



S.A.No.49 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.49 of 2021

Alamelu

... Appellant / plaintiff

Vs

Iyyappan

....Respondent / Defendant

Prayer : Second Appeal is filed under Section 100 of C.P.C to set aside the judgment and decree dated 08.08.2019 passed by the Subordinate Judge, Omalur in A.S.No.10 of 2019, confirming the judgment and decree dated 20.12.2018 in O.S.No.371 of 2013 before the District Munsif Court, Omalur.

For Appellant : Mr.T.Balaji

For Respondent : Served -No appearance



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JUDGMENT

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The concurrently unsuccessful plaintiff who filed a suit for bare injunction, is the appellant before this Court. The parties are referred to in the same array as in the suit O.S.No.371 of 2013.

2. The facts are as follows:

(i) The plaintiff had filed O.S.No.371 of 2013 on the file of the District Munsif, Omalur, Salem District for a bare injunction. It is her case that the suit property was purchased by her mother, Palaniammal under a registered Sale Deed Dated 12.02.1992. Pursuant to the sale, her mother, Palaniammal had put up a tiled house in the year 1992. The plaintiff is the only daughter of the said Palaniammal. The plaintiff's father Rathinam had two wives. The first wife is her mother, Palaniammal and the second wife is one Kuppayee, who is the mother of the defendant. The plaintiff's contention is that she and her mother were in possession and enjoyment of the suit property and her mother



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Palaniammal died intestate on 25.03.2000, the property devolved on her. The plaintiff would further submit that her father, Rathinam passed away on 22.11.2008.

(ii) The plaintiff would submit that while she was in peaceful possession and enjoyment of the property, the defendant had started to interfere with her peaceful possession. The defendant had demanded that the plaintiff should sell the property to him, which was flatly turned down by the plaintiff and therefore, he attempted to trespass into the suit property on 26.11.2013, which attempt was thwarted. Hence, the plaintiff has come forward with the suit in question.

3. The defendant had filed a written statement *inter-alia* admitting that the property belonged to Palaniammal. However, it is his contention that on the death of Palaniammal intestate on 25.03.2000, her property devolved both on her husband as well the



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plaintiff. Thereafter, on the death of Rathinam, his $\frac{1}{2}$ share devolved on both the plaintiff as well as the defendant and therefore, the defendant is also a co-owner to the property and there cannot be an injunction against a co-owner. He would also deny the contention of the plaintiff that she is in exclusive possession and enjoyment of the property in question.

4. The trial Court had framed the following issues.

- 1. Whether the suit for bare injunction is maintainable without the relief of declaration?*
- 2. Whether the plaintiff is in lawful possession and enjoyment of the suit property?*
- 3. To what other reliefs the plaintiff is entitled to?*

5. Ultimately, the suit was dismissed by the trial Court.

Challenging the same, the plaintiff had preferred an appeal in



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A.S.No.10 of 2019 on the file of the Subordinate Court, Omalur. The appellate Court also concurred with the judgment and decree of the trial Court and dismissed the appeal. Challenging the same, the plaintiff is before this Court.

6. Heard Mr.T.Balaji, learned counsel appearing for the appellant and perused the materials available on record. Though the respondent has been served, he has not entered appearance through counsel.

7. Admittedly, Palaniammal died intestate, and when she had passed away, she was survived by her father, the plaintiff, and her husband, Rathinam. As a result, both Rathinam and the plaintiff were entitled to an equal share of the property. Thereafter, Rathinam passed away in the year 2008, and his $\frac{1}{2}$ share has devolved on the plaintiff, his daughter, and the defendant, his son. Therefore, the plaintiff and the defendant are the co-owners of the property. No doubt, the plaintiff has



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3/4th share and the defendant has 1/4th share. Therefore, the plaintiff cannot seek to injunct a co-owner. The courts below have rightly considered the issue and dismissed the suit. I see no reason to interfere with the concurrent judgment and decree of the Courts below. Further, no substantial question of law has been made out by the appellant / plaintiff. Accordingly, the second appeal is dismissed. No costs.

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Index: Yes/No
Speaking order/non-speaking order
srn



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P.T.ASHA, J.,

srn

To

1. The Subordinate Judge, Omalur
2. The District Munsif Court, Omalur.
3. The Section Officer,
V.R.Section,
High Court, Madras.

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