



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2022

CORAM : THE HON'BLE MR.JUSTICE N.SESHASAYEE

S.A.(MD).No.664 of 2007

Jayalakshmi (Died)
2.Raju
3.Murugesan
4.Maheswari

... Appellant/Respondent/Plaintiff

...Appellants/
LR's of the deceased sole appellant

[Appellants 2 to 4 are brought on record as LR's of the deceased sole appellant vide order dated 26.09.2022 made in C.M.P(MD). Nos.6617, 6618, 6620, 8934, 8936 and 8937 of 2022 in S.A.(MD). No.664 of 2007]

Vs

Ayyalusamy (Died)
2.A.Ravichandran
3.A.Varatharaj
Muralidaran (Died)
4.Renganayaki

...Respondent/Appellant/Defendant

...Respondents/
LR's of the deceased sole respondent

[Respondents 2 to 4 are brought on record as LR's of the deceased sole respondent vide order dated 26.09.2022 made in C.M.P(MD). Nos.6617, 6618, 6620, 8934, 8936 and 8937 of 2022 in S.A(MD). No.664 of 2007]

Prayer:- Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree in A.S.No.85 of 2003 dated 22.04.2004 on the file of the Additional Subordinate Court, Dindigul, setting aside and reverse the decree and judgment of the II Additional District Munsif, Dindigul in O.S.No.614 of 1999 dated 02.02.2001.

For Appellant : Mr.R.Senthil Kumar

For Respondents : Mr.A.Haja Mohideen
for R2 to R4
R1-Died

J U D G M E N T

The plaintiff who was successful before the trial Court in her suit for declaration of title and injunction vis-a-vis suit property in O.S.No.614 of 1999 but suffered a reversal in her fortune before the First Appellate Court in A.S.No.85 of 2003 which was filed by the defendant is the appellant herein.



2. The facts in this suit fall within a very narrow compass:

- The suit property is described as a house property in Survey No.129/31 of Anjukullipatti village. The property admittedly belongs to a certain Iyyappa Naicker. Iyyappa Naicker had three daughters and a son. The plaintiff Jayalakshmi is one of his daughters and the defendant is his only son. The other two daughters are Dhanalakshmi (D.W.2) and Ayyammal. According to the plaintiff, sometime in 1980, Iyyappa Naicker had orally given the suit property as Stridhana to her and that she has been in continuous possession and enjoyment of the property. It is also her case that the revenue records were mutated in her name and she has been paying necessary tax and rates to the local body concerned. When she faced threat to her possession from her brother/the defendant in the suit, she laid the present suit.

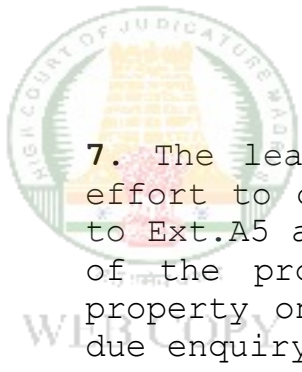
3. The defendant in his written statement refused the plaintiff's claim of exclusive possession but pleaded that the plaintiff herself has demanded partition of the suit property vide Ext.B1, reply notice issued on behalf of the plaintiff and D.W.2, dated 30.06.1975 to the defendant and also issued Ext.B2, suit notice dated 27.12.1985, in both of which she had demanded partition of the suit property. He added that there was a panchayat in which both D.W.2 and the plaintiff had paid some amount in lieu of their share.

4. The dispute went to trial and before the trial Court, both sides have adduced their oral and documentary evidence. For the plaintiff, she examined herself as P.W.1 and examined one Sivalingam as P.W.2. She has produced Ext.A1 to Ext.A7. For the defendant, he examined himself as D.W.1 and examined one Dhanalakshmi, who is none other than the sister of D.W.1. The defendant had produced Ext.B1 to Ext.B6. Of the documents produced by the plaintiff, Ext.A6 and Ext.A7 are the letters written by the defendant to the plaintiff, during the pendency of the suit.

5. On appreciating the evidence, the trial Court chose to decree the suit essentially based on Ext.A6 and Ext.A7 letters addressed by the defendant to the plaintiff in which the defendant appears to have held out threats to the plaintiff that he would take forcible possession of the property. The trial Court however did not go into the question whether the suit property at all was given as Stridhana property to the plaintiff. As outlined earlier, the defendant preferred a first appeal and the First Appellate Court found that the plaintiff had not proved that the suit property was given as Stridhana property. Hence, the second appeal by the plaintiff.

6. This appeal was admitted on 07.02.2008 for considering the following substantial question of law:

"Whether the judgment and decree of the first appellant Court is erroneous on account of its misconstruction of the documents exhibited on the side of the appellant?"



7. The learned counsel appearing for the appellants made a valiant effort to convince this Court that the plaintiff has produced Ext.A1 to Ext.A5 all of which show that the plaintiff has been in possession of the property and that she has also been given patta for the property on 11.03.1990. She added that this patta was granted after due enquiry and therefore, it binds the defendant.

8. Per contra, the learned counsel appearing for the defendant/respondent would submit that Ext.B1, reply notice and Ext.B2, suit notice both dated 30.06.1975 and 27.12.1985 respectively in 1975 and 1985 would go to show that the plaintiff had only sought for partition which defies her theory of Stridhana given in 1980. He added that D.W.2, one of those who has joined with the plaintiff in issuing Ext.B1 and Ext.B2, had deposed in favour of the Panchayat which the plaintiff has alleged.

9. There is no denying the fact that the suit property belongs to Iyyappa Naicker and when he died, the property would automatically devolve on his four children including the plaintiff. To claim exclusive title to the property, the plaintiff has not strained herself much and for proving the certain Panchayat, the defendant too has not done his home work adequately. With the result, neither the plaintiff nor the defendant can claim exclusive title to the property from the evidence available here. Necessarily, the parties have to go for a suit for partition and the plaintiff cannot seek exclusive title to the property. Necessarily, this Court has to concur with the findings of the First Appellate Court on this aspect. However, inasmuch as the plaintiff is in continuous possession of the house in the suit property for several years, the defendant is enjoined from disturbing her possession except by a due process of law which as indicated should necessarily mean the institution of the suit for partition.

10. In fine, this Second Appeal is partly allowed and the decree of the First Appellate Court is modified only to the extent of grant of prohibitory injunction against the defendant but as to the prayer for declaration of the plaintiff's title, the same stands dismissed and the decree of the First Appellate Court is confirmed to that extent. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/11/2022

Sub Assistant Registrar(CS)



S.A.(MD)



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To

1. Additional Subordinate Court, Dindigul,

2. II Additional District Munsif, Dindigul

Copy to

The Section officer,

VR Section,

Madurai Bench of Madras Highcourt, Madurai (2 Copies), .

+1 CC to M/s.R.SENTHIL KUMAR, Advocate (SR-49064[F] dated 12/10/2022)

+1 CC to M/s.HAJA MOHIDEEN, Advocate (SR-49072[F] dated 12/10/2022)

S.A.(MD) No.664 of 2007

12.10.2022

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