

2.Whether the defendants had perfected title by adverse possession?

3.To what other reliefs are the parties entitled to?”

6.During trial, the 1st plaintiff was examined as PW-1 and marked Exs.A1 to A9. The preliminary decree, final decree and the orders in



execution petition were marked as Exs.A1 to A4. The patta in the name of the plaintiffs was marked as Ex.A5. The kist receipts were marked as Exs.A6 to A8. The common order in O.S.No.1226 of 1972 and O.S.No.599 of 1974 dated 14.02.1977 were marked as Ex.A9.

7.On the side of the defendants, the 3rd defendant was examined as DW-1 and four independent witnesses were examined as DW2 and DW5. The defendants also marked Exs.B1 to B6. Ex.B2 was the death certificate of the father of the plaintiffs, Ponnusamy and Ex.B3 was the patta granted in favour of Arjunan / father of the defendants and Ex.B6 was the copy of the Will executed by Venkatammal in favour of the 3rd defendant.

8.On the basis of the pleadings, documentary and oral evidence adduced, the learned Principal District Munsif came to a finding that the judgment and decree in O.S.No.1226 of 1972 / suit for partition was binding on the defendants and also found that consequent to the preliminary decree passed, a final decree had also been passed dividing the properties into metes and bounds and that further in the execution petition, the properties had also allotted to the plaintiffs. The learned Principal District Munsif,



further found that the plaintiffs have produced sufficient documents to show possession. The learned Principal District Munsif, further found that the defendants have not established that the father of the plaintiffs and the father of the defendants were not brothers and the claim of the defendants that judgment and decree in O.S.No.1226 of 1972 had been obtained by fraud and was a nullity was rejected and the suit was decreed.

A.S.No.14 of 2000 (The Sub Court, Vellore):-

9. Aggrieved by the judgment in O.S.No.625 of 1993, the unsuccessful defendants filed A.S.No.14 of 2000 which came up for consideration before the Sub Court at Vellore. In the judgment dated 27.11.2001, the learned Sub Judge framed points for consideration under Order 41 Rule 31 CPC and proceeded to examine whether the judgment of the Trial Court was vitiated in any manner known to law. However, a specific finding was given that the plaintiffs have taken possession consequent to the filing of execution petition and it was also found that the father of the defendants and their grandmother were both parties in O.S.No.1226 of 1972 and therefore the contention of the defendants that the father of the plaintiffs / Ponnusamy was born to one



Easal and therefore, could not claim partition and separate possession of the suit mentioned properties in O.S.No.1226 of 1972 was rejected. On appreciation of the facts, the learned Sub Judge, held that the Trial Court had properly decided the issues and further held that since the plaintiffs were in possession, they were entitled for decree of permanent injunction and therefore dismissed the Appeal.

S.A.No.855 of 2002:-

10.The unsuccessful defendants then filed the Second Appeal before this Court. The Second Appeal had been admitted on 14.05.2002 on the following substantial questions of law:-

“1.Whether the judgment and decree in O.S.No.1226 of 1972 will bind the defendants herein when they are not parties in the said suit and they have not been given a chance to contest the same?”

11.Heard arguments advanced by Mr.A.Gowthaman, learned counsel for the appellants and Mr.T.Dhanyakumar, learned counsel for the respondents 2, 4 to 6.



WEB COPY 12.Mr.A.Gowtham, learned counsel for the appellants pointed out that it was the case of the appellants herein who were the defendants in the Trial Court that the father of the plaintiffs, Ponnusamy was born to one Easal, whereas the father of the defendants / respondents herein, Arjunan was born to one Ravan and therefore, they could not be brothers. It is also contended that material facts have been suppressed in O.S.No.1226 of 1972 and that the judgment and decree in the said suit had been obtained by fraud. The learned counsel further stated that the appellants herein were not parties to the said suit and therefore, insisted that the said judgment and decree was not binding on them. The learned counsel, therefore, urged this Court should hold the substantial question of law framed for consideration in favour of the appellants and which would consequently mean that the respondents herein were not entitled to the decree of permanent injunction.

13.Mr.T.Dhanyakumar, learned counsel for the respondents, on the other hand, pointed out the findings and reasonings given in the judgment of the Trial Court and in the First Appellant Court. The learned counsel pointed out that the issue of paternity of the father of the respondents herein had



been examined and the claim of the appellants had been rejected by the Courts below and therefore, stated that there was no necessity to revisit the facts already established in the Second Appeal. The learned counsel further stated that since the father of the appellants was the defendant in the earlier suit in O.S.No.1226 of 1972, the said judgment and decree in the said suit would also automatically binding the appellants as legal representatives of Arjunan. The learned counsel urged that the Second Appeal should be dismissed.

