



S.A(MD)No.574 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE G. CHANDRASEKHARAN

S.A(MD)No.574 of 2023
and
C.M.P(MD) No.13371 of 2023

D.Chandrasekar

...Appellant

-Vs-

R.Manjulavathi

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 12.04.2023 passed in A.S.No.129 of 2016 by the IV Additional Subordinate Court, Tiruchirappalli, confirming the decree and judgment dated 18.10.2016 passed in O.S.No.741 of 2014, by the III Additional District Munsif, Tiruchirappalli.

For Appellant : Mr.M.Dinesh Hari Sundaram

For Respondent : Mr.B.Prasanna Vinoth



S.A(MD)No.574 of 2023

WEB COPY

JUDGMENT

This second appeal is filed against the judgment in A.S.No.129 of 2016 on the file of the IV Additional Subordinate Court, Tiruchirappalli, confirming the judgment in O.S.No.741 of 2014 on the file of the Third Additional District Munsif, Tiruchirapalli.

2. The appellant as plaintiff filed a suit in O.S.No.741 of 2014 seeking the relief of permanent injunction against the respondent on the following plaint averments:-

The plaintiff and defendant are brother and sister. The suit property, known as Poongavanam Store, which situated at New T.S.No.2, Thennur, Thiruchirappalli, was originally belonged to the paternal grandmother of the plaintiff and defendant Poongavanathammal. After her death, her only son Durairaj succeed to her property. The said Durairaj died intestate on 31.12.2004 leaving his wife Chellakannu, two sons namely, D.Chandrasekar, the plaintiff and D.Balasubramanian and two daughters namely Balambikai and Manjulavathi, the defendant. The plaintiff is the elder male member of the family



S.A(MD)No.574 of 2023

WEB COPY

and he has taken active part in the family management. He has maintained the family property by renovating the old structure and by doing repair works. He also resides in the suit property. The suit property is part of the entire property owned by Durairaj. It is described as 'ABCD A' in the Rough Plan and it consists of a house and three small shops. The shops are rented out. The plaintiff is residing in the house. The defendant is married and residing in Chennai. She often comes to Trichy and threatened the plaintiff to vacate the suit property on the basis of some concocted documents. She has no right to ask the plaintiff to vacate the property and even if she has any right, she was asked to work out the remedy in the manner known to law. She has no right to evict the plaintiff from the suit property illegally without adopting due process of law. In the said circumstances, the suit is filed for the relief of permanent injunction.

3. In the trial Court, the defendant/respondent did not file written statement and remained *ex parte*. However, the learned trial Judge on going through the oral and documentary evidences produced, finding that the respondent /defendant is also one of the co-parcener of the suit property and that the suit for injunction against the co-owner cannot be maintained, dismissed the suit. Against the said



S.A(MD)No.574 of 2023

WEB COPY

judgment, the appellant filed an appeal in A.S.No.129 of 2016 before the IV Additional Subordinate Court, Tiruchirappalli. In the said appeal, the respondent appeared and contested the appeal. During the appeal, the respondent filed interlocutory application in I.A.No.01 of 2022 under Order 41 Rule 27 of CPC. This application came to be dismissed by the first appellate Court for the reason that the respondent had not filed written statement and there was no pleading with regard to the documents sought to be produced as additional documents. The learned first appellate Judge also on considering the oral and documentary evidence, concurred with the findings of the trial Court and also found that the appellant has not proved his possession on the basis of the documents produced and the document produced are self-serving documents and ultimately, dismissed the appeal confirming the judgement of the trial Court. Thus, the plaintiff is before this Court by filing this second appeal.

4. The learned counsel appearing for the appellant would submit that the Courts below have failed to appreciate properly the oral and documentary evidence produced to prove the possession and enjoyment of the suit property by the appellant. The respondent claimed independent right over the suit property



S.A(MD)No.574 of 2023

WEB COPY

based on fabricated and concocted documents, despite to establish her independent right and if that be the case, when there are overwhelming evidence available to show the possession of the suit property by the appellant, the dismissal of the suit by the Courts below is against the evidence and law.

5. In response, the learned counsel for the respondent submitted that the respondent's father had executed a registered Will in respect of the suit property in favour of the respondent on 28.01.2004. The respondent filed an application in I,A.No.01 of 2022 for reception of the Will as additional document to establish her independent right. However, the application came to be dismissed for the reason that the original Will was not produced and that written statement was not filed and no pleading was there in connection with the documents sought to be produced as additional documents. However, he continued to submit that it is the admitted case of the appellant that the respondent and two other siblings are also entitled for the suit properties just like the appellant and they are also entitled to have the right of enjoyment. Therefore, the Courts below have rightly dismissed the suit on the premise that there should be no injunction against the co-owner.



S.A(MD)No.574 of 2023

WEB COPY 6. Considered the rival submissions and the records produced .

7. From the oral and documentary evidence produced in this case, the judgments of the Courts below and submissions of the learned counsel appearing for the parties, it is not in dispute that the suit property was originally belonged to Poongavanathammal. Poongavanathammal has only son Durairaj and he has two sons and two daughters. One son and one daughter are before the Court as plaintiff and defendant. It is not in dispute that after death of Poongavanathammal, Durairaj succeeded to her properties including the suit property. Thus, it goes without saying that the plaintiff and defendant and two other children of Durairaj namely, Balasubramanian and Balambikai are also entitled to share in the suit property.

8. It is pertinent to refer the judgment of the Hon'ble Supreme Court in ***Sakhahari Parwatrao Karahale and Another vs. Bhimashankar parwatrao Karahale*** reported in ***(2002) 9 Supreme Court Cases 608***, wherein it is held as follows:-

“Even if there be exclusive possession of the plaintiff-



S.A(MD)No.574 of 2023

WEB COPY

respondent before partition, it would be possession on behalf of all. Thus it cannot disentitle the defendant-appellant's claim against the suit property. In view of this it is inconceivable that injunction could be granted against another co-sharer of the Joint Hindu property as has been done in the present case.”

9. The plaintiff is living in the suit property, but that will not make him entitled for the relief of permanent injunction against other co-owner including the respondent/defendant and other two siblings. In respect of the allegation made that the respondent was trying to evict him forcibly from the suit property, it appears that no positive evidence was produced before the trial Court. Thus, considering the fact that the respondent is the co-owner of the suit property and there is no positive evidence to show that the respondent tried to evict the appellant forcibly from the suit property, this Court is of the considered view that both the Courts below have rightly dismissed the suit.

10. In ***Sir Chunilal V. Mehta and Sons v. The Century Spinning Co. Ltd., 1962*** reported in ***AIR 1962 SC 1314***, the Hon'ble Supreme Court formulated what amounts to a substantial question of law, as follows:



S.A(MD)No.574 of 2023

WEB COPY

1. Whether it is of general public importance (or)
2. Whether it directly and substantially affects the rights of parties *and if so*,
3. Whether it is *either* an open question (in the sense not finally settled by this Court or Privy Council or Federal Court) *(or)*
4. The question is not free from difficulty and calls for discussion of alternative views.

11. In the case before hand, the appellant has not made out any of the aforesaid grounds to formulate substantial question of law. There is no substantial question of law arises for consideration in this second appeal.

12. In fine, this Second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

31.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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S.A(MD)No.574 of 2023

WEB COPY

To

- 1.The IV Additional Subordinate Judge,
Tiruchirappalli.
- 2.The III Additional District Munsif,
Tiruchirappalli.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A(MD)No.574 of 2023

G. CHANDRASEKHARAN, J.

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S.A(MD)No.574 of 2023

31.10.2023