



S.A.No.223 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.08.2022

PRONOUNCED ON: 12.10.2022

CORAM

THE HON'BLE Ms.JUSTICE P.T.ASHA

S.A.No.223 of 2022

and

C.M.P.No.4437 of 2022

1.K.Jayabalan

2.Mrs.Lalitha

... Appellants/ Appellants/ Plaintiffs

Vs.

Gomathi (Deceased)

1.Rengarajan

2.R.Giri Senthil Rajan

3.Mrs.Gazal Maya

(Respondents represented by their power agent 1st Respondent
Rengarajan)

...Respondents/ Respondents/ Defendants



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PRAYER : This Second Appeal is filed under Section 100 of the C.P.C, against the judgment and decree dated 04.01.2022 on the file of Sub Court Thiruvarur and made in A.S.No.10 of 2020 confirming the judgment and decree dated 16.10.2020 on the file of the District Munsif Court, Thiruvarur and made in O.S.No.09 of 2017.

For Appellants : Mr.B.Ramamoorthy

For Respondents : Mr.R.Thirugnanan for
Mr.T.Chandrasekaran [R.1]

: R.2 & R.3 rep. By R-1 Power Agent

J U D G M E N T

The plaintiffs are the appellants in this Second Appeal challenging the concurrent judgment and decree passed in a suit filed by them seeking the grant of a permanent injunction against the defendants. The facts, in brief, are as follows and the parties are referred to in the same ranking as before the Trial Court, namely the District Munsif, Thiruvarur in OS.No.9 of 2017. The property in question in respect of which the injunction was sought for is described herein below:-



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DISCRIPTION OF PROPERTY

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Thiruvarur District, Kodavasal Taluk, Melathirumathikunnam village
(now Koothanallur Taluk)

1st Item:-

(Old) R.S.No.73/1	Manai
(New) R.S.No.73/26	Extent of 1.09.18 Ares with an old tailed building bearing Door No.5/199.

Boundaries:-

R.S.No.73/25 South of Gopalajaramulu Plot and house
R.S.No.73/3C West of Jayabal Lalitha plot and Yasodha plot East of
Street
R.S.No.73/27 North of Vahab related plot.

2nd Item:-

Thiruvarur District, Kodavasal Taluk, Melathirumathikunnam village
(now Koothanallur Taluk)

R.S.No.73/3C – Dry – Extent Hec. 0.03.0 Ares.



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Boundaries:-

- R.S.No.73/26 East of Jayabal plot and house
- R.S.No.73/4 North of Yasodha Plot
- R.S.No.73/3 South of Rajagopala Rajamulu Plot
- R.S.No.73/3A West of Gopalajayaramulu and
- R.S.No.73/5 Yadodhai Plot

Plaintiff's case:-

2. It is the case of the plaintiffs that the suit 1st item of property measures an extent of 0.09.18 Ares (equivalent to 0.22 cents) with an old tiled building bearing Door No.5/199. It is the case of the plaintiffs that on 29.11.1995 the Thoraya Patta was issued in favour of the 1st plaintiff in respect of the land and the house tax receipt stands in his name. The 1st item of property is situate in old Survey No.73/1, New Survey No.73/26. The 2nd item of the suit property is situate in R.S.No.73/3C and it is a Punja land measuring an extent of 0.03.0 Ares (equivalent to 7 cents). This property is jointly owned by the plaintiffs.



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2.1. It is their case that under the UDR Scheme a patta had been issued in the name of the plaintiffs several decades ago and these are the documents which prove the plaintiff's right to the suit properties. The defendant is a permanent resident of Chennai. Her husband had retired from the Revenue Department and using his clout with the revenue officials he is now attempting to dispossess the plaintiffs from the suit property.

2.2. On 02.12.2016, certain police officials of the nearby police station had called them and threatened them with dire consequences if they did not vacate the property immediately. The plaintiffs would submit that the defendant has taken all steps to dispossess them from the suit property using the help of the Revenue Department. Therefore, left with no other alternative the plaintiffs are constrained to file the above suit.



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Written Statement of the Defendant:-

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3. It is the case of the defendant originally there was only one defendant Gomathi, who had filed the written statement. On her death, her legal representatives were brought on record as defendants 2 to 4. It is the defendant's case that the properties are the ancestral properties of the defendant. The defendant is the daughter of one Yasodhai Ammal and T.K.Sundarajan. In the year 1972, her father T.K.Sundarajan had died and her mother died in the year 2007. Under the sale deeds of the years 1963, 1971 and 1975, Yasodhai Ammal had purchased the properties. Since her husband was in Malaysia, Yasodhai Ammal had permitted her father-in-law Kaliyaperumal to take care of the 11 acres of land. However Kaliyaperumal clandestinely got the revenue records mutated in his name.

