



S.A.No.676 of 2008 & M.P. No.1 of 2008 & C.M.P. Nos 7656 & 7657 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.676 of 2008 &
M.P. No.1 of 2008 &
C.M.P. Nos. 7656 & 7657 of 2018

B. Sumathy

...Appellant

Vs.

1. Subbammal
2. Mayilsamy
3. Ramasamy
4. Soundarajan (died)
5. Rajendran
6. S. Padmavathy
7. Minor S. Hari Krishnan

... Respondents

RR6 & 7 brought on record as LR's of the deceased
R4 vide order of court dated 02.09.2015 made in M.P.
No.1 to 3/14 in S.A. No.676/08.

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 31.01.2007 passed in A.S. No.9 of 2006, on the file of the Subordinate Judge, Tiruppur, upholding the decree and judgment dated 27.02.2006 passed in O.S. No.203 of 2002, on the file of the District Munsif Court, Tirupur.



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For Appellant : Mrs. Hema Sampath, Senior Counsel
Asst. by Mr. K. Govi Ganesan
For R1 to R3 & R5 : Mrs. T.R. Gayatri
for Sarvabhauman Associates.

JUDGMENT

The unsuccessful plaintiff before both the courts below has filed the present Second Appeal. The plaintiff filed a suit in O.S. No.203 of 2002 before the District Munsif, Tiruppur, for a permanent injunction restraining the defendants from interfering with her peaceful possession and enjoyment of the suit property which is described in the plaint as a pathway measuring 10 x 230 feet in Survey No.7 of Iduvai Village, Tiruppur Taluk, Coimbatore District.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.



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3.The case of the plaintiff is that the suit property was originally owned by one Palanisamy Gounder, who executed a Will (Ex.A2) dated 05.09.1983 bequeathing the suit property and other properties in favour of his wife, sons and daughters. The 'B' schedule property mentioned in the Will was bequeathed in favour of his daughter Chitra. The said Chitra along with her daughter Krithika executed two sale deeds (Ex.A4 and Ex.A5) dated 29.01.2001 in favour of the plaintiff along with a right to enjoy the suit pathway. According to the plaintiff, she and her predecessor in title were enjoying the suit pathway continuously without any interruption and since the defendants started preventing the plaintiff from using the said pathway, she was forced to file the suit for bare injunction.

4. The suit was resisted by the defendants on the ground that the suit property was originally classified as Ryotwari Inam and the Settlement Tahsildar, Gobichettipalayam, after conducting inquiry, issued a Ryotwari patta in the name of Palanisamy Gounder and his daughter Subbammal dated 13.02.1968. It was therefore contended that



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Palanisamy Gounder had no independent right to execute a Will in respect of the properties mentioned in the Will. Moreover, the proceedings passed by the Tahsidar under Act 30 of The Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (herein after called the "Act") is final and the Civil Court does not have any jurisdiction over the same. They, therefore, prayed for dismissal of the suit.

5. On the basis of the above pleadings, the trial Court framed the following issues :

- i. "Whether the plaintiff and the defendants are the co-owners of the suit property?
- ii. Whether the Will dated 05.09.1988 is valid?
- iii. Whether the suit pathway is in existence?
- iv. Whether the plaintiff is entitled for permanent injunction?
- v. To what relief plaintiff is entitled.



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6. In the trial Court, the plaintiff examined herself and five other witnesses and marked Ex.A1 to Ex.A24. On the side of the defendant, the 3rd defendant examined himself and three other witnesses and marked Ex.B1 and Ex.B32.

