



S.A(MD)No.175 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 24.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.175 of 2004

Parimala

... Appellant/Appellant
/Plaintiff

Vs.

Sivalingam

... Respondent/Respondent
/Defendant

PRAYER :-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 21.10.2003 passed in A.S.No.36 of 1999 on the file of the I Additional Subordinate Judge, Trichy, modifying the judgment and decree, dated 22.12.1998 passed in O.S.No.701 of 1997 on the file of the District Munsif Court, Trichy.

For Appellant : Mr.N.C.Ashok Kumar

For Respondent : Mr.K.Sekar



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JUDGMENT

The plaintiff in the suit for bare injunction is the appellant. The suit was dismissed by the trial Court. An appeal filed by him was partly allowed by the First Appellate Court granting limited injunction subject to the right of partition available on the respondent in respect of item No.2 of the suit property. The appeal was dismissed in respect of item Nos.1 & 3. Aggrieved by the same, the plaintiff is before this Court. The respondent has not filed any appeal challenging the limited decree passed against him in respect of item No.2. Therefore, the Second Appeal is restricted to item Nos.1 and 3.

2.According to the appellant, the suit property originally belonged to the paternal grandfather, Ekambaram. He had four children namely Veerasamy, Karuppaiah, Sellamal and Karuppayee. It was averred in the plaint that the said Ekambaram was living along with the appellant and doing cultivation in item No.1 of the suit property. It was further averred that the appellant as his sole legal heir (daughter of Karuppaiah) had been in possession and enjoyment of the entire suit property. It was also claimed that the respondent herein was an utter stranger to the appellant's family and he



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claimed himself as one of the legal heir of Ekambaram tried to interfere with the possession of the appellant.

3.The respondent herein filed a written statement denying the exclusive right claimed by the appellant over the suit property. According to the respondent, he is one of the son of Ekambaram's daughter Sellammal, who is no more. Therefore, according to the respondent, he as a co-owner of the suit properties along with plaintiff entitled to a share. The suit was mainly resisted on the ground that the suit for injunction would not lie against the co-owner. It was also claimed by the respondent that he was residing in item No.2 of the suit property and he was also engaged in cultivation of item No.1 of the suit properties.

4.The trial Court on the basis of the evidence available on record came to the conclusion that the respondent herein was a co-owner of the suit property and consequently dismissed the suit. Aggrieved by the same, the appellant preferred the first appeal in A.S.No.36 of 1999 on the file of the Sub Court, Thiruchirapalli. The First Appellate Court also confirmed the findings of the trial Court that the respondent was a co-owner and dismissed the appeal



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insofar as item Nos. 1 and 3 are concerned. As far as item No.2 is concerned, the Appellate Court came to the conclusion that even as per the admission made by the respondent, the appellant was residing in item No.2 of the suit property and consequently she was entitled to limited injunction subject to the right of the partition available to the respondent. Aggrieved by the dismissal of the appeal in respect of item Nos.1 and 3, the appellant has come by way of this Second Appeal.

5. At the time of admission, this Court formulated the following substantial questions of law:-

1. Whether both the lower Courts are correct in holding that the defendant attested Ex.A12 without knowing its contents even without a plea to that effect in the written statement?

2. When it is specifically pleaded by the plaintiff in her plaint that Ex.A12 was executed by her by asserting ownership over the suit properties and the defendant attested the same and also pleading that the defendant is an utter stranger to the properties, is it not incumbent on the part of the defendant to specifically deny the same as per the provisions of Order 8 Rule 3 of C.P.C.



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3. When a specific averment is made in the plaint affecting the case of the defendant to a substantial extent, is not specifically and precisely denied in the written statement will it not become an admission by the defendant about the said averment in the plaint as per the provisions of Order 8 Rule 5 of C.P.C.

4. Whether the lower Courts are right in accepting the mere oral evidence of DW1 that he executed Ex.A12 without knowing its contents without any plea to that effect in the written statement.

5. Whether the attestation of a document by a person who is claiming to be a person interested in the subject matter be placed in the same footing with that of a person who is not interested.

