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A.S.No.1024 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

CORAM

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

A.S.No.1024 of 2012

S. Sumathi

.... Appellant/Plaintiff

Vs

1. R.Deepa

2. K.R.Raja Krishnan

3. E.M.Subramaniam

4. S.Maheswari

5. Thodda Thayee

6. Chinna Thayee

.... Respondents/Defendants

PRAYER: Appeal Suit filed under Section 96 of CPC against the Judgment and Decree dated 11.07.2012 made in O.S.No.70 of 2009 on the file of the Principal District Judge, Erode.

For Appellant : Mrs.G.Sumitra
for Mr.T.Doraisamy

For R1, R2, R5 & R6 : Mr.N.Manokaran

For R3 & R4 : No appearance



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JUDGMENT

This Appeal Suit has been filed against the Judgment and Decree dated 11.07.2012 passed in O.S.No.70 of 1991 by the Principal District Judge, Erode, thereby dismissing the suit for declaration and permanent injunction.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The appellant is the plaintiff and the respondents are the defendants in the suit filed for declaration and permanent injunction. The case of the plaintiff is that the plaintiff had purchased the suit properties by the registered sale deeds dated 02.01.1984 and 16.10.1991. After purchase, the plaintiff was in possession and enjoyment of the suit properties. She had also applied for quarrying black granite in the suit properties and obtained permission on 31.05.1984 for a period of three years. Subsequently, the said permission was also renewed till the filling of the suit. As per the family arrangements, the defendants 5 and 6, who



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are the daughters of one Mathey Gowda, declared that they are not having any interest in the property comprised in R.S.No.1075/1B in the sale deed dated 16.10.1991. The defendants 1 and 2 are said to be the owners and admitted to trespass into the suit property on 17.04.2009. The first defendant is the wife of the second defendant. The third defendant is father of the fourth defendant. The defendants 5 and 6 are the daughters of Late Mathey Gowda. They executed a sale deed in favour of the third defendant. The third defendant along with his daughters executed a sale deed in favour of the defendants 1 and 2. Therefore, the said sale deeds are not valid and the defendants are not having any right over the suit property. Hence, the suit.

4. Resisting the same, the defendants filed written statement stating that the plaintiff filed a suit suppressing the earlier suit filed by them in O.S.No.239 of 2005 for the very same relief on the file of the District Munsif Court, Bhavani. In the said suit, the plaintiff sought for an interim injunction in I.A.No.792 of 2005 and the same was dismissed. It was also confirmed in the appeal and revision petition of this Court and



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directed the Trial Court to dispose of the suit within a period of four weeks from the date of receipt of a copy of the order. When the suit was posted for trial, the plaintiff herself had withdrawn the suit and the same was dismissed. However, the finding made in Interlocutory Application in I.A.No.792 of 2005 was confirmed upto this Court. Therefore, the defendants 1 and 2 are the co-owners of the suit property and the second defendant filed a writ petition before this Court in W.P.No.8663 of 2009 as against the plaintiff and others with regard to quarrying. Pending suit, it was found that the plaintiff violated the rules and sub-leased in favour of M/s. Minrocks International from the year 2003. Further, the first defendant had purchased a share in the suit property from vendor E.M.Subramaniam, who in turn had purchased the property from the legal heirs of Mathey Gowda. The first defendant is the co-owner of the suit property and no injunction was granted as against the co-owners.

5. The 5th and 6th defendants filed written statement stating that their father had two wives. First wife is one Bommi through whom a son viz., Madhavan was born. After the demise of the first wife, their



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father got married to one Chinnamathe, through whom the defendants 5 and 6 and another son one Murugan were born. Therefore, the sale deed dated 02.01.1984 in favour of the plaintiff is not valid. Since, the first defendant was minor without obtaining permission from the Court, the vendor had no right to sell the property in favour of the plaintiff. The defendants 1 and 2 had sold their share in the suit property in favour of E.M.Subramaniam on 28.06.2005. Therefore, the plaintiff alone is not the absolute owner of the suit schedule property.

6. On hearing the rival pleadings, the learned Trial Judge framed the following issues for determination in the suit :-

"1. Whether the plaintiffs are entitled to relief of declaration and injunction as prayed for ?

2. Whether the plaintiffs are entitled share in the common property regarding 40 cents in R.S.No.1075/1B as claimed ?

3. Whether the 1st defendant is co-owner of the property as alleged by the defendants?

4. Whether the right of title in I.A.No.782 of 2005 in O.S.No.239 of 2005 on the file of District Munsif,



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Bhavani which operate as resjudicata as alleged by the defendants?

5. *To what relief, the plaintiff is entitled to ? "*

7. On the side of the plaintiff, she had examined P.Ws.1 to 5 and marked Exs.A1 to A30. On the side of the defendants, they had examined D.W.1 to D.W.3 and marked Exs.B1 to Ex.B16. The Court had marked Exs.C1 & C2. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the Trial Court dismissed the suit for declaration and permanent injunction. Aggrieved by the same, the present Appeal Suit.