7. After full contest, the learned trial court Judge dismissed the suit filed by the plaintiff vide his decree and judgment dated 27.02.2006, on the following grounds:

- i. As per the proceedings of Tahsildar (Ex.B4 and Ex.B5), patta was issued under the Act in favour of Palanisamy and Subbammal and therefore, Palanisamy Gounder does not have any right to execute a Will.
- ii. Under Section 46(1) of the Act any order passed by any officer of the Government or other authority or any division of the Tribunal or Special Appellate under the Act in respect of matters to be determined for the purposes of this Act shall be final subject only to any appeal or revision provided under the Act.
- iii. As per the Will (Ex.A2) dated 05.09.1983, the 'A' schedule



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- iv. Chitra sold her property in favour of the plaintiff.
- v. However, in Ex.A20 which is a sale deed executed by one Vishnu and his heirs in favour of the 1st defendant, there is a mention about Survey No.7 of Iduvai Village, which belongs to Palanisamy Gounder. Therefore, the Will is true and valid in respect of Survey No.7 alone.
- vi. Thayammal and Chitra were only given life estate through the Will Ex.A2. Their legal heirs did not raise any objection in respect of the sale executed by Thayammal and Chitra.
- vii. The plaintiff has not established that she is in possession of the suit pathway by adducing land receipt or adangal extract.
- viii. The plaintiff's counsel also accepted that a suit in O.S. No.217 /2003 was filed for declaration of title in respect of Survey No.5 and 7 before the Subordinate Court, Tiruppur. Therefore, it is not necessary in the present suit to decide the ownership of the plaintiff in Survey No.5 of the suit property.



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8. Aggrieved over the judgment and decree passed by the trial court, the plaintiff filed an appeal in A.S. No.9 of 2006 before the Subordinate Court, Tiruppur. The learned Subordinate Judge, Tiruppur, after analysing the oral and documentary evidence adduced on both sides, upheld the findings recorded by the trial court vide his decree and judgment dated 31.01.2007.

9. Now the present second appeal is filed by the plaintiff. Notice of motion was issued to the respondents and after several adjournments, the case was posted today for final hearing. Substantial questions of law raised by the learned counsel for the appellant in the grounds of appeal are as follows:

- i. Whether the Courts below have misdirected themselves by deciding the title of the parties in respect of S.F.No.5 when the suit has been filed for the usage of the cart track in S.F.No.7?
- ii. Whether the Courts below are correct in holding that mere injunction without declaration is not maintainable as the same is



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iii. Whether the principle of no injunction can be granted against a co-owner is applicable to the facts and circumstances of the case?

10. Heard Mrs.Hema Sampath, learned senior counsel assisted by Mr.K.Govi Ganesan, learned counsel for the appellant and Ms.T.R.Gayathri, learned counsel for the respondents 1, 2, 3 & 5.

11. Mrs.Hema Sampath, learned senior counsel for the appellants contended that the plaintiff had filed the suit only for bare injunction in respect of the suit pathway and this is described in the plaint schedule clearly. However, both the Courts below had gone into the title of the plaintiff in respect of her land in S.No.5 of Iduvai Village, Tiruppur Taluk, Coimbatore District. Her specific contention is that the Tahsildar in his proceedings in N.R.1139/MI Act/Palladam Taluk/68 dated 13.02.1968 had given a finding based on the evidence of Palanisamy Gounder that the land measuring 4.97 in S.No.5 of Iduvai Village, Tiruppur Taluk, Coimbatore District, was jointly owned by him



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and Subbammal jointly and had issued a joint patta in the name of Palanisamy Gounder and Subbammal. Relying on this particular document both the Courts below had wrongly held that Palanisamy Gounder does not have any right to execute a Will in respect of S.No.5 as Subbammal is also a joint owner especially when the other legal heirs of Palanichamy Gounder did not take action to set aside the sale deeds in favour of the plaintiff till date. She also relied on the full bench decision of this Court in *Srinivasan and six others vs Sri Madhyarjuneswaraswami, Tiruchirapally District* reported in **1998 (I) CTC 630** and contended that the jurisdiction of the Civil Court to entertain a suit for declaration of title and injunction is not barred by reason of the grant of patta under the provisions of Tamilnadu Act 30 of 1963 and in the instant case both the Courts below had mainly dismissed the suit filed by the plaintiff on the ground that the order passed by the settlement Tahsildar under the Act 1963 is final and the Civil Court does not have any jurisdiction. It is also her submission that both the Courts below had extensively gone into the title of the suit especially when another suit was filed by the plaintiff to declare her right over the suit



