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S.A.No.223 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.03.2024

PRONOUNCED ON : 04.06.2024

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.223 of 2021
and
C.M.P.No.4421 of 2021

1.D.Mercy Stella
2.D.Mohan Doss
3.D.Buela Esther
4.D.Salaman Raja

... Appellants

V.s

Chandrasekaran

... Respondent

Prayer: Second Appeal is filed under Section 100 of C.P.C to set aside the Judgement and decree in AS.No.10 of 2019 on the file of the Principal District Court, Coimbatore dated 28.10.2020 confirming the judgement and decree in O.S.No.122 of 2017 on the file of the Sub Judge, Mettupalayam dated 14.11.2018.

For Appellants : Mr.V.Raghavachari for
M/s.V.Srimathi

For Respondent : Mr.C.K.M.Appaji, Caveator Counsel
for sole respondent.



JUDGEMENT

The unsuccessful defendants in a suit for declaration, injunction and recovery of possession together with mesne profit are the appellants before this Court.

2. The Second Appeal has been admitted on the following Substantial Questions of Law:-

“i. Whether the courts below are right in decreeing the suit when the appellants are in possession of property and the appellants specifically made a plea that the property was purchased out of the income of both i.e. the father of the appellants Mr.P.M.Muthuswamy and out of the income of their mother Mrs.Gnanasundari?

ii. Whether PW2 could see to eject the appellants who are his children through Gnanasoundari through PW1 by executing a sham document under Ex.A4?”



3. The facts which have led to the filing of the suit is herein below set out and the parties are referred to in the same ranking as before the Trial Court.

Plaintiff's case:-

4. It is the contention of the plaintiff that his father Muthuswamy had worked as a fitter in the Neyveli Lignite Corporation (NLC) at Neyveli. In the year 1995, he had married the plaintiff's mother Andal and they begot four children, namely, Jayakumari, Chandrasekaran (the plaintiff), Tamilarasi and Dhanalakshmi. The plaintiff is the only son born to them. On 10.09.1972, the plaintiff's mother Andal died leaving behind her surviving the plaintiff, his father and sisters. After the demise of his mother, his father Muthuswamy had developed an illegal intimacy with one Gnanasoundari, who was already married and they started to live together. Prior to her getting close to the plaintiff's father, Gnanasoundari was married to one David Alagesan through whom the defendants were born. After her relationship with the plaintiff's father



she had eloped with the plaintiff's father and they had set up their residence at Jhansi, Uttar Pradesh. The defendants had slowly followed their mother and they were all living at Jhansi under the care of the plaintiff's father Muthuswamy. It is the contention of the plaintiff that his father was the only earning member of the family and he was also practicing Homeopathy and earning income. The said Gnanasoundari was only a homemaker.

5. Thereafter, in the year 1999, Muthuswamy had taken voluntary retirement and returned to Mettupalayam and had purchased 12.5 cents of land in Mettupalayam (which is the suit property) under 3 sale deeds dated 20.12.1999, 23.02.2000 and 15.09.2000. Therefore, from the year 1999, Muthuswamy, Gnanasoundari and the defendants were living together in the suit property. In the year 2004, Gnanasoundari was struck by paralysis and was being maintained exclusively by the plaintiff's father, Muthuswamy. On 23.04.2008, Gnanasoundari died. On 25.05.2010, Muthuswamy had executed a settlement deed in favour of the plaintiff. The plaintiff was not aware



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about this deed and it was only in the year 2012 that he came to know about the same and thereafter he had got the revenue records mutated in his name. Meanwhile, in December 2012, the 1st defendant quarreled with Muthuswamy and harassed him. Therefore, on 13.12.2012, the said Muthuswamy returned to Neyveli and was living with the plaintiff and it is the plaintiff who is now taking care of Muthuswamy.

6. In the year 2014, the plaintiff had visited Mettupalayam and noticed that the 1st defendant was in illegal occupation of the suit property. He, therefore, requested her to vacate and hand over vacant possession of the suit property. However, the 1st defendant refused and on the contrary threatened the plaintiff. The plaintiff immediately lodged a complaint with the Mettupalayam Town Police Station on 30.06.2014 to which there was absolutely no follow up. Therefore, the plaintiff had issued a legal notice dated 03.08.2015, calling upon the defendants particularly the 1st defendant to vacate and hand over



vacant possession of the premises. To this a reply notice was received from the defendants wherein they claimed that Gnanasoundari was the legally wedded wife of the plaintiff's father and the defendants are children born to him. The plaintiff submits that since the 1st defendant was attempting to demolish the building and encumber the suit property, he was left with no other alternative except to institute the above suit.

