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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

S.A.No.473 of 2013

Manivannan

.. Appellant

vs.

Sellappan

..Respondent

Second Appeal filed under Section 100 of CPC against the judgment and decree dated 14.12.2012 made in A.S.No.9 of 2012 on the file of Subordinate Judge, Sathyamangalam confirming the judgment and decree dated 10.11.2011 made in O.S.No.211 of 2008 on the file of District Munsif Court, Sathyamangalam.

For Appellant : Mr.A.V.Arun
assisted by
Ms.Abinu Monisha

For Respondent : Mr.Titus Enock
for Mr.I.C.Vasudevan

ORDER

This is a dispute between two co-owners of the property. The property situated in S.F.No.102, Makkinamkombai Village is owned in



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common by the appellant, respondent and 7 other persons. The appellant had originally filed a suit in O.S.No.166 of 2006 on facing obstruction with respect to a cart track running over the property. Subsequently, he attempted to remove the top soil in the property in the aforesaid survey number for the purpose of using it in the brick kiln that he was operating. This constrained the defendant in O.S.No.166 of 2006 to file a suit for permanent injunction against the appellant. This suit was taken on file as O.S.No.211 of 2008.

2. With the consent of parties, O.S.No.166 of 2006 and O.S.No.211 of 2008 were tried together. Insofar as O.S.No.166 of 2006 is concerned, a decree was passed granting the relief with respect to the cart track to the plaintiff. Insofar as O.S.No.211 of 2008 is concerned, the Court held that since the parties are co-owners and removal of the top soil by the defendant, who is the appellant herein, would affect the value of the property, it granted an order of injunction restraining the appellant from removing the top soil till a proper suit for partition or a suit for declaration is presented.



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3. This was put in appeal before the learned sub-ordinate Judge at Sathyamangalam in A.S.No.9 of 2012. By a judgment dated 14.12.2012, the regular appeal was dismissed against which the present second appeal.

4. When this Second Appeal came up before this Court on 19.04.2013, notice regarding admission was ordered. After hearing both parties, the second appeal was admitted on the following substantial question of law on 10.08.2023:

“Whether the Courts below were right in concluding that the property remains undivided between the plaintiff and the defendant overlooking the specific description in Exhibit A1 Sale Deed, which go long way to say that the plaintiff's predecessor in interest had purchased the specific portion with specific boundaries of the property and there was nothing undivided in the property?”

5. After hearing Mr.A.V.Arun, learned counsel for appellant and Mr.Titus Enock, learned counsel representing Mr.I.C.Vasudevan, I feel that the question of law can be re-framed as follows:

“Whether one co-owner is entitled to maintain a suit for injunction as against other co-owner without presenting a suit for partition when allegation of diminution in the value of the



property is made?”

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6. Heard both sides and perused the records.

7. It is not in dispute that the appellant / defendant is running a brick klin in the name and style of “Amman Chambers” at Sathyamangalam. Though the defendant had in his written statement taken a stand that he is not taking the sand from the said land, which is enjoyed in common, during the course of evidence he has categorically admitted on two aspects. One, that an attempt had been made to remove the top soil to the extent of three feet and two, if the top soil had been removed in entirety. it will diminish the value of the property.

8. In order to come to the conclusion that the appellant is having the property in common with others, I refer to two documents, namely Ex.A1, the partition deed that was entered into between the appellant and his father and Ex.A7, the partition deed that was entered between the appellant, his father and his paternal uncles. In all the documents, subject matter of the suit was shown in the schedule of the property and it has been specifically stated that the property is being enjoyed in common with others.

9. Apart from that, in none of these documents in order to show that it had been enjoyed exclusively by the family of the appellant neither



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the extent under enjoyment nor the boundaries showing the other owners of the adjacent property has been mentioned. Furthermore, the document under Ex.A6 would show that the property stands in the common ownership of Venkadachalam and 8 others. A cumulative reading of Exs.A1, A7 and A6 leads me to the conclusion that insofar as item 1 of the suit schedule mentioned property, there has been no division by metes and bounds between the co-owners of the property.

10. Mr.A.V.Arun, arguing on behalf of Mr.R.T.Doraisamy would vehemently contend that the only remedy for a person, who is a co-owner of the property, is to file a suit for partition and not maintain a suit for injunction. This he would base it on the fact that if at all there were co-owners, the remedy is only for partition by virtue of Order II Rule 1 of CPC and not through a mere suit for injunction. If Mr.Arun were to be correct, then in every case where one co-owner is acting in detriment to the interest of the other co-owner, necessarily a suit for partition alone is the remedy. Unfortunately, the law of the land is otherwise.

11. The law is One co-owner cannot act in a manner which will diminish, damage or reduce the value of the land in detriment to the interest of the other co-owner. The well known principle on law of injunction is, one co-owner cannot seek for an injunction against other



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co-owner. An exception to this Rule being that one co-owner cannot take the law in his own hand and act in a manner which will affect the rights of the other co-owners. If one co-owner does so and acts in a manner detrimental to the others, it is always open to the other co-owner to bring forth a suit for injunction restraining the former from acting in a manner which would diminish the value of the property jointly owned by them. This is exactly what has been done in the present case. Though the plaintiff has sought for a higher relief, the trial Court as well as the lower appellate Court had modified it by stating that the injunction will operate till a regular suit for partition is filed.