8. The learned counsel appearing for the appellant/plaintiff would submit that the defendants 5 and 6 have no right over the property comprised in R.S.No.1075/1B, after sale deed dated 16.10.1991. The sale deed dated 28.06.2005 was executed in favour of the third defendant by the 5th and 6th defendants which is not valid. As per the sale deed dated 16.10.1991, the 5th and 6th defendants were also executants and they have sold the entire land comprised in



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R.S.No.1075/1B. There was nothing to be remained sold. Therefore, the sale deed executed by them in favour of the third defendant is not valid. The present suit is not hit under Order 2 Rule 3 of CPC, since the earlier suit in O.S.No.239 of 2005 was filed only as against the defendants 1 and 2. Therefore, the present suit has been filed to implead the defendants 1 and 2 as parties as along with other defendants.

9. Per contra, the learned counsel appearing for the respondents submitted that the suit itself is barred under Order 2 Rule 3 of CPC, since similar suit was already filed by the third respondent in respect of the very same property for the very same relief. In fact, the interim application for injunction is dismissed and the same was confirmed by this Court. In the said suit, after examination of the witnesses, the plaintiff had withdrawn her suit, without any liberty to file the present suit on the very same cause of action. The defendants 5 and 6 are the daughters of the original owner. In spite of their presence, they were not made a party in Ex.A1. Therefore, it would not bind them and their share did not get transfer under Ex.A1. Therefore, they rightly sold



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out their share of the property in favour of the first defendant. Now, the first defendant also became one of the co-owner of the property. Therefore, the plaintiff cannot ask for declaration in respect of the entire extent of the property. As they operated some quarry activities in respect of the suit property, it would not give any title by adverse possession.

10. He further submitted that the plaintiff had purchased the suit property under Exs.A1 and A2 from all the legal heirs of the Mathey Gowda. Therefore, there was no need to file a suit for partition. Even assuming that the plaintiff had purchased undivided share, she cannot file a suit for partition, because, being the purchaser, she ought to have filed a suit for partition within a period of 12 years as per Article 65 of the Limitation Act.

11. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials available on record.



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12. On hearing the arguments on either side, the point for consideration arising in this appeal is that.

“(i) Whether the plaintiff is entitled for the relief of declaration and injunction in respect of the suit schedule properties ?

and

(ii) Whether the sale deed executed by the defendants 5 and 6 are valid or not in favour of the first defendant ?”

13. The plaintiff had purchased the suit property under Exs.A1 and A2. As per Ex.A1, the plaintiff had purchased the property to an extent of 3.11 acres comprised in R.S No.1075 in the total extent of the property is 7.43 acres in Survey No.1075. The recital of the sale deed is also clear that the subject property was an ancestral property of one Mathey Gowda. The said Mathey Gowda, for himself and one of his minor son, along with the second wife and her son, had sold the properties.



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14. A perusal of Ex.A2-Sale Deed also reveals that the properties are ancestral in nature of the said Mathey Gowda. His wife Chinnamathe along with her minor child and also along with her sisters, viz., the defendants 5 and 6, had sold the property comprised in R.S.No.1075 to an extent of 3.11 acres. The plaintiff had purchased properties admeasuring 6.44 acres by way of Exs.A1 and A2. Therefore, the remaining extent of 1.00 acre is very much available to the legal heirs of the Mathey Gowda in the said R.S.No.1075. Therefore, the plaintiff cannot claim ownership for the entire extent of land comprised in R.S.No.1075. Further, the plaintiff filed a suit for declaration in O.S.No.594 of 1990 in respect of the very same property as against third parties. The said third parties are no way connected with the suit properties.

15. The defendants are in no way connected with the said suit. Further the third defendant had also purchased the property only in the year 2009 and his vendor had purchased the suit property in the year 2005. Therefore, the plaintiff is not entitled for the relief of declaration in respect of the suit property. Further, the Trial Court rightly observed



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that the plaintiff can seek for partition and separate possession instead of filing suit for declaration. The plaintiff had already filed a suit for declaration as against the third defendant in respect of very same suit property in O.S.No.239 of 2005. After filing the suit, the first defendant had purchased the suit property from the third defendant vide sale deed which was marked as Ex.B8. In the said suit, the plaintiff filed an application for injunction and the same was dismissed and confirmed upto this Court in CRP No.2823 of 2007. Thereafter, the said suit was dismissed as withdrawn without any leave to file a similar suit on the very same cause of action. Even before the withdrawal of the suit on 02.06.2009, the present suit was filed on 27.04.2009 itself. When the suit was pending for the very same relief in respect of the very same property, the plaintiff ought not to have filed another suit in respect of the very same property. Even at the time of withdrawal of the earlier suit, the plaintiff failed to get leave to file a fresh suit on the very same cause of action. Therefore, the present suit itself is not maintainable and it is nothing but a clear abuse of process of law. Therefore, the Trial Court rightly dismissed the suit.



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16. In view of the above, this Court finds no infirmity or illegality in the Judgment and Decree dated 11.07.2012 passed in O.S.No.70 of 2009 by the Principal District Judge, Erode. Accordingly, this Appeal Suit is dismissed. No costs.

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Index : Yes / No
Internet : Yes / No
Speaking order /Non-speaking order
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To

1. The Principal District Judge,
Erode.

2. The Section Officer,
V.R.Section,
High Court,
Madras.



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G.K.ILANTHIRAIYAN, J.

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