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schedule property and for a permanent injunction in O.S.No.217 of 2003 before the Sub Court, Tiruppur. According to her the said suit was stayed under Section 10 of the Code of Civil Procedure as per the orders passed in I.A. No.632/19 since the present second appeal is pending before this Court. She therefore prayed that this suit may be remitted back to the trial Court to be tried along with O.S.No.217 of 2003.

12. Per contra, the learned counsel for the respondents contended that both the courts below rendered a concurrent finding and therefore, there is no need for this Court to interfere with the same.

13. At the outset, it may observed that the plaintiff had filed the suit only for a bare injunction restraining the defendants from using the pathway measuring 10 x 230 ft'. However, both the Court below had gone into the title of the plaintiff in respect of her property in S.No.5 which was sold to her under Ex.A4 & Ex.A5 by one of the beneficiaries of the Will (Ex.A2). It is true that in the Will Ex.A2 the vendor of the plaintiff was given only a life estate. However, her daughter Krithika and



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grandmother Thayammal jointly executed two sale deeds in favour of the plaintiff. The legal heirs of Chitra did not raise any objection in this regard. Similarly, Subbammal was also given life estate in respect of A schedule property through the said Will and this Will was accepted by her also. It is pertinent to mention that the Will is dated 05.09.1983 and till date, none of the legal heirs of Palanisamy Gounder including the present defendants had attacked the said Will on the ground that Palanisamy Gounder does not have any exclusive right to execute the Will. These aspects have not been considered by both the Courts below and on the other hand, without going into the documentary evidence adduced on the side of the plaintiff to show her possession over the suit property which is only the pathway running North-South connecting the road, both the Courts below had gone beyond the scope of the suit by holding that Palanisamy Gounder does not have any right to execute the Will and that the order passed by the settlement Tahsildar under Act 30 of 1963 has become final and the Civil Court does not have any jurisdiction. It is an admitted fact that subsequent to the filing of the suit the plaintiff has filed a suit for declaration of her right over the suit



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property and for permanent injunction in O.S.No.217 of 2003 and the same has been stayed under Section 10 CPC since the present second appeal is pending before this Court. Moreover, an advocate commissioner was not also appointed to know the existence of suit pathway. The vendors of the plaintiff and the defendants belong to the same family and they might have used a pathway to reach the main road. In fact the sale deeds in favour of the plaintiff states "kh%y; top eil ghj;jpak;"

14. In the circumstances, the case is remitted back to the Sub Court, Tiruppur to be tried simultaneously with O.S.No.217 of 2003. The trial Court is further directed to render its findings based on the oral and documentary evidence adduced on both sides, uninfluenced by any of the observations made by this Court in the second appeal.

15. In the result,

i. The Second Appeal is disposed of. No costs. Consequently



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- ii. the decree and judgment dated 31.01.2007 passed in A.S. No.9 of 2006, on the file of the Subordinate Judge, Tiruppur, and the decree and judgment dated 27.02.2006 passed in O.S. No.203 of 2002, on the file of the District Munsif Court, Tiruppur, are set aside.
- iii. The case is remitted back to Sub Court, Tiruppur, to be tried simultaneously with O.S.No.217 of 2003.
- iv. The trial Court is directed to render its findings based on the oral and documentary evidence adduced on both sides, uninfluenced by any of the observations made by this Court in the second appeal.

25.04.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
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To

1. The Subordinate Judge, Tiruppur,
2. The District Munsif Court, Tiruppur.
3. The Section Officer, VR Section, High Court, Madras.

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