



S.A.No.1015 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2022

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

S.A.No.1015 of 2022
and CMP.No.21704 of 2022

1.R.Chandrabose
2.R.Sivaprakasam

..Appellants

Vs.

1.R.Rajeswari
2.R.Pushparaj
3.R.Premakumari
4.R.Ravichandran
5.R.Vijayakumar
6.R.Manjula

..Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the decree and judgment dated 24.11.2021 passed in A.S.No.84 of 2017 on the file of the Additional Subordinate Judge, Kanchipuram, confirming the decree and judgment passed in O.S.No.118 of 2011 dated 12.10.2017 on the file of the Additional District Munsif, Kanchipuram.

For Appellants : Mr.V.Manisankaran

For Respondents

For R1 to 4 : No appearance

For R6 : No appearance



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JUDGMENT

The Second Appeal has been filed as against the decree and judgment dated 24.11.2021 passed in A.S.No.84 of 2017 on the file of the Additional Subordinate Judge, Kanchipuram, confirming the decree and judgment passed in O.S.No.118 of 2011 dated 12.10.2017 on the file of the Additional District Munsif, Kanchipuram, thereby allowing the suit filed by the respondents.

2. The respondents are plaintiffs and the appellants are the defendants in the suit filed for permanent injunction in respect of the subject property.

3. The case of the respondents is that the suit property originally belonged to one Kaliasammal, who died intestate leaving behind her son one Rajarathinam and four daughters and that the four daughters died intestate without any issues and that the only son Rajarathinam obtained the suit property exclusively. He was in peaceful possession and enjoyment of the same. He had two wives. The respondents father Rajasekaran was the son of the first wife and the appellants were born to the second wife of the said Rajarathinam. The respondents are the sons and daughters of said Rajarathinam, who died intestate, leaving behind them. The suit property ad-



measures to an extent of 30 cents together with some tiled houses in it. Their father obtained an extent of about 10 cents and a tiled house in it towards his 1/3rd undivided share. The appellants were residing in the other 20 cents. However, on the strength of his working in Revenue Department, he obtained Natham patta from Revenue Department and attempted to evict the respondents from the suit property.

4. The case of the appellants is that the second appellant was in absolute, exclusive possession and enjoyment of the suit property and obtained Natham patta in his name. Therefore, the respondents have no right over the property. The appellants never residing or in possession and enjoyment of the suit property.

5. On the side of the respondents, they had examined PW1 and PW2 and marked Exs.A1 to A9 and on the side of the appellants they had examined DW1 and marked Exs.P1 to P7.

6. On perusal of oral and documentary evidence, the trial Court decreed the suit. Aggrieved by the same, the appellants preferred an appeal suit and the same was dismissed the judgment decree passed by the trial Court. Aggrieved by the same, the present second appeal.



7. The learned counsel for the appellants would submit that admittedly the appellants are co-owners of the suit property therefore, the injunction suit is not at all maintainable as against the co-owners. Both the Courts below allowed the suit only on the basis of Advocate Commissioner's report. In the injunction suit, an Advocate Commissioner ought not to have been appointed and his report cannot be considered to prove their possession and enjoyment of the property.

The following substantial questions of law are raised in this appeal;

“I. Whether the prayer of permanent injunction is maintainable as against co-owner in respect of the suit schedule property.

II. Whereas when there is a dispute regarding the title over the property whether bare injunction suit is maintainable, without seeking declaratory relief for title of the suit schedule property.

III. Whether the report of the Advocate Commissioner can be taken in to consideration to prove the possession of the suit schedule property in valid in eye of law.”

8. On perusal of records revealed that admittedly the respondents and the defendants were born to two wives of said Rajarathinam. The respondents were born to his first wife and the appellants were born to his second wife. The suit



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property is Natham land. The total extent of the suit property is 30 cents in which the respondents are residing in their respective houses. Though, the second appellant was issued with a patta in respect of the total extent of the property, Exs.A3 to A6 categorically proved that the respondents are in possession and enjoyment of the suit property. In a rare case filed for a permanent injunction, an Advocate Commissioner can be appointed and in this case, the Advocate Commissioner was appointed and his reports were marked as Ex.C1 and C2.

9. On perusal of Advocate Commissioner's report revealed that the respondents are in possession and enjoyment of the suit property. It is also seen that on oral partition, the respondents are in possession and enjoyment of the suit property to the extent of 10 cents and the appellants are in possession of 20 cents. Therefore, no substantial questions of law is involved in this appeal and it is liable to be dismissed.

10. Accordingly, the second appeal stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

16.12.2022

Speaking/Non-speaking order
Index : Yes/No
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G.K.ILANTHIRAIYAN.J.

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To

1. The Additional Subordinate Judge,
Kanchipuram.
2. The District Munsif,
Kanchipuram.

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