



S.A.No.679 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.679 of 2013

1.Kanniyappa Naidu

2.Muniyappa Naidu

3.Narayana Naidu

4.Gengammal ... Defendants/Respondents/Appellants

Vs.

Krishnaveni ... Plaintiff/Appellant/Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and decree of the Subordinate Judge's Court at Madurantakam, dated 30-10-2012 in A.S.No.8 of 2012 reversing the judgment and decree of the District Munsif Court at Madurantakam, dated 28-10-2011 in O.S.No.89 of 2009.

For Appellants : Mr.P.Valliappan
Senior Counsel for
S.M.S.Shriram Narayanan

For Respondent :Mr.Gnanasambandam for
Mr.P.Chandrasekar.



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JUDGMENT

The present appeal arises out of the judgment and decree of the Court of the Subordinate Judge Madurantakam in A.S.No.8 of 2012, dated 30.10.2012 in reversing the judgment and decree of the Court of the District Munsif, Madurantakam in O.S.No.89 of 2009 dated 28.10.2011.

2. The parties will be referred to as per their rank in the suit.

3. The defendants' appeal is before me.

4. O.S.No.89 of 2009 is a suit for permanent injunction based on possession. One Krishnaveni is the plaintiff. It is her case that her father Narayana Naidu purchased the property orally from one Desappa Naidu in the year 1968. Narayana Naidu had taken possession pursuant to the oral sale and was in enjoyment of the property from the year 1968 onwards. During the UDR proceedings, noting that Narayana Naidu was in possession of the property, patta was granted to him. Narayana Naidu died intestate leaving behind the plaintiff and one Subbammal as his legal heirs.



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5. On 26.08.2002, the plaintiff moved the revenue authorities and mutated the revenue records in her favour. She would claim that she is cultivating the properties for more than 40 years. As the defendant attempted to dispossess the plaintiff, on 18.01.2009, she came forth with the suit for injunction.

6. On service of summons, the defendants 1 and 3 filed detailed written statement. The defendants, I have to add, are sons and daughter of Desappa Naidu. They took a specific stand that the property belong to their paternal Grand mother Gengammal who purchased it from one Ramakrishna Naicker on 16.11.1933. Gengammal was in possession and enjoyment of the property. On her death, the property was succeeded by her daughter-in-law i.e., the mother of the defendants and her sister Subbammal. In recognition of their possession, they had been given a patta in Patta No.148 to an extent of 0.19 cents.

7. They would further state that the allegation of oral sale by Desappa Naidu in favour of the plaintiff's father Narayana Naidu is a false one because Desappa Naidu died in the year 1967 and by no stretch



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of imagination could he have sold the property one year thereafter in 1968. According to the defendants, Jayalakshmi ammal died on 09.08.2001. They would further plead that Desappa Naidu could not have transferred the property which belongs to Jayalakshmi ammal in favour of Naryana Naidu. It is their specific case that they continued to be in possession and enjoyment of the property right from 1933 onwards.

8. An additional written statement was filed by the 1st defendant alone pleading that Govindappa Naidu, the son of Gengammal and the brother of Desappa Naidu, and other sister by name Alamelu also succeeded to the property as Class 1 legal heirs. They would state that Andalammal died in the year 1993 leaving behind her daughters Muniammal, Ragammal and Desammal. Govindappa Naidu died in the year 1963 leaving behind his son Adikesavan and daughters Andalammal, Ellammal. Since the above said 5 persons have not been impleaded, the suit is not maintainable.

9. On these pleadings the learned trial Judge framed the following issues:

“1. Whether the plaintiff has right and possession over



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the plaint schedule property?

2. Is the plaintiff entitled for the relief of permanent injunction?

3. What are all the other reliefs and cost plaintiff is entitled for ?”

10. On the side of the plaintiff, one Muthukrishnan was examined as P.W1 and one Veerasamy as P.W2. Exs.A1 to Ex.A9 were marked on their side. On the side of the defendants, the 3rd defendant Narayana Naidu examined himself as D.W1 and marked Exs.B1 to Ex.B6.

11. On consideration of the oral and documentary evidence, the learned trial Judge held that the plaintiff has not proved the oral sale and since the question of adverse possession does not arise in the present suit, he held that the plaintiff is not entitled to any relief and consequently dismissed the suit.