3.1. On a complaint being made, the Tahsildar by order dated 17.02.1972 had transferred the patta back in the name of Yasodhai Ammal. The 1st plaintiff had appeared before the Tahsildar and only thereafter the orders were passed. On 10.08.1972, the 1st plaintiff in the presence of Panchayatidars had handed over possession of the property to



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the said Yasodhai Ammal. Between 1972 and 1976, Yasodhai Ammal was personally cultivating the lands. In the year 1976, the defendant had got married, thereafter, Yasodhai Ammal had renewed her relationship with the plaintiffs which had become stranded on account of the clandestine mutation of the revenue records and had requested them to take care of the suit properties. Between 1976 and 1977, Yasodhai Ammal had spent for the cultivation and had profited from the harvest.

3.2. In the year 2005, Yasodhai Ammal died and the defendant being the only legal heir of the said Yasodhai Ammal inherited the property. In the year 2015, the 1st plaintiff cut all the trees in the suit property with a bulldozer and cleared the land. On coming to know about this high handed act, the defendant had immediately call for an explanation and then instructed him to stop taking care of lands both Nanja as well as Punja. Meanwhile, the 1st plaintiff had clandestinely got the UDR patta changed in his name as also the tax receipts in respect of the hut.



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3.3. The defendants would submit that apart from the 1st defendant there were 10 other children born to Kaliyaperumal through his three wives. The defendants would submit that the plaintiffs have come to Court with unclean hands and on false allegations. The properties in question is the ancestral property of the defendants for over three generations. 7 cents of land in Survey No.73/26 is the ancestral property of T.K.Sunderajan, the husband of Yasodhai Ammal along with a tiled house. Survey No.73/26, measures 16 cents and the Gramanathan also belongs to them. An additional written statement was thereafter filed by the 2nd defendant more or less reiterating the contentions in the earlier written statement.

Trial Court:-

4. The learned District Munsif had framed the following issues which are translated into English from the vernacular herein below.

*1. Whether the plaintiffs are entitled to the decree
for injunction?*



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2. What are the reliefs that are available to the plaintiffs?

4.1. On the side of the plaintiffs, three witnesses were examined. The 1st plaintiff had examined himself as P.W.1 and one Chandaran and Rajendaran as P.W.2 and P.W.3 respectively. Ex.A.1 to Ex.A.12 were marked on the side of the plaintiffs. On the side of the defendants, the 2nd defendant had examined himself as D.W.1 and one Govindaraj as D.W.2. Ex.B.1 to Ex.B.11 were marked. Ultimately, the learned District Munsif on considering the evidence on record proceeded to dismiss the suit.

Appellate Court:-

5. Challenging the said Judgement and Decree the plaintiff had filed A.S.No.10 of 2022 on the file of the Sub Judge, Thiruvavur. The learned Sub Judge on considering the pleadings and the judgement of the Trial Court as also the records had framed the following points for consideration which are translated into English from the vernacular herein below:-

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1. Whether the suit as framed is not maintainable as the plaintiff has not sought for a declaration of his title and has only sought for the decree for injunction?

2. Whether the Trial Court was correct in law in holding that the plaintiffs are not entitled to the relief of injunction against the defendants 2 to 4?

3. Whether the judgment and decree of the Trial Court has to be set aside or confirmed?

5.1. On a detailed analysis of the above-referred documents and on hearing the submissions of both the counsels below, the learned Sub Judge, Thiruvarur was pleased to dismiss the appeal thereby confirming the judgement and decree of the Trial Court. Aggrieved by this concurrent judgement and decree the appellants/plaintiffs are before this Court.

6. When the matter came up for hearing on 24.06.2002, this Court was pleased to direct notice to the respondents. On receipt of the summons from this Court the defendants have entered appearance



Submissions:-

7. Mr.B.Ramamoorthy, learned counsel appearing on behalf of the plaintiffs would submit that a mere perusal of the schedule of property described in Ex.B.1 which is the sale deed in favour of Yasodhai Ammal on 20.01.1963 would describe the house property of Kaliyaperumal Naidu as the northern boundary. He would further submit that the defendants have admitted the grant of patta in favour of the plaintiffs in their written statement wherein they had stated that they had come to learn that in the year 1988 under the UDR Scheme patta had been given to the plaintiff. He would submit that the defendants have not proved that the property is their ancestral property.

