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S.A(MD)No.736 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.02.2022

DELIVERED ON : 11.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A(MD)No.736 of 2021

Kannadhasan

... Appellant/Respondent/
Plaintiff

Vs.

Arivalagan

... Respondent/Appellant/
Defendant

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the decree and judgment passed, dated, 09.11.2019, made in A.S.No.20 of 2018 on the file of the Additional Sub Court, Kumbakonam, reversing the judgment and decree passed, dated, 16.03.2018, made in O.S.No.265 of 2011 on the file of the I Additional District Munsif, Kumbakonam.

For Appellant : Mr.G.Gomathi Sankar
For Respondent : No appearance

JUDGMENT

The plaintiff is the appellant herein.

2. The plaintiff filed O.S.No.265 of 2011 before the I Additional District Munsif Court, Kumbakonam, for permanent injunction, restraining the defendant from interfering with his possession and enjoyment of the suit schedule properties. The suit was decreed by the trial Court. The defendant filed A.S.No.20 of 2018 before the Additional Sub Court, Kumbakonam. The learned First Appellate Judge was pleased to allow the appeal and dismiss the suit. As against the same, the present Second Appeal has been filed by the plaintiff.

3. The plaintiff had contended that the suit schedule properties are the absolute properties of the plaintiff. The plaintiff's father was granted chitta and adangal for the suit schedule properties. The plaintiff's father had executed a settlement deed in favour of the plaintiff on 27.07.2010 under Exhibit A1. He further contended that the defendant is the brother of plaintiff's father. He does not have any right title or possession over the suit schedule properties. The defendant has started disturbing the possession of the plaintiff. Hence, the present suit for permanent injunction.



4. The defendant filed a written statement contending that originally natham patta was granted in favour of one Nadesan, who passed away in the year 2002 leaving behind his two sons, namely Anbalagan and Arivalagan and a daughter by name Tamilarasi. No partition has taken place among the three legal heirs. Hence, this defendant and the plaintiff are entitled to each 1/3rd share in the suit schedule properties and the remaining 1/3rd share belongs to their sister, Tamilarasi. Hence, he contended that when his brother Anbalagan had got only 1/3rd share in the suit schedule properties, he is not entitled to execute settlement deed under Exhibit A1 in favour of the plaintiff for whole of the suit schedule property. He further contended that the suit schedule properties are being enjoyed jointly after the death of his mother. He further contended that since the defendant is also one of the co-owners of the property, the plaintiff is not entitled to a decree for permanent injunction.

5. The trial Court relied upon Exhibit A1 settlement deed and held that the defendant has not taken any steps either to cancel the said settlement deed or file a suit for partition. Since the plaintiff is in possession of the suit schedule properties, he is entitled to a decree for permanent injunction.

6. The First Appellate Court after consideration of the documents on either side arrived at a finding that the plaintiff's grand-father, Nadesan got title to the property based upon a Government grant and hence, it should be presumed to be a self-acquired property, unless the grant appears to be intended for the benefit of the family. The First Appellate Court also found that the said Nadesan had died intestate. After the death of said Nadesan, patta standing in the name of Nadesan has been cancelled and a fresh patta has been issued in the name of the plaintiff's father (Anbalagan) under Exhibit A4, without any jurisdiction. Based upon the said patta, plaintiff's father cannot claim absolute title to the suit schedule properties. Hence, Exhibit A1 settlement deed executed by the said Anbalagan in favour of the plaintiff is not valid in the eye of law. The property is a joint family property of the plaintiff, defendant and one Tamilarasi. Since the defendant is one of the co-owners, a decree for permanent injunction cannot be granted as against the co-owner. Based on the said findings, the First Appellate Court dismissed the suit. As against the same, the said Second Appeal has been filed.

7. The learned Counsel for the appellant/plaintiff had contended that the plaintiff has ousted title of the defendant in view of his continuous occupation of the suit schedule properties. He further contended that since the defendant is not in joint possession of the suit schedule properties, even a co-owner is entitled to a decree for permanent injunction to protect his possession. He further



that the suit schedule property is a joint family property.

8. I have carefully considered the submission made by the learned Counsel for the appellant.

9. Two Village Administrative Officers have been examined as P.W.3 and D.W.2. Both of them have deposed that even today, the patta stands in the name of one Nadesan, who is the grand-father of the plaintiff. Since the plaintiff's father came into possession of the suit schedule properties, patta standing in the name of Nadesan was cancelled and the name of the plaintiff's father Anbalagan has been included. Hence, it is evident that patta standing in the name of plaintiff's grand-father has been cancelled and a fresh patta has been issued in the name of the plaintiff's father Anbalagan, without notice to the defendant. Based upon the said patta, the father of the plaintiff has chosen to execute Exhibit A1 settlement deed in favour of the plaintiff. Patta standing in the name of the plaintiff's father will not confer upon him any title to the whole of the property and any document executed on the basis of the said patta will not convey any title in favour of the plaintiff.

10. Admittedly, the plaintiff's father and the defendant one Tamilarasi are co-owners. Hence, after the death of Nadesan, plaintiff's father, defendant and the said Tamilarasi are each entitled to 1/3rd share in the suit schedule properties. The defendant is a co-owner of the suit schedule properties. The plaintiff is now seeking injunction as against the co-owner not to disturb his possession based upon Exhibit A1 settlement deed. Since this Court arrived at a finding that the father of the plaintiff is not entitled to execute such a settlement to the whole of the property, the plaintiff cannot relied upon the said document. The First Appellate Court has correctly appreciated the oral and documentary evidence on either side and dismissed the suit.

11. I do not find any substantial question of law for admitting the above Second Appeal and the Second Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

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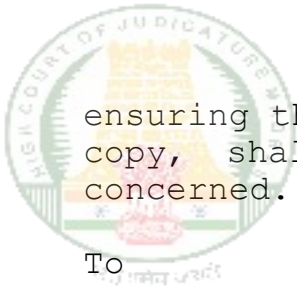
Sub Assistant Registrar(CS)

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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 Additional Subordinate Judge,
Kumbakonam.
- 2.The I Additional District Munsif,
Kumbakonam.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.G.GOMATHISANKAR, Advocate (SR-5564[F] dated
11/02/2022)

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RK(29/03/2022) 4P 6C