Written statement:-

7. The 4th defendant had filed a written statement which was adopted by defendants 1 to 3. The defendants would submit that the father's name of defendants 2 and 4 that has been furnished in the plaint as David Alagesan is totally incorrect and that they were putting the plaintiff to strict proof of the same. It is their case that the correct name of the father of defendants 2 and 4 is Daniel P.Muthusamy. Their father Muthuswamy was born a Hindu and after he married their mother Gnanasoundari, he had converted to Christianity and



changed his name as Daniel P.M.Samy. The father of the plaintiff and defendants born Muthusamy and now Daniel P.M.Samy is one and the same.

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8. The defendants would contend that they are children born through the legally wedded wife of Daniel P.M.Samy, namely, Gnanasoundari and the plaintiff and one Dhanalakshmi @ Dhanam are born through Andal who was not the legally wedded wife of Muthuswamy. It is the contention of the defendants that the said Daniel P.M.Samy had married their mother, Gnanasoundari in the year 1952 and had converted to Christianity. At the time of marriage, Gnanasoundari was employed as a teacher near the Kadalur town and the said P.M.Samy @ Daniel Muthusamy was working as a fitter in NLC at Neyveli. The defendants were born to them through this wedlock.

9. The defendants would also submit that Tamilarasi, the other daughter was also born through the illegal relationship between Andal



and the said Daniel P.M.Samy. They would submit that Daniel P.M.Samy had suppressed his marriage to Gnanasoundari and had developed an illegal relationship with Andal. When Gnanasoundari had come to know about the relationship and had questioned about the same, a Panchayat was held by elders and both families and thereafter Muthuswamy had left for Jhansi along with the said Gnanasoundari and the defendants. The 2nd defendant was working as a plumber and the said Daniel P.M.Samy was working as a Technician in BHEL at Jhansi, Uttar Pradesh.

10. It is their contention that defendants 2 and 3 had contributed their income to the family along with Daniel P.M.Samy up to the year 1999. In the year 1999, Daniel P.M.Samy and the defendants along with Gnanasoundari had shifted residence to Tamil Nadu and had taken residence at Wellington, Conoor, The Nilgiris.

11. Their further contention that the suit property was purchased from out of the joint income of Daniel P.M.Samy and defendants 2



and 4. The plaintiff had never taken care of the family of the defendants till 2008. He had come to Mettupalayam only in the year 2008 to attend the funeral ceremony of the defendant's mother Gnanasoundari. Prior to that he had never visited them either at Jhansi or at Mettupalayam.

12. It is their further contention that they along with their father Daniel P.M.Samy were residing in the suit property from the year 1999. It is also their contention that the 1st defendant's husband, Durairai had given a hand loan for the purchase of the suit property in the year 1999. They would submit that the plaintiff who is not the legal son of Daniel P.M.Samy cannot claim any right to the suit property. The suit property has been purchased from the income of Daniel P.M.Samy and defendants 2 and 4. Further, Daniel P.M.Samy and the plaintiff had no right to make any encumbrance over the suit property independently. They would also submit that they have been in possession of the suit property from the date of purchase till the date of the suit and the plaintiff has never been in possession of the same. They therefore, prayed for the dismissal of the suit in question.



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1. Whether the plaintiff is the absolute owner of the suit property?

3. Whether the plaintiff is entitled to permanent injunction against demolition and encumbrance as prayed?

5.To what other reliefs?

10/24



marked Ex.B1 to B16.

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15. On going through the evidence the learned Trial Judge observed that since the defendants are Christians and profess the Christian religion, the concept of a joint family was not applicable to them and therefore since the properties stood in the name of Muthuswamy, the property was his absolute property and he was free to dispose of the property to whomsoever he wished and the defendants could not question the dispossession.

16. The learned Trial Judge had not gone into the question as to who was the legally wedded wife of Muthuswamy as the same did not assume significance as Muthuswamy was very much alive and had also deposed as P.W.2. The learned Trial Judge therefore proceeded to decree the suit with reference to the relief of declaration and recovery of possession. However, with reference to the relief of damages, the learned Trial Judge had observed that admittedly Muthuswamy, the owner of the property was living in the suit property along with



Gnanasoundari, the mother of the defendants and therefore their entry into the property cannot be termed a trespass and therefore held that the plaintiff was not entitled to damages.

Lower Appellate Court:-

17. Aggrieved by the judgment and decree of the Trial Court the defendants had filed A.S.No.10 of 2019 on the file of the Principal District Court, Coimbatore. The learned Lower Appellate Judge by his judgment and decree dated 28.10.2020 was pleased to dismiss the appeal and confirmed the judgment and decree of the Trial Court. Aggrieved over the same the defendants have filed the above Second Appeal and the same has been admitted on the Substantial Questions of Law set out supra.

