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S.A.No.881 of 2017



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 25.03.2024

Pronounced on: 12.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.881 of 2017

Chandran (Died)

2.Lakshmi

3.Meganadhan

4.Sayilajamanimakalai

5.Menaka

6.Malini

...Appellants

[A1 Died, A2 to A6 are brought
on record as LR's of the deceased
A1 vide order dated 11.01.2024
made in C.M.P.Nos.29119, 29118
& 29117 of 2023 in S.A.No.881
of 2017]

Vs.

1.Kannappan (Died)

2.Radha

3.Venugopal

4.Kanchana

5.Sarasvathi

6.Aarthi

...Respondents

[R1 Died, RR4 to 6 are brought
on record as LR's of the deceased
R1 vide order dated 13.02.2024
made in C.M.P.No.3414 of 2024
in S.A.No.881 of 2017]



S.A.No.881 of 2017

PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 05.04.2017 made in A.S. No.32 of 2017 on the file of the Additional District Court, Krishnagiri, reversing the judgment and decree dated 23.04.2015 made in O.S. No.247 of 2009 on the file of the District Munsif Court, Krishnagiri.

For Appellants : Mrs.S.Uma Maheswari

For Respondents : Mr.V.Nicholas

JUDGMENT

The plaintiff in a suit for permanent injunction, having initially succeeded before the Trial Court but however suffered a reversal finding at the hands of the First Appellate Court, is the Appellant herein.

2.The parties are described as per the litigative status before the trial court.

3.The brief facts that are necessary for deciding the present Second Appeal are as hereunder:

According to the plaintiff, the first Item of the suit property was purchased by his father Muniappan on 16.05.1981 and after his demise,



he has been in possession of the said first Item of the suit property.

Insofar as the second Item of the suit property is concerned, the plaintiff states that it was purchased by his father on 24.05.1966 and he was in possession of the same. With regard to the third Item of the suit property, the said property stood in the joint names of the plaintiff's mother Kamala and the 1st defendant. According to the plaintiff, in the northern side, 48.5 cents was allotted to the plaintiff's mother and in the southern side, 48.5 cents was allotted to 1st defendant, by means of a partition and they have been in separate enjoyment of their respective allotments. The plaintiff also claims that his mother obtained Electricity service connection for the Well situated in 3rd Item of the suit property. The plaintiff further claims that after the demise of his mother, he has acquired title by adverse possession in respect of the 3rd Item of the suit property. The suit was instituted on the ground that the defendants were disturbing the plaintiff's peaceful possession and enjoyment of the suit property.

4.The said suit was resisted by the defendants stating that they never claimed any right over the 1st item of the suit property or in fact the 2nd item of the suit property, however, the defendants have only



stated that there is no tamarind tree existing in the 2nd item of the suit property as claimed in the plaint. According to the defendants, Items 1 and 2 were totally unnecessary for the purposes of the suit in respect of the 3rd Item of the suit property. The case of the 1st defendant is that his father purchased the same, as early as on 02.01.1928 and after his demise, the 1st defendant has been in possession of the said 3rd item of the suit property. The plaintiff's mother took advantage of the 1st defendant's employment outstanding and obtained EB service connection in her name. The suit was therefore sought to be dismissed as the plaintiff was never in possession of the 3rd Item of the suit property.

5.The Trial Court decreed the suit as against which the defendants preferred an appeal in A.S.No.32 of 2017. The First Appellate Court allowed the appeal and set aside the judgment and decree of the Trial Court. Aggrieved by the reversal findings rendered by the First Appellate Court, the plaintiff has come by way of the present Second Appeal.

6.The above Second Appeal was admitted by me on 06.02.2024, in the following two substantial questions of law:

*(i). Whether the Lower Appellate Court is right
in setting aside the judgment and decree of the trial*



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Court in respect of item Nos.1 and 2 of the plaint schedule on the ground that there was no cause of action without the plaintiff had established title to the suit item Nos.1 & 2 by production of Ex.A1 and Ex.A.2?

(ii) Whether the Lower Appellate Court was right in the suit in respect of item No.3 of the plaint schedule on the ground that the revenue records stood in the name of the mother of the plaintiff and not the plaintiff who had inherited the said property from the mother under Section 15 of Hindu Act?