14.I have given my careful consideration on the arguments advanced and perused the materials.

15.I would retain the nomenclature as given in the Trial Court which would mean that the appellants herein would be termed as defendants and the respondents herein would be termed as plaintiffs.

16.The plaintiffs had filed a suit for permanent injunction over the two stretched of dry lands in Elavambadi, Vellore Taluk, measuring 0.11.0 hectares in S.No.170/5 and 0.14.5 hectares in S.No.170/6. They claimed to



be in possession consequent to have been put in possession in E.P.No.318 of 1988 by order of Court dated 13.02.1989. The said execution petition had been filed consequent to a final decree passed on 23.03.1982 which final decree was consequent to a preliminary decree granted on 14.02.1977 in O.S.No.1226 of 1972 on the file of the Principal District Munsif Court, Vellore, which suit was a suit for partition and separate possession filed by the plaintiffs against Arjunan, the father of the defendants and their grandmother. As is evident, the said suit was decreed and the plaintiffs had been put in possession.

17.They claimed interference with possession. The present suit in O.S.No.625 of 1993 had then been filed seeking permanent injunction restraining the defendants from interfering with peaceful possession. It had been the contention of the defendants that the father of the plaintiffs and the father of the defendants were not brothers. It was specifically contended that the father of the plaintiffs was the son of one Easal whereas, the father of the defendants was the son of one Ravan. The learned counsel therefore stated that the suit for partition and separate possession could have put the plaintiffs in possession, but the title should be declared, since a reasonable



suspicion had been raised that the decree in O.S.No.1226 of 1972 had been obtained by fraud. Both the Courts below had however rejected that particular contention that the father of the plaintiffs was born to one Easal. However, the documents still stand namely Exs.B2 and B4, which indicate that the name of the father of the plaintiffs, Ponnusamy was Easal and that the name of the mother was Unnamalai Ammal. It is the contention of the defendants that their father was Arjunan and that his mother, Venkatammal had executed a Will with respect to the properties in favour of some of the defendants. It was therefore contended that a reasonable cloud exists over the title of the properties. This has to be erased. However, it is a fact that the plaintiffs are in possession pursuant to the execution petition filed. Their possession was consequent to the recognition of their right to be in possession by a competent Civil Court namely, the Principal District Munsif, Vellore in O.S.No.1226 of 1972.

18.The substantial question of law which had been raised is whether such decree is binding on the defendants. Though the defendants may not be parties to the said suit, still their father Arjunan was a party to the said suit. It would thus bind the defendants.



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19. However, this would not be a bar to the defendants to seek declaration of title. They claim under a Will executed by Venkatammal and they further claim that the decree in OS.No.1226 of 1972 had been obtained by a fraud by suppressing material facts, more particularly, by allegedly projecting a false fact that the father of the plaintiffs, Ponnusamy and the father of the defendants, Arjunan were brothers, even though documents had been produced that Ponnusamy was born to Easal and Arjunan was born to Ravan. These are issues which are this Court cannot effectively decide. This Court can only answer the substantial question of law, which had been framed and that is whether the decree in O.S.No.1226 of 1972 would bind the defendants. The answer is it would. But however, it would only bind the defendants so far as the possession of the plaintiffs are concerned. With respect to title, the parties will have to agitate that particular issue in manner known to law.

20. Observing as above and not entering into any discussion on title, I would answer the substantial question of law that the decree in O.S.No.1226 of 1972 on the file of the Principal District Munsif Court, dated 14.02.1977



is binding on the defendants only so far as the possession of the plaintiffs are concerned. The Second Appeal is dismissed. No order as to costs.

Consequently, the connected Civil Miscellaneous Petition is closed.

30.06.2022

Index:Yes/No
Internet:Yes/No
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To

- 1.The Sub Court, Vellore.
- 2.The Principal District Munsif Court, Vellore.
- 3.The Section Officer, VR Section, Madras High Court.



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C.V.KARTHIKEYAN,J.

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Pre-delivery Judgment made
in
S.A.No.855 of 2002
and
C.M.P.No.6722 of 2002



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30.06.2022