12. Aggrieved by the same, the plaintiff preferred A.S.No.8 of 2012 to the file of the Sub Court, Madurantakam. The learned Subordinate Judge, after analysis of the records, confirmed the finding of



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the learned trial Judge that the oral sale had not been proved but found the plaintiff is in possession of the property prior to the presentation of the plaint and therefore, granted a decree for permanent injunction against the defendants.

13. Aggrieved by the same, the present second appeal has been preferred before this Court.

14. On 07.01.2014, the second appeal was admitted on the following substantial questions of law:-

“1) Whether the lower Appellate Court is correct in law in granting decree for injunction by picking illusory holes in the defense, particularly when it is axiomatic that the respondent as plaintiff has to succeed or fail on the strength of her case?

2) When the pleas of ownership and adverse title are mutually destructive, is the lower Appellate Court correct in law in granting decree for injunction especially when the respondent had set up title in herself and also pleaded prescriptive title?

3) When the plaint itself discloses serious disputes regarding title and the appellants have stoutly denied



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the title of the respondents in their written statement and also set up a title in themselves, is the respondent entitled to maintain the suit for bare injunction, without the relief of declaration?

4) Whether the issue of title can be gone into the present suit for bare injunction valued under Section 27(c) of the Tamil Nadu Court Fee and Suit Valuation Act, 1955?

5) Is the lower Appellate Court correct in law in granting decree for injunction after having rejected the plea of oral sale advanced by the respondent?"

15. Originally Mr.Nagushah was appearing for the respondents and when the appeal was taken up for hearing, Mr.P.Chandrasekaran represented that he is appearing on behalf of the sole respondent.

16. I heard Mr.P.Valliappan for Mr.S.M.S.Shriram Narayanan and Mr.Gnanasambandham for Mr.P.Chandrasekaran.

17. As the questions of law that have been framed have a link with one another, I heard the appeal on all those questions of law together.



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WEB COPY 18. The aforesaid facts would go to show that Krishnaveni claimed the property by virtue of an oral sale. After the enactment of the Transfer of Property Act, the Registration Act read together with the Indian Stamp Act, oral sale of property of a value of more than Rs.100/- is unknown to civil law. Therefore, I confirm the finding of the trial Court as well as the lower appellate Court that the plea of the oral sale has to fail. The other reason, why the oral sale has to fail, is because the specific plea of the plaintiff is that her father Narayana Naidu purchased the property from Desappa Naidu in the year 1968 whereas P.W1 entered into the witness box and stated that Desappa Naidu died in the year 1967. Even if I have to agree to an oral sale, I certainly cannot agree to a situation where a dead man could have been resurrected one year after his death for the purpose of conveying title over the property. Consequently, the argument on oral sale stands rejected.

19. Mr.P.Valliappan would argue that the remedy in case where title has been denied in all such situations is only a suit for declaration of title and for injunction and that the suit for bare injunction is not maintainable. This is a suit which has been presented under Section



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27(C) of the Tamil Nadu Court Fees and Suit Valuation Act read with the provisions of Specific Relief Act relating to prohibitory injunction, in such a kind of suit, all that the Court would have to see is whether the person who comes to the Court is in “settled possession of a property”. If he is in settled possession, then law will come to his rescue and would direct the owner of the property to take possession only resorting to due process of law. This position of law has been settled as early as in the **Midnapur Zamindari Co. Ltd Vs. Naresh Narayan Roy and others, 1924 SCC Online Privy Council 18**. The view taken by the Privy council has also been approved by the Supreme Court in **Rame Gowda (D) by Lrs. Vs. M.Varadappa Naidu (D), (2004) 3 MAD LW 143**. The position of law is that, a person who is in settled possession of the property is entitled for injunction against the true owner yet unless he is dispossessed in accordance with law. What is in accordance with law? One need not search for what is the meaning for “in accordance with law”. It only means that he has to approach the jurisdictional civil Court by bringing forth a proper suit for a recovery of possession.

