



WEB COPY



S.A.No.996 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.996 of 2013 &
M.P.No.1 of 2013

1.K.Selvam
2.K.Shankar (died)
3.S.Easwari
4.S.Jagathambal
5.S.Kumaresan
6.S.Tamilselvi ... Appellants

(Appellants 3 to 6 brought into record
as LRS of the deceased second
appellant vide order of this Court
dated 05.01.2022)

-Versus-

1.R.S.Kulandaivelu
2.J.Ethiraj
3.T.Ariyammal (Died)
4.Kumar
5.Jaganathan ... Respondents

(Respondents 4 & 5 brought into
record as LRS of the deceased third
respondent vide order of this Court
dated 05.01.2022)

Appeal filed under Section 100 of C.P.C. against the decree and judgment dated 24.01.2013 in A.S.No.1 of 2012 on the file of the Principal District Judge at Thiruvallur confirming the Judgment and Decree dated 27.06.2011 in O.S.No.23 of 2008 on the file of the Subordinate Judge, Ponneri.



WEB COPY



S.A.No.996 of 2013

For Appellant : Mr.P.Sheshadri

*For Respondents : No appearance
1 & 2*

R4 & R5 Refused

JUDGEMENT

The present second appeal arises out of the judgment and decree of the court of Principal District Judge, Tiruvallur in A.S.No.1 of 2012 dated 24.01.2013 in confirming the judgment and decree of the court of learned Principal Subordinate Judge at Ponneri in O.S.No.23 of 2008 dated 26.07.2011.

2. For the sake of convenience, the parties will be referred as their ranks in the suit.

3. O.S.No.23 of 2008 on the file of the learned Subordinate Judge at Ponneri is a suit, which was filed for the relief of permanent injunction restraining the defendants from interfering with the possession and enjoyment of the property.

4. The case of the plaintiffs is that they are the children of one Kothanda



S.A.No.996 of 2013

Reddy and Jagadhambal and their grandfather is Elumalai Reddy. Elumalai

Reddy has three sons viz., Kothanda Reddy, Shanmuga Reddy and Balasubramanian. Elumalai Reddy, Kothanda Reddy, Shanmuga Reddy and Balasubramanian divided the property amongst themselves through a registered partition deed dated 05.12.1873. As per the said partition, A schedule property fell to the share of Elumalai Reddy, B schedule property fell to the share of Kothanda Reddy and his sons/the plaintiffs, C schedule property fell to the share of Shanmuga Reddy and D schedule property fell to the share of Balasubramanian. As per the partition deed, the female heirs of Elumalai Reddy are not entitled to any share in the same.

5. Pursuant to the partition deed, Kothanda Reddy and his sons took the properties and have been enjoying the same.

6. The plaintiffs further pleaded that the third defendant/Ariyammal is the daughter of Kothanda Reddy through his first wife/Kannammal. Ariyammal married one Thulukkanam Reddy and was separated from the family. According to the plaintiffs, she had created some documents as if she is in possession of the property and attempted to interfere with the same. Hence, the suit.



S.A.No.996 of 2013

WEB COPY

7. The first and second defendants filed a detailed written statement. According to them, the relationship set forth in the plaint is admitted. They added, the daughter, not having been given a share in the suit schedule property, filed O.S.No.745 of 1990 against her father, Shanmuga Reddy, Balasubramanian and the other sharers in the property.

8. In the said suit, an exparte preliminary decree was passed on 31.01.1994. To set aside the exparte decree, an application was filed together with condonation of delay and the same was dismissed by the trial court. That order had not been challenged by way of revision.

9. The preliminary decree having attained finality, the third defendant had filed an application for final decree in I.A.No.2256 of 1994 and a final decree was also passed. Under the final decree, two properties were allotted to the third defendant. Thereafter, she filed an application to execute the final decree in E.P.No.40 of 2003 and on that basis, took delivery of property on 19.05.2004.

10. Since the third defendant feared interference from the hands of her



S.A.No.996 of 2013

relatives, she filed a suit in O.S.No.8 of 2005. In the said suit, she obtained an interim injunction and the same was also made absolute. Narrating these facts, the first and second defendants pleaded that the third defendant had appointed them as her power agent and therefore, pleaded that the suit for injunction should be dismissed on the ground of suppression of material facts.

11. On the basis of the pleadings, the trial court framed the following issues:

“1. Whether the plaintiffs are entitled for the relief of permanent injunction as prayed for in the plaint?

2. What are the other relieves is the plaintiffs are entitled to?”

12. During the course of trial, on the side of the plaintiffs, the second plaintiff entered the witness box and one Nandhagopal was examined as PW2. On the side of the plaintiffs, Ex.A1 to Ex.A4 were marked. On the side of the defendants, son of the third defendant/ one Jaganathan examined himself as DW1 and Ex.B1 to Ex.B5 were marked.

