**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**Reserved on : 11.08.2022**

**Pronounced on: 23.09.2022**

**CORAM : JUSTICE N.SESHASAYEE**

S.A.(MD) No.683 of 2012
and
M.P.(MD) No.1 of 2012

1.Narayanamoorthy
2.Muthuramasubramaniam
3.Vishnuvarthanan ... Appellants/Respondents 1 to 3/ Plaintiffs

-vs-

1.K.M.Kanthasamy ... 1st Respondent/Appellant/ 1st Defendant

2.Selection Grade Panchayat,
Tiruchendur,
Through its Executive Officer,
Tiruchendur Taluk,
Tiruchendur. ... 2nd Respondent/4th Respondent/ 2nd Defendant

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 06.09.2012 made in A.S.No.4 of 2012 on the file of the First Additional District and Sessions Court, Thoothukudi, modifying the judgment and decree dated 15.12.2010 made in O.S.No.77 of 2008 on the file of the Additional District Munsif Court, Tiruchendur.

For Appellants : Ms.Jessi Jeeva Priya

For Respondents : Mr.K.Mahendran for R1

: Mrs.K.Christy Theboral
Additional Government Pleader for R2

## JUDGMENT

The plaintiffs, who were successful in their suit in O.S.No.77 of 2008, but suffered a partial reversal of fortune before the first appellate Court in A.S.No.4 of 2012 filed at the instance of the first defendant, are the appellants herein. The parties would be referred to by their rank before the trial Court.

**2.** The scope of the appeal travels within a narrow space:

- Certain Krishnammal was the original owner of a house in Natham Survey No.241/1 of Keelatiruchenthur Town, Tiruchendur Taluk. On 17.09.1959, under Ext.B.1-sale deed, a certain Kandasamy Thevar purchased this property from Krishnammal.
- Krishnammal had a brother Andi Iyer. On the very date of purchase on 17.09.1959, Kandasamy Thevar executed Ext.A.1 document and

this is styled as a 'settlement deed'. In this document, it is recited that since Krishnammal and her brother Andi Iyer did not have any other property of their own, and as they were also hereditary '*Kattalaidharar'* of the family of Kandasamy Thevar, they would be entitled to be in possession of the suit property. The document also stipulated that the beneficiary under the document viz., Krishnammal and Andi Iyer would not have any right of alienation, and that if the heir of Andi Iyer leaves no heirs, the property should revert to the heirs of the settlor.

- The plaintiffs claim that this document had created absolute title in favour of Krishnammal and Andi Iyer. They claim that in 1962, Andi Iyer died leaving behind him surviving his son Vembu Iyer. Krishnammal died in 1967 without any heirs. The plaintiffs are the sons of Vembu Iyer. According to them, based on Ext.A.1 document dated 17.09.1959, Municipal records came to be mutated and the property was assessed to property tax in the names of beneficiaries under Ext.A.1.

- The first defendant is the grandson of the aforesaid Kandasamy Thevar through the latter's son Muruganandham. The plaintiffs complain that Muruganandham asserts a false claim over the property by virtue of Ext.B.2-Will dated 10.01.1963 purported to have been executed by Kandasamy Thevar himself. On the strength of the Will, the plaintiffs allege that the first defendant had changed the property tax assessment in his name, and this is now challenged in the suit. As an ancillary relief, they also seek a decree for prohibitory injunction to restrain the first defendant from dispossessing them.

**3.** The first defendant alone contested the suit. In his written statement, he claims that under Ext.A.1 document, there is a clear stipulation that the beneficiaries under the document would enjoy the property along with the executant of the document viz., Kandasamy Thevar. In other words, Krishnammal and Andi Iyer were only given right to enjoy the property along with the title holder of the property, and Ext.A.1 does not create any vested title in the property beyond the right of joint occupancy. Indeed Ext.A.1 stipulates that the beneficiaries of the document do not have any right of alienation but contrary to the same, they mutated the property tax assessment register in their names and also mortgaged the property to a third party which runs counter to the extent of right granted to them under Ext.A.1 and resisted the suit.

**4.** The dispute went to trial and before the trial Court, the third plaintiff examined himself as P.W.1. He also examined one Jayaraj as P.W.2. He is a staff of the second defendant – local body concerned. They produced Ext.A.1 to Ext.A.7. For the defendants, the first defendant entered the box as D.W.1. Besides, he examined two other witnesses as D.W.2 and D.W.3. They produced as many as 11 documents. On appreciating the evidence, the trial Court decreed the suit in *toto.*

**5.** When the matter reached the first appellate Court at the instance of the first defendant, the first appellate Court did find that transfer of name in the property tax assessment register by the second defendant – Local Body is bad in law since no enquiry was conducted prior to that, but declined to grant a decree for prohibitory injunction, as the first defendant is entitled to be in joint possession of the property. That part of the decree of the first appellate Court where it declined the decree of prohibitory injunction to the plaintiffs is now under challenge in this appeal.

