



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A. (MD)No.141 of 2010

WEB COPY

1. NP.Alagiri Ambalam (Died)

2. PR.Muthaiah Ambalam (Died)

3. AL.Solaimalai Ambalam (Died)

... Appellants / Respondents /
Defendants

4. AL.Subramanian

(4th appellant was brought on record as LR. of the
deceased first appellant vide order dated 14.03.2022
in C.M.P. (MD)Nos.1721, 1723 and 1724 of 2022)

... Appellant

Vs.

Kailasam

... Respondent / Appellant /
Plaintiff

Prayer: Second appeal filed under Section 100 of C.P.C., against the Judgment and Decree of the learned Subordinate Judge, Devakkottai, dated 30.11.2009 in A.S. No.12 of 2009 setting aside the Judgment and Decree of the learned Principal District Munsif, Karaikudi in O.S.No.322 of 2004 dated 09.01.2009.

For Appellants : Mr.R.Sundar Srinivasan

For Respondent : Ms.M.Parameswari,
for Mr.S.M.S.Johny Basha.

J U D G M E N T

The defendants in O.S.No.322 of 2004 on the file of the Principal District Munsif, Karaikudi, filed this second appeal.

2. During the pendency of the appeal, they passed away and the son of the first appellant has been brought on record. The respondent herein, namely, Kailasam filed the said suit seeking the relief of declaration that the suit property is absolutely belonging to him and for directing the defendants to remove the encroachment committed over 352 sq.ft. of the suit property and for permanent injunction. The defendants filed written statement not only



controverting the plaint averments but also questioning the very maintainability of the suit. Based on the divergent pleadings, the trial Court framed the necessary issues. The plaintiff examined himself as P.W.1 and three other witnesses were examined on his side. Ex.A.1 to Ex.A.7 were marked. On the side of the defendants, three witnesses were examined. Ex.B.1 to Ex.B.7 were marked. An Advocate Commissioner was appointed and his report and plan were marked as Ex.C.1 and Ex.C.2. After consideration of the evidence on record, by judgment and decree dated 09.01.2009, the suit was dismissed. Challenging the same, the plaintiff filed A.S.No.12 of 2009 before the Sub Court, Devakottai. By the impugned judgment and decree dated 30.11.2009, the decision of the trial Court was reversed and appeal was allowed and the suit came to be decreed as prayed for. Questioning the same, this second appeal came to be filed.

3. The second appeal was admitted on 14.03.2022 on the following substantial questions of law:-

" Whether the finding of the learned Subordinate Judge, Devakkottai that the appellants who are defendants having failed to file application under Order 1, Rule 8 CPC cannot dispute that the suit is bad for non-joinder of necessary parties is legally sustainable? "

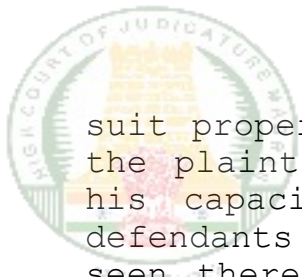
4. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial question of law in favour of the appellants and set aside the impugned judgment and decree and restore the decision of the trial Court.

5. Per contra, the learned counsel appearing for the respondent submitted that the impugned judgment and decree do not call for any interference.

6. I carefully considered the rival contentions and went through the evidence on record.

7. According to the plaintiff, the suit property belonged to one Muthiah Chettiar and that he was originally in possession of the same. He purchased it from Muthiah Chettiar under Ex.A.1 dated 10.08.2000. Since the defendants not only threatened the plaintiff's possession and enjoyment of the suit property but also committed encroachment over a portion of the same, the present suit came to be instituted.

8. I went through the contents of the plaint. In paragraph No.8, it is stated that the defendants claimed themselves as representatives of Kanadukathan Vallambars and unlawfully interfered with the possession of the plaintiff over the suit property. The defendants in their written statement specifically pleaded that the



suit property belongs to Six karai Nattars of Kanadukathan and that the plaintiff was in possession and enjoyment of the same only in his capacity as a lessee. In support of their contention, the defendants marked Ex.B.1. Ex.B.1 is a copy of SLR and it can be seen therefrom that the property comprised in Survey No.439/3 has been described as natham and it stands in the name of Sri Ponnazhagi Devi Amman Kovil and Sri Chidambara Vinayagar Kovil. It is stated that Sri Ponnazhagi Devi Amman Kovil belonged to Chettiar community. Even though the learned counsel appearing for the appellants would strongly contend that Muthiah Chettiar had no title over the property and that he fraudulently obtained patta and that based on the same, Ex.A.1 was executed, I refrain from going into the said contentious issue. The defendants have also marked Ex.B.5 and Ex.B.2. These two documents according to the defendants were written by the plaintiff in favour of Kanadukathan Nattar community accepting their title. During the cross examination, while the plaintiff would concede that he did execute the letter dated 07.06.1999, he denied his signature in the letter dated 14.09.1994. Kanadukathan community has put up a row of shops and out of them, two fall within the suit property. The plaintiff has not only sought the relief of declaration and injunction but also sought the relief of recovery of possession. The categorical stand of the defendants is that the property belonged to the community and not to them. Reading of the plaint averments also indicates that the plaintiff impleaded the defendants only on the allegation that they claimed themselves as the representatives of Kanadukathan Nattars. In view of the stand taken by the plaintiff himself and the stand taken in the written statement and the contents of the aforesaid exhibits, particularly, Ex.B.1 and Ex.B.5, one can safely conclude that proper person to be sued could only be the collective body of Kanadukathan Nattars. Therefore, the plaintiff should have followed the procedure set out under Order 1, Rule 8 CPC .

9. In this case, it was not followed. That is why, the trial Court non-suited the plaintiff. The first Appellate Court chose to reverse the same by holding that since the defendants alone were interfering with the plaintiff's possession and encroachment, they can very well be sued in their individual capacity. This finding is clearly erroneous. As rightly pointed out by the learned counsel appearing for the appellants, since the recovery of possession is sought, it will be inexecutable because the community has not been impleaded in the representative capacity.

10. I therefore answer the substantial question of law in favour of the appellant. The impugned judgment and decree passed by the first appellate Court is set aside and suit stands dismissed. This second appeal is partly allowed.

11. To reiterate that the suit filed by the respondent herein stands dismissed on account of non-adherence to Order 1, Rule 8 CPC.



All the other issues are left open. I make it clear that I am not restoring the decision of the trial Court because there are certain findings adverse to the plaintiff. No costs.

Sd/-

Assistant Registrar (CS II)

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/ /2022

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Subordinate Judge,
Devakkottai.
2. The Principal District Munsif,
Karaikudi.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.SUNDAR SRINIVASAN, Advocate (SR-14039[F] dated 24/03/2022)

+1 CC to M/s.S.M.S.JOHNNY BASHA, Advocate (SR-14588[F] dated 25/03/2022)

S.A.(MD)No.141 of 2010
23.03.2022

MGJ(18.04.2022) 4P 7C