7.1. He would further draw the attention of the Court to certain admissions made by D.W.1 in his cross examination. The witness had admitted that there was an updating Scheme between 1984 and 1996. He



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would further admit that the total extent of land comprised in old Survey No.73/1 was an extent of 1 acre and 84 cents of Punja land as per Ex.B.1. The witness had also admitted that Survey No.73/1 had been sub-divided into various sub-divisions. The witness was also not able to explain the total extent in Survey No.73/1 that belong to Kaliyaperumal's family. He would also admit that the 1st plaintiff is the son of the said Kaliyaperumal and that besides the 1st plaintiff, there were other legal heirs for the said Kaliyaperumal.

7.2. The learned counsel would further submit that there is no reference to Ex.B.1 to Ex.B.3 in the written statement filed by the defendants and this fact had been admitted in cross by D.W.1. The witness would also admit that the first objection to the grant of patta was made on 11.04.2007 and the suit has been filed in the year 2017. The learned counsel would submit that the plaintiffs had produced Ex.A.1 to Ex.A.11 to show possession of the suit properties. However, the same has been overlooked by the Courts below. He would submit that as on the date of filing of the suit the plaintiffs had proved their possession of the



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suit property and therefore the Courts below have failed to appreciate the documents from the correct perspective and hence the suit ought to be decreed as prayed for.

7.3. The learned counsel for the plaintiffs has relied upon the judgment reported in (2019) 2 MLJ 148 – *Poochi Servai (died) and Others Vs. Rajendaran and Others*.

8. Mr.R.Thirugnanan, learned counsel appearing on behalf of the defendants would submit that Survey No.73/1 measures a total extent of 23 cents and Survey No.73/3C measures an extent of 7 cents. The suit properties have been purchased by Yasodhai Ammal under 3 sale deeds, Ex.B.1 to Ex.B.3. He would submit that under Ex.B.1 dated 20.01.1963, Yasodhai Ammal had purchased 7 cents of vacant site in Survey No.73/1 within the following boundaries.

West : by Street

North : by tile house of Kaliaperumal

East : by Survey No.73/4



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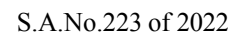
South : by backward of VijayalakshmiAmmal's son

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8.1. Apart from the 7 cents in Survey No.73/4, Yasodhai Ammal had purchased an extent of 10 cents in Survey No.73/4 and 73/5. Under Ex.B.2 and Ex.B.3, 4 ½ cents each has been purchased by the said Yasodhai Ammal.

8.2. He would further contend that both the Courts below have extensively considered the documents as well as the arguments. He would further submit that the plaintiff has signed Ex.B.2 as a witness which is one of the documents under which the defendants would claim a right to the suit properties. He would submit that the plaintiffs have not questioned the title deeds of the defendants and the suit is not maintainable since the plaintiff has not sought for the relief of declaration of title, though the title has been openly challenged by the defendants.

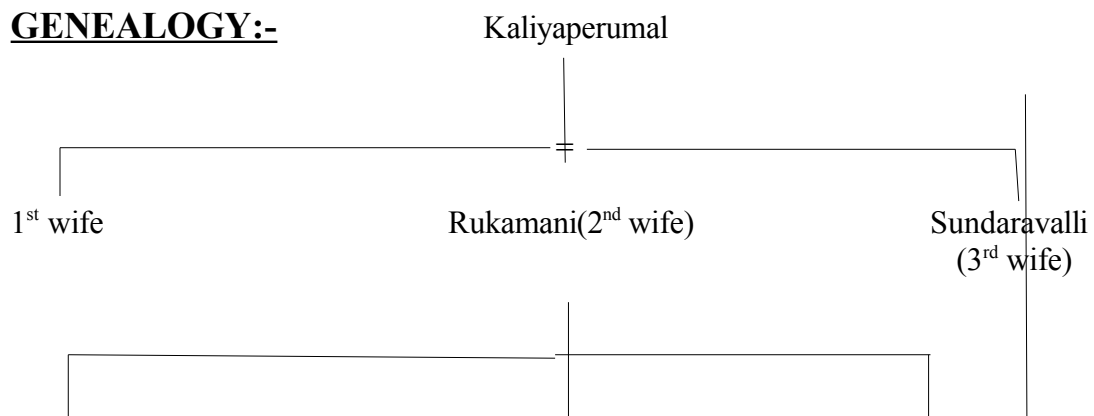
8.3. The learned counsel for the defendants has relied the judgment reported in *1999 (3) CTC 304 – Kammavar Sangam through its*



Discussion:-

9. A perusal of the pleadings on either side does not indicate the relationship of parties. On the contrary, it gives out that the plaintiff and defendants are strangers. However the genealogy given herein below would show how both parties trace their ancestry to one Kaliyapermal.