6. Whether a person found to be in exclusive possession is not entitled to get a decree of injunction to protect the same as against others including co-owners when the said co-owners have not established that they are also in joint possession.

7. Whether the possession of original patta and mere photographs are sufficient to hold that the defendant is the grandson of Ekambaram in the absence of material evidences like birth register etc.,

6. The learned counsel for the appellant submitted that the appellant herein proved her exclusive possession over the suit property by producing



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tax receipts in her name, which were marked as Ex.A2 to Ex.A6. The learned counsel further submitted that under Ex.A12, the appellant mortgaged a portion of item No.1 of the suit property to a third party asserting her right over the same and the said document was attested by the respondent. Therefore, it is the contention of the learned counsel for the appellant that the exclusive possession of appellant over item No.1 of the suit property was very much proved before the Court below. But, however, the material documents marked by the appellant were over looked by the Courts below.

7.The learned counsel for the respondent submitted that the Court below by taking into consideration the oral and documentary evidence available on record rendered a finding that the respondent is a co-owner of the suit property and hence, the suit for bare injunction filed by the appellant against the other co-owners is not at all maintainable.

8.The appellant herein filed the present suit by making a specific averment that the respondent was a stranger to the suit property. However, the respondent filed a written statement claiming himself as son of deceased daughter of the original owner Ekambaram. Therefore, it is the specific case



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of the respondent that he is the co-owner of the suit property. In order to prove that the respondent is a son of Ekambaram's daughter Sellammal, one of the daughters of Sellammal was examined as DW2. She deposed that the respondent was born to Sellammal and he participated in the puberty function of her daughter in his capacity as maternal uncle. She also produced photographs of the said function, in which, the respondent participated. Those photographs were marked as Ex.B12 to Ex.B15. The voters list of the concerned village was marked as Ex.B11, wherein, the names of the parties are mentioned in same page. Yet another witness DW3 was examined on behalf of the respondent to prove that he is a son of Ekambaram's daughter Sellammal. The Court below based on the evidence of DW2 and DW3 and also the other documentary evidence produced by the respondent came to a factual conclusion that the respondent was a son of Ekambaram's daughter, deceased Sellammal and hence, he ought to be treated as co-owner of the suit property along with the appellant. In fact, the respondent marked patta stood in the name of Ekambaram for the suit property as Ex.B2. He also produced the pass book of Ekambaram as Ex.B3. There is no explanation on the side of the appellant as to how the respondent possessed those documents, if he was a stranger to the family of the appellant. The factual findings rendered by the



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Courts below that the respondent is the co-owner of the suit property is based on acceptable evidence available on records and it requires no interference by the Court exercising the jurisdiction under Section 100 of C.P.C.

9.The learned counsel for the appellant contended that the appellant produced tax receipts in her name as Ex.A2 to Ex.A6 to prove the exclusive possession of the suit item No.1, which are cultivable lands. It is settled law that merely because the revenue records stands in the name of one of the co-owner, he cannot claim any exclusive right over the suit property. The possession of one of the co-owner is on behalf of other co-owners also. Therefore, the said contention of the learned counsel for the appellant is rejected.

10.As far as the item No.2 is concerned, the First Appellate Court granted limited injunction in favour of the appellant. The respondent failed to file any appeal challenging the decree for injunction granted in favour of the appellant in respect of item No.2. Therefore, the said findings need not be disturbed.



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11.In view of the discussion made earlier the questions of law framed at the time of admission are answered against the appellant and the Second Appeal is dismissed.

12.In fine,

a) the Second Appeal stands dismissed and the judgment and decree passed by the learned I Additional Subordinate Judge, Trichy, dated 21.10.2003 in A.S.No.36 of 1999 stands confirmed;

b) in the facts and circumstances of the case, there would be no order as to costs.

24.02.2023

NCC : Yes/No
Index : Yes / No

vsd

To

1.The I Additional Subordinate Judge,
Trichy.

2.The District Munsif Court,
Trichy.

3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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