Submissions:-

18. Mr.V.Raghavachari, learned Senior Counsel appearing on behalf of the counsel for the appellants/defendants would submit that Muthuswamy had married Gnanasoundari and converted to



Christianity and had changed his name to D.M.Swamy @ Daniel Muthuswamy. He would submit that the defendants are born to the said Daniel Muthuswamy and Gnanasoundari. It is for this reason that all of them were living under the same roof in the suit property and prior to that in Jhansi. That Daniel Muthuswamy was living with Gnanasoundari has been admitted by the plaintiff in paragraph nos.3 to 5 of the plaint.

19. The learned Senior Counsel would also draw the attention of the Court to Ex.B.1 and Ex.B.2 photographs which would show that Muthuswamy and Gnanasoundari were husband and wife and that apart the plaintiff and his sisters were also with them. He would also invite the attention of this Court to Ex.B.3 which is the Service Register of Gnanasoundari where under the column (2) name of parent/guardian the name David Alagesan has been stated and this according to the learned senior counsel would clearly prove that David Alagesan was not the husband of Gnanasoundari.

20. He would also point out the discrepancies between the



evidence of P.W.1 and P.W.2 regarding the dates when Daniel Muthuswamy had left for Jhansi. As per the evidence of P.W.1, his father Muthuswamy was at Jhansi between the years 1975 to 1995 and that during this period the defendants were also living with Muthuswamy. Whereas, P.W.2, on the contrary, would submit that it is after the year 1985 that he had gone to Jhansi. Therefore, reliance cannot be placed upon the evidence of P.W.2. He would further submit that Ex.B.1 and B.2 photographs would clearly show how close the family was. He would submit that the fact that the said Muthuswamy, Gnanasoundari and the defendants were all living together will only go to show that the defendants are the children born to the said Gnanasoundari and Muthuswamy.

21. The learned Senior Counsel would draw the attention of this Court to Ex.B.5 to show that the Muthuswamy had converted to Christianity and was called Daniel P.M.Samy. He would also refer to Ex.B.7 which is the certificate of baptism of the 4th defendant, Soloman Raja where as against the column parent's name, Daniel



Samy is shown as the father.

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22. He would also draw the attention of the Court to Ex.B.14 legal heirship certificate of Gnanasoundari. In this document Muthuswamy has been described as Gnanasoundari's husband and this certificate has been obtained by the said Muthuswamy himself. In the said document the 2nd defendant and the 4th defendant have been described as sons by Muthuswamy himself. He would submit that from the date of the purchase the defendants have been in possession and enjoyment of the suit property along with the said Muthuswamy. They being his children are entitled to ownership and possession of the property. He would further submit that the defendants 2 and 4 who were employed even at Jhansi had contributed their income to the family and it is with their income as well as that of the said Muthuswamy that the suit property has been purchased and therefore on this ground also they are entitled to retain possession of the property. He would therefore pray that the Second Appeal be allowed and the judgement and decree of the Courts below be set aside.



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23. Per contra, Mr.C.K.M.Appaji, learned counsel appearing on behalf of the plaintiff/respondent would highlight the following documents as proof that the defendants could not have been born to the said Muthuswamy and that their father was one David Alagesan.

24. The learned counsel point out the entries made in Ex.A.8 which is the record sheet which has been issued to the 3rd defendant Buela Esther issued by the Danish Mission Girls Boarding Higher Elementary School wherein the said Buela Esther's father and guardian has been described as David Alagesan and the said Buela Esther's date of birth is shown as 06.01.1968. The said Buela Esther has been admitted into the aforesaid school on 19.06.1974. The 4th defendant is said to be 4 years younger to her. Therefore, he should have been born in the year 1972.

25. The learned counsel would submit that in paragraph no.5 of



the written statement the defendants had stated that once their mother had come to know about the relationship between Muthuswamy and the plaintiff's mother, she had questioned the same and a Panchayat was held and thereafter they had left for Jhansi. However, D.W.1 in her chief examination would submit that after their mother had come to know about the relationship she had embraced the second family of her husband and all of them were living as one happy family under one roof. The 1st defendant in her evidence as D.W.1 has set forth a totally different case than the one pleaded in the written statement. She would admit that it was P.W.2 who had purchased the suit property.

26. The learned counsel would further submit that P.W.2 Muthuswamy in his evidence has clearly stated that it was only his income that had been used for purchasing the suit property. Further, Ex.B.15 would only show the name of P.W.2 and Gnanasoundari and not the defendants. The learned counsel would submit that the plaintiff has admitted the fact that Gnanasoundari and his father were



living together. However, there is nothing to show that Muthuswamy had married Gnanasoundari and defendants were born to the two of them. The said Muthuswamy who had examined as P.W.2 has clearly and categorically denied that he is the father of the defendants and that he had married Gnanasoundari. He had admitted to the fact that they were living together. However, he had denied the matrimonial relationship. P.W.2 has clearly deposed to the fact that he was married to Andal only and the plaintiff and his sisters were born to them. P.W.2 had admitted that he has executed the settlement deed in favour of the plaintiff.