GENEALOGY:-





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Sundarajan

Duraisamy(2nd Plaintiff)

Sundaravalli

Yasodai Ammal

Gomathi (deceased defendant)

Rengarajan (1st Defendant)

R.Giri Senthil (2nd Defendant)

Gazal Maya(3rd Defendant)

Jayabalan (1st Plaintiff)

Padmanatham

Rajalakshmi

Vimla

Shankar

Sowrirajan

Kasturi

Vasumathi

9.1. The plaintiffs have based their claim to the two items of suit properties, one under Ex.A.1 which is a Thoraya Patta dated 29.11.1995 and other under Ex.A.2, Mannaivari Patta dated 14.08.2015. The admitted fact is that the ancestral property is a house property which is over 100 years old. The defendants would submit that the plaintiff has



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clandestinely obtained the mutation in his name. This fact has also been admitted by P.W.1 in his cross. P.W.1 would fairly admit that the patta had been granted to him under Natham Land Revenue Scheme, however, prior to that he does not have any revenue records to prove the continuous possession and enjoyment of the property by him. The plaintiff admits that the property belonged to Kaliyaperumal and Kaliyaperumal had children through his 2nd wife as also the 1st wife. He would further submit that the defendants have challenged the grant of patta in favour of the plaintiffs and the Revenue Court had directed the plaintiffs to move the Civil Court so as to bring about a quietus to the dispute between the plaintiffs and the defendants.

9.2. Therefore, the contention of the plaintiffs that the appeal filed by the defendants challenging the patta being granted to the plaintiffs is dismissed is incorrect as the dismissal is only with a direction to move the Civil Court as the question of title has to be considered. Admittedly, the plaintiff has not sought to implead all the legal heirs of the said



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Kaliyaperumal and having admitted that the property belongs to Kaliyaperumal there is no explanation as to how the plaintiff has got separate patta favouring him.

9.3. A perusal of Ex.B.5, Ex.B.6 and Ex.B.7 would further show that the plaintiffs are in permissive occupation and the correspondence between the plaintiffs and the defendants and the deceased defendants as well as the 1st defendant would clearly show that the plaintiffs have been put in permissive occupation particularly on a perusal of Ex.B.10 and Ex.B.11 letters. The plaintiff has no explanation as to why he has not sought for relief of declaration especially when the defendants have vehemently contended that the plaintiffs does not have title to the suit property and on the contrary, it is the defendants who have a right to the property. The plaintiffs who have come to Court seeking an order of injunction have not proved their continuous possession of the property till the date of the suit and thereafter. That apart, when there was a contest to title, the suit for bare injunction is not maintainable. In the instant case the injunction is sought against co-owners.



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9.4. The Hon'ble Supreme Court in the judgement reported in *(2008) 4 SCC 594 - Anatula Sudhakar Vs. P.Buchi Reddy (Dead) by Lrs. and Ors*, the Hon'ble Supreme Court has laid down the general principles where a mere suit for permanent injunction would lie and where the suit has to include a prayer for declaration and or possession with injunction as a consequential relief. One of the principles laid down therein was that where issue of title has been raised then a prayer for declaration has to necessarily be asked for.

9.5. In the instant case, despite the fact that the defendants had raised an issue relating to the plaintiff's title, the plaintiff has not deemed it fit to amend the plaint to include the relief of declaration, therefore the findings of the Courts below cannot be called in question and consequently, the Second Appeal which does not give rise to any substantial question of law has to necessarily fail. Accordingly, the



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Second Appeal stands dismissed. Consequently, the connected
Miscellaneous Petition is closed. No costs.

12.10.2022

Index : Yes / No
speaking Order : Yes / No
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To

- 1.The Sub Court Thiruvarur.
2. The District Munsif Court, Thiruvarur.
- 3.The Section Officer,
V.R.Section,
High Court, Madras -104.



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P.T.ASHA, J.,

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Pre-delivery Judgment in
S.A.No.223 of 2022
and C.M.P.No.4437 of 2020

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