**6.** This appeal was admitted for considering the following substantial questions of law:-

> *"i. Whether it is a lawful and equitable for the Court, to dismiss the suit filed by the plaintiff for permanent injunction, even after holding that he is in possession of the suit property, simply because, a defendant has got a joint right with the defendant, thereby, allowing the person in lawful possession to be dispossessed, otherwise than in accordance with law?*
>
> *ii. In an interpretation of the recitals and the conditions of the terms of the settlement, whether the Court can interpret the document only on the basis of a few recitals, without reading the entire documents, to find out the intention of the author of the document?*
>
> *iii. When the plaintiff has claimed two separate reliefs in his suit and when the reliefs were granted by the Trial Court in his favour, whether, the lower Appellate Court, without*

> *separately formulating a point for determination, for each of the relief, can simply frame whether the appeal to be allowed or not, is it legal to decide a point as a point for determination, whether such determination is legal in terms of Order XLI Rule 31 of Code of Civil Procedure?"*

**7.** The learned counsel for the appellants/plaintiffs argued that it has come out in evidence that pursuant to Ext.A.1, Andi Iyer was in actual physical possession. Thereafter, his son Vembu Iyer became entitled to the possession of the property, and the plaintiffs continued with the right of possession after the demise of their father Vembu Iyer. The evidence also indicates that Kandasamy Thevar, the executant of Ext.A.1, never stayed under the same roof along with Andi Iyer and Krishnammal and that he lived separately. Hence, the plaintiffs' possession must be protected.

**8.** Per contra, the learned counsel for the first defendant submitted that the plaintiffs have conducted their affairs inconsistent to the terms of Ext.A.1, whereas Ext.A1 stipulates that Krishnammal or Andi Iyer or other successor in interest will not have any right of alienation. These plaintiffs have clandestinely mutated the property tax assessment pertaining to the residential building in their favour and also have mortgaged the property.

**9.** The issue as stated earlier is all about two aspects: (a) Whether the plaintiffs would have exclusive right over the property in question; and (b) Whether they would be entitled to a right of decree for injunction.

**10.** The rights of rival side depend on a construction of Ext.A.1-settlement deed dated 17.09.1959. Given the fact where the dispute relates to allegation of mutation of property tax assessment register in the name of the plaintiffs as pertaining to the suit property, the legitimacy of the same has to be evaluated on a construction of Ext.A-1. That, however, has been adequately done by the Courts below. Suffice to state that under Ext.A.1, Krishnammal and Andi Iyer were only given a licence to occupy the building and no exclusive right over the property in question was granted to them.

**11.** Any contra argument will not stand the test of reason for at least two reasons: (a) Kandasamy Thevar had purchased the property under Ext.B.1 from Krishnammal, and if only it was his intention to give the property back to Krishnammal, there is no need for him to buy and give the property back to the same Krishnammal; and (b) the document says that Krishnammal and Andi Iyer, and their heirs, if any, would be enjoying the property along with the settlor's family. In other words, the title to the property vests with Kandasamy Thevar or his successors in interest, but right of possession of the property alone is granted to Andi Iyer and his heirs. In this background, if the line of reasoning of the first appellate Court is considered, it only upholds the contention of the first defendant challenging the transfer of name in the property tax register only because it was not supported by a formal enquiry. This Court agrees with the proposition and therefore, does not intend to interfere with that. After all, when a civil right is attempted to be interfered by an administrative action, right of hearing shall be given. Ultimately, this issue has to be resolved only by the second defendant, who as on date is watching the proceedings without participating in it.

**12.** Turning to the critical leg of this appeal, the issue now is whether the plaintiffs must be granted decree of prohibitory injunction restraining the first defendant from dispossessing the plaintiffs. The first appellate Court has taken a view that inasmuch as Ext.A.1 has only created joint possession, the first defendant cannot be excluded from possession.

**13.** This Court considers that the first appellate Court has telescoped the principle of a law pertaining to co-sharers for addressing the issue before it. In the case of property held by co-sharers, each co-sharer would be entitled to every square inch of the property and hence one co-sharer is not allowed to exclude another co-sharer from enjoying any piece of property. This principle will not have any application in this case.

**14.** So far as the present case is concerned, admittedly, the first defendant is not in actual physical possession. The best case scenario for the plaintiffs is that they are the licensees of the property, but they are still in exclusive possession. As already held, the title to the property did not vest in the plaintiffs and hence the plaintiffs have no right in themselves to either resist or take objection to the proceedings of the second defendant in mutating the property tax assessment of the suit property to the first defendant's name. But possession is a different aspect and here, this Court has to hold that the plaintiffs can be dispossessed only by a due process of law.

**15**. In fine, this Court partly allows the appeal and modifies the decree of the first appellate court dated 06.09.2012 made in A.S.No.4 of 2012 on the file of the First Additional District and Sessions Court, Thoothukudi, only to the extent that the plaintiffs' possession should not be disturbed by the first defendant except as per law. No costs. Consequently, connected miscellaneous petition is closed.

**.09.2022**

Internet:Yes
Index:Yes/No
abr

**N.SESHASAYEE, J.**

abr

To

1.The First Additional District and Sessions Court,
Thoothukudi.

2.The Additional District Munsif Court, Tiruchendur.

3.The Executive Officer,
Selection Grade Panchayat,
Tiruchendur Taluk, Tiruchendur.

4.The Section Officer, VR Section,
Madurai Bench of Madras High Court.

**S.A.(MD) No.683 of 2012**

**.09.2022**