7.I have heard Mrs.S.Uma Maheswari, learned counsel for the appellants and Mr.V.Nicholas, learned counsel for the respondents. I have also gone through the pleadings, oral and documentary evidence adduced by the parties as well as the judgments of the Trial Court and the First Appellate Court.

8.The learned counsel for the appellants, Mrs.S.Uma Maheswari would invite my attention to the discussion of the First Appellate Court at paragraph 13 of its judgment and state that the First Appellate Court had got the basic facts wrong and therefore proceeded to render erroneous findings, thereby setting aside the Will based on the judgment



of the Trial Court. The learned counsel for the appellants would also state that admittedly when the Electricity service connection was in the name of the plaintiff's mother, it would only lead to a presumption that there was a partition between the plaintiff's mother and the 1st defendant and the plaintiff's case ought to have been accepted and the court should have granted the relief of permanent injunction, finding the plaintiff to be in physical possession of the suit property.

9.The learned counsel for the respondents, Mr.V.Nicholas would submit that the First Appellate Court has rightly found that revenue records were only in the joint names of the mother of the plaintiff and the 1st defendant and after the demise of the plaintiff's mother, the plaintiff has not taken any steps, for two decades, to mutate revenue records in his separate name, especially when he sets up a plea of partition between his mother and the 1st defendant in and whereby the property was divided into two portions and the northern half was allotted to the plaintiff's mother and the southern half was allotted to the 1st defendant. Therefore he would pray for dismissal of the Second Appeal.

10.The suit, being one for permanent injunction, the plaintiff has



to establish the factum of being in physical possession of the suit on the date of filing of the suit. However revenue records that have been exhibited by the plaintiff are all in the name of his mother and not in the name of the plaintiff. In respect of the 3rd Item of the suit property the plaintiff has not let in any satisfactory evidence to establish the plea of partition allotting the northern portion of the 3rd Item of the suit property to the plaintiffs' mother.

11. Moreover the First Appellate Court also found that patta, Chitta, Adangal were registered only in the joint names of Kamala and the 1st defendant and therefore, did not believe the plea of partition set up by the plaintiff. The plaintiff has admittedly not filed a single document to establish that he has been in possession of the 3rd Item of the suit property, subsequent to the demise of the mother. The First Appellate Court has also rightly assessed the oral and documentary evidence adduced by the parties in coming to the conclusion that the plaintiff was not entitled to relief of permanent injunction and that there is absolutely no cause of action for the plaintiff to seek a relief of permanent injunction even in respect of Items 1 and 2, over which the defendants admittedly never made any claim whatsoever.



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12.The First Appellate Court has also taken note of the fact that, when the plaintiff claims title as being the legal representative of his mother, has also pleaded adverse possession and rightly held that a claim of ownership and adverse possession cannot go together. The First Appellate Court has allowed the appeal, reversing the erroneous findings rendered by the Trial Court. I do not find any perversity or illegality in the findings arrived at by the First Appellate Court. Merely because the defendants have admitted that they have no claim or right over the suit Items 1 and 2, and it would not automatically entitle the plaintiff to a permanent injunction. The plaintiff having come to the court with a specific cause of action that the defendants are attempting to interfere with his possession of the said Items 1 and 2 of the suit property, the plaintiff has to satisfy the court and prove the allegations made against the defendants and in the absence of adducing sufficient and satisfactory oral and documentary evidence, the plaintiff would not become entitled to the relief of permanent injunction. In respect of the electricity service connection standing in the name of the appellants' mother, it shall be open to the respondents to take such legal steps that may be open to them. In fine, the substantial questions of law are answered against the



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appellants.

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13.In the result, the Second Appeal is dismissed. There shall be no order as to costs.

12.04.2024

Neutral Citation :Yes/No.

Speaking order/Non-speaking order

rkp

To

1. The Additional District Court, Krishnagiri
2. The Distict Munsif Court, Krishnagiri.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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P.B.BALAJI, J,

rkp

Pre-delivery Judgment in

S.A.No.881 of 2017

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