27. The learned counsel would submit that the defendants cannot claim any right to the suit property as they being Christians the concept of joint family is not available to them.

28. Heard the counsels on either side and perused the records.

Discussion:-

29. The plaintiff claims right to the property on the basis of



Ex.A.1 to A.4. Ex.A.1 to Ex.A.3 are the documents under which the suit property had been purchased by the plaintiff's father, Muthuswamy. Under Ex.A.4, Muthuswamy has settled the property on the plaintiff. Ex.A.5 to Ex.A.7 would show that the mutation of the records have been effected in the name of the plaintiff.

30. The defendants have come forward with a case that the plaintiff's mother, Andal was only a concubine and the plaintiff and his two sisters are born to Muthuswamy through his illegal relationship and therefore they are not the legally born children of the two. It is their case that the four of them were born to Muthusamy. However, the defendants have not produced the best evidence to prove that Muthuswamy is their father. They have not produced their school certificates which would be the best evidence to prove they were born to the said Muthuswamy. On the contrary, Ex.A.8 has been produced by the plaintiffs which is the record sheet standing in the name of the 3rd defendant, Buella Ester. In the said record sheet the 3rd defendant has been described as the daughter of David Alagesan. She is born in 19/24



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the year 1968. It was argued that the 4th defendant is born 4 years later i.e; in the year 1972. However, his baptism certificate which has been filed as Ex.B.7 would show that he was born on 02.10.1969. He has been baptized when he was nearly 20 years old i.e; on 15.01.1989. However, the school certificate of the said 4th defendant has not been produced for the scrutiny of this Court. It appears that this document has been deliberately kept away from the Court as the same would reveal that even the 4th defendant is not born to the said Muthuswamy. Though the defendants have pleaded that Gnanasoundari had married Muthuswamy in the year 1952, Ex.A.8 would clearly belie the statement since in the year 1974 when the said Buella Esther, the 3rd defendant was admitted into school, she is described as the daughter of David Alagesan. Therefore, even in the year 1969 when the 4th defendant was born Gnanasoundari continued to be the wife of David Alagesan. This co-relates with her Service Register which is marked as Ex.B.3 which shows that she has taken voluntary retirement on 31.12.1974 from the school at Virudhachalam. Further, in Ex.B.3, the



name of David Alagesan is shown against the column parent/guardian.

Therefore, from the above documents it is crystal clear that the defendants are not born to Muthuswamy and Gnanasoundari was married to David Alagesan who is the father of the defendants. Since the best evidence has not been produced by the defendants, adverse inference has to be drawn against them.

31. Admittedly, the suit property has been purchased in the name of Muthuswamy. Though the defendants have pleaded that they have contributed for the purchase of the suit property, no document has been produced to prove the same. P.W.2, Muthuswamy has clearly stated that it was his income that has gone towards the purchase of the suit property and there is no rebuttal evidence by the defendants. The defendants have been in possession of the suit property only on account of the fact that the said Muthuswamy and their mother Gnanasoundari were living together. Their possession, if any, is only a permissible occupation. Even assuming without admitting that they were living in the suit property the same is only on account of they



being the children of Gnanasoundari who was in a relationship with Muthuswamy.

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32. Considering the fact that the defendants have not proved their allegation that their mother Gnanasoundari and they had contributed for the purchase of the suit property, the Substantial Question of Law No.1 is answered against the defendants/appellants.

33. Since this Court has come to the conclusion that the appellants/defendants are not born to Muthuswamy through Gnanasoundari and that the plaintiff is his only son, the execution of Ex.A.4, which has been admitted by P.W.2 Muthuswamy himself, cannot be considered as a sham document. Since the property has been purchased by Muthuswamy from out of his income it is his self-acquired property and it is well open to him to dispose the property in any manner he chooses. Muthuswamy has chosen to settle the property on his son, the plaintiff and no exception can be taken to the same. Since the property now belongs to the plaintiff and he requires vacant



possession of the same, the defendants are bound to vacate and hand over vacant possession of the suit property. Therefore, the Substantial Question of Law No.2 is also answered in favour of the plaintiff.

34. In fine, the Second Appeal is dismissed and the judgement and decree of the Courts below stands confirmed. No costs. Consequently, the connected Miscellaneous Petition is closed.

04.06.2024

Index : Yes/No
Speaking order/non-speaking order
Neutral Citation : Yes/No
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To,

1. The Principal District Court, Coimbatore
2. The Sub Judge, Mettupalayam.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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