12. Let us now look at the law laid down by Supreme Court, which govern the field. In *T.Lakshmi pathi and Others Vs. P.Nithyananda Reddy and Others* reported in (2003) 5 SCC 150, Supreme Court held in paragraph 25 as follows:

“25.... The law as to co-owners is well settled. Where any property is held by several co-owners, each co-owner has interest in every inch of the common property, but his interest is qualified and limited by similar interest of the other co-owners. One co-owner cannot take exclusive possession of the property nor commit an act of waste, ouster or illegitimate use, and if he does so he may be restrained by an injunction....”



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13. Insofar as the argument under Order II Rule 1 CPC is concerned the cause of action for a suit for partition arises day-to-day like in a suit for mortgage. In fact even if a suit for partition is dismissed for default, nothing prevents the plaintiff in that suit to present yet another suit for partition as the cause of action being continuous and Order IX Rule 9 proviso would not apply to such a case.

14. Mr.A.V.Arun would try to persuade me by relying on a judgment of this Court, namely a judgment in ***K.S.K.P.Subbayan Chettiar and K.Ramu and others*** reported in ***1996 (2) MLJ 115*** in order to state that since the respondent /plaintiff has not filed a suit for partition within a period of 12 years, he cannot claim a right over the property. It is pertinent to note that, that was a case where stranger to a “JOINT FAMILY” had attempted to take possession of the property after a period of 12 years. Insofar as the Hindu Joint Family is concerned, a purchaser of the joint family is not entitled to claim possession but can only present a suit to enforce partition. If such a suit is not presented within a period of 12 years, this Court had held that the co-parcener in possession of the property ousts the stranger purchaser by virtue of Article 65 of the Limitation Act. This judgment does not apply to the



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facts of the present case because here is not a case where the respondent has attempted to bring forth the suit for partition but the relief sought for by the respondent is both appellant and himself are in possession of the property and the act of the appellant denudes or has an effect of reducing the value of the property. As stated above, whether the appellant has ousted the respondent from possession etc., has to be gone into in a separate suit and not in the present one.

15. Be that as it may, as I pointed out above, namely from Exs.A1, A7 and continuity of revenue records under Ex.A6, ruins the plea of adverse possession to the ground in this case. Had the appellant been in exclusive possession of the property as claimed by him, then the revenue records would not be standing in common in the name of Vendachalam and others.

16. The trial Court as well as the lower appellate Court have rightly come to the conclusion that the issue of ouster or the right of adverse possession that may be claimed by the appellant should be gone into in a properly instituted suit and they have refrained from giving any finding therein.

17. The other judgment which Mr.Arun relied upon is in ***K.P.Srinivasan Vs. Gopalammal and Others*** case reported in **2019 SCC**



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Online Mad 338. The relief sought for in that particular case was for declaration and injunction that other co-owner should not encumber the property to an extent of 2/6 share. It is too well settled that the mere fact that if two persons were co-owners, one co-owner cannot prevent the other co-owner from alienating his share of the property. It was in those circumstances in paragraph 31 of the said order, the Court held that the relief granted by the lower appellate Court was improper and allowed the appeal. That is not a case where the co-owner had acted against the interest of the other co-owner as in the present case.

18. Similar is the situation with respect to the judgment in ***Devendran Vs. Ramalinga Padayatchi and Others*** reported in **(2012) 5 MLJ 27** wherein instead of filing a suit for partition, a mere suit for injunction had been presented not to interfere with the possession. Such a suit falls within the teeth of the settled proposition of law that as I recalled above that one co-owner cannot file a suit for injunction as against another. None these judgments comes to the rescue of Mr.Arun.

19. As the findings of the Courts below is that the appellant has acted in detriment to the interest of the other co-owners being a factual question and in the light of the admissions made by the appellant in his



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evidence that he is running a brick kiln and attempted to utilize the top soil of the suit schedule mentioned property for that business, I have to agree with the Courts below that such removal of soil will result in damage to the suit property.

20. In the light of the aforesaid facts and circumstances, I find that the act of the appellant in attempting to denude the value of the property has to be necessarily injuncted. Accordingly, I concur with the view of the trial Court and lower Appellate Court.

21. In fine, the judgment and decree dated 14.12.2012 in A.S.No.9 of 2012 on the file of Subordinate Judge, Sathyamangalam in confirming the judgment and decree dated 10.11.2011 made in O.S.No.211 of 2008 on the file of District Munsif Court, Sathyamangalam are confirmed and second appeal is dismissed. There shall be no order as to costs.

29.01.2024

Index: Yes/No

Neutral Citation: Yes/No

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To

1. The Subordinate Judge
Sathyamangalam

2. The District Munsif Court
Sathyamangalam



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V. LAKSHMINARAYANAN, J.

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