13. On the basis of oral and documentary evidence filed before the Court,



S.A.No.996 of 2013

the learned trial judge came to a conclusion that the plaintiffs are not entitled to the benefit of decree of permanent injunction. Consequently, she dismissed the suit. Aggrieved by the same, the plaintiffs filed the regular appeal. The learned Appellate Judge concurred with the view taken by the learned trial judge and dismissed the appeal. Against the concurrent findings, the second appeal has come before the court.

14. This Court did not admit the second appeal and ordered notice regarding admission on 28.11.2013. The matter was listed before me, and Mr.P.Sheshadri, learned counsel for the appellants submitted that the following substantial question of law arises for consideration in the case:

“1.Whether the Lower Appellate Court has properly considered the scope and effect of Ex.A1 Partition deed between Kothanda Reddy and his brother?

2.Whether Lower Appellate Court is right in finding that the appellant have not challenged the decree in O.S.No.745 of 1990 and O.S.No.8 of 2005 when admittedly the partition as between the male members under Ex.B1 was effected long prior to the amendment to Section 6 of Succession Act by the State Government and that the 3rd defendant did not get any right to seek for any partition?

3.Whether the finding of the Lower Appellate Court that the plaintiff failed to plead material facts in the plaint



S.A.No.996 of 2013

and also not proved possession as on the date of plaint to get the relief of permanent injunction?

4. Whether the Lower Appellate Court is right in dismissing the suit for permanent injunction filed by the appellant?

5. Whether the Lower Appellate Court is right in holding that as per the terms of the Partition Deed Ex.A1 and the final decree passed in O.S.No.745 of 1990 the third defendant obtained possession of the suit property and therefore the third defendant is entitled to the property, the plaintiffs have no right to interfere with her possession?"

15. I have carefully gone through the records and considered the submissions made by the plaintiffs/appellants.

16. The relationship between the parties is not in dispute. The necessary documents to be considered in this case are Ex.B1 to Ex.B3. Ex.B1 is the certified copy of the preliminary decree passed in O.S.No.745 of 1990 on the file of the learned District Munsif Court at Ponneri. Ex.B2 is the certified copy of the final decree passed in the said suit. Ex.B3 is the delivery Athatchi or delivery receipt for the purpose of proving that Ariyammal had taken possession of the property, pursuant to the final decree that had been passed by the learned District Munsif.



S.A.No.996 of 2013

WEB COPY

17. On the strength of the decree as well as the taking of possession, Ariyammal/the third defendant had mutated the property in her name in the revenue records under Ex.B4. The revenue department had also recognised her possession by granting her patta. Insofar as the plaintiffs are concerned, they had relied upon a registered partition deed dated 05.12.1973 and on this basis, they claimed to have mutated the patta and a certificate has been issued by the Village Administrative Office to the effect that the plaintiffs are in possession of the property.

18. Patta being a revenue record is not a document of title. It merely points out as to who is in possession of the property. By virtue of Ex.B3 and Ex.B4, the defendants have been able to show that they are in possession and enjoyment of the same. As per section 114(e) of the Indian Evidence Act, delivery athatchi or delivery receipt is the record of the court and it raises a presumption that all the acts were done properly i.e., handing over of possession of the property to the third defendant have been done properly.

19. It is not conclusive proof for the court to come to a conclusion only on the basis of the delivery athatchi. Therefore, the burden lay on the plaintiffs



S.A.No.996 of 2013

to discharge that they continued to be in possession even after Ex.B3.

Unfortunately for the plaintiffs, the presumption that has been raised by virtue of Ex.B3 and Ex.B4 has not been discharged.

20. As pointed out by the trial court and the lower appellate court, no document was forthcoming from the side of plaintiffs/appellants to rebut the presumption that Ariyammal/the third defendant had taken possession of the property through the process of the court.

21. Insofar as the partition deed under Ex.A1 is concerned, i.e. of the year 1973, the partition suit filed by Ariyammal is subsequent to the said proceedings, and admittedly, Ariyammal is not a party to the partition deed. She had exercised her independent right claiming a share in the property of her father and had presented the suit and had been successful.

22. In the light of the above discussion, I do not consider any of the substantial questions of law arises for consideration in the present case. Therefore, the second appeal is not admitted, but it is **dismissed**.

23. The Judgment and decree of the court of Principal District Judge at Tiruvallur in A.S.No.1 of 2012 dated 24.01.2013 in confirming the judgment and decree of the learned Subordinate Judge at Ponneri in O.S.No.23 of 2008



S.A.No.996 of 2013

dated 27.06.2011 stands confirmed. As the respondents are not entered

appearance in the appeal, there shall no order as to costs.

01.03.2024

nl

Index : Yes / no

Neutral Citation : Yes / no

Speaking / Non Speaking Order



S.A.No.996 of 2013

V.LAKSHMINARAYANAN, J.
nl

To

- 1.The Principal District Judge at Thiruvallur
- 2.The Subordinate Judge, Ponneri.

S.A.No.996 of 2013

01.03.2024