20. I am not agreeable with the submission of Mr.Valliappan that a person who is in possession of the property must always seek



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declaration of title and injunction. As held in **Anathula Sudakar Vs. P.**

Buchi Reddy (Dead) by L.Rs. & others, 2008 (6) CTC 237, the law

permits the party, in settled possession, to approach the Court and seek its protection as against unlawful dispossession. In fact, that is the reason why the provision under Section 27(c) of the Tamil Nadu Court Fees and Suit Valuation Act specifically requires that it is the suit based on possession alone without a right being claimed on title. The other provision under Section 27(a) clarifies the situation. It deals with a suit for possession based on title. In such circumstances, the Court fee that the party pays is certainly higher than the party pays towards a suit for injunction. The law makes the distinction between the suit for bare injunction based on possession and suit for bare injunction based on title. The present suit is one based on possession, as would be clear from the meaningful reading of the plaint. In such circumstances, all that I have to see is whether the plaintiff has proved her possession on the date of presentation of the plaint.

21. A probe of the respective documents filed by both sides, I am able to see from Ex.A1 that possession of the plaintiff has been recognised and on that basis taxes had been paid by her to the



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Government for the year 2005, 2006 and 2007. This is clear from Ex.A3(Series). The other documents laid by the plaintiff are all subsequent to the proceedings and therefore, I am ignoring the same. As against these documents whereby the plaintiff was able to prove that she is in possession of the property, all the defendants revenue records are post litem documents. Apart from the sale deed of Gengammal in the year 1933, no other documents have been produced for the long period of nearly 75 years. Therefore, the only conclusion that I can come from the above discussion is by virtue of Ex.A1 and Ex.A3, the plaintiff is in possession of the property and it is not the defendant. The evidence of D.W1 Narayanan also goes to point out that the suit schedule mentioned properties is surrounded on all sides by the plaintiff's property. Therefore, I cannot take any exception to the finding of the lower appellate Court that the plaintiff is in possession of the property.

22. However, I necessarily have to interfere with the Clause 3 of the decree because the learned Judge has given an decree which is permanent in nature restraining the true owner not to interfere with the possession of the plaintiff at all. When the plea of the oral sale fails, then the title would go back to the Gengammal and by virtue of the applicable



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succession laws, the title will now be passed on to her legal heirs.

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23. The Courts below have also held that question of adverse possession has not been pleaded. In fact in a suit for injunction, the question of adverse possession need not been gone into because under Article 65 of the Limitation Act, the plea of adverse possession is raised by the defendant to defeat the claim of the plaintiff.

24. At this stage, Mr.Valliappan would cite the judgment of the Supreme Court reported in **Padhiyar Prahladji Chenaji (Deceased) through L.R.s Vs. Maniben Jagmalbhai (Deceased) Through L.R.s and Ors. Civil Appeal No.1382 of 2022 dated 03.03.2022** to argue that the Court cannot grant an injunction in favour of a person in protecting his possession of a property when the relief of declaration has been denied.

25. A careful reading of this judgment does not lead me to that conclusion because that was a case where the plaintiff came forward with the suit for declaration of title and for consequential relief of injunction. The Court came to the conclusion that since declaration of title had not been proved, the consequential relief of injunction cannot be granted. It



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was under those circumstances that the Supreme Court held that a person who loses the main relief is not entitled to a consequential relief. I will not stretch the language of the judgment to mean in all cases a suit for injunction is not maintainable. That being the position of law, the second appeal is accepted and it is partly allowed. The question of law is answered as follows:

“The plaintiff is entitled for the relief of injunction as he has proved to be in possession of the property”

This decree for injunction is subject to the possession being not disturbed except otherwise in accordance with law. Neither I nor the Courts below had gone into the question of title.

26. It is always open to the defendants to file a suit for recovery of possession and recover the property from the plaintiff if it is otherwise open to it. Clause 3 of the decree shall stand modified to the effect that there shall be a decree for permanent injunction restraining the defendants, their men agents or subordinates from interfering with the plaintiff's possession and enjoyment of the property except in due process of law.



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WEB COPY 27. With the above modification, the second appeal is partly allowed. As the parties are closely related, I am not inclined to impose costs.

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To:

1. The District Munsif ,
Madurantakam.
2. The Subordinate Judge,
Madurantakam,
3. The Section Officer,
Vernacular Section,
High Court of Madras.



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V.LAKSHMINARAYANAN, J.

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