



S.A.No.921 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.921 of 2023

and

C.M.P.No.29568 of 2023

K.M.Raju (Died)

2.Moghini

3.Haldurai

4.Mrs.Saraswathi

5.Ms.Saroja

6.K.R.Loganathan

... Appellants

[A.1 dies, A.2 to A.6 are brought on record as Lrs of the deceased A.1 vide Court order dated 15.02.2024 made in C.M.P.Nos.3555 to 3357 of 2024 in S.A.No.921 of 2023 (PTAJ)]

Vs.

Onniammal (Deceased)

K.V.Bhojan (deceased)

1.K.V.Shankaran



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2.K.V.Rani

3.Saraswathi

4.Malliga

5.Viswanathan

6.Savithiri

7.Sabitra

8.Karthick

... Respondents

Prayer:- Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree, dated 01.02.2018 made in A.S.No.56 of 2017 on the file of the Subordinate Judge, Coonoor in reversing the judgement and decree, dated 23.08.2017 made in O.S.No.30 of 2009 on the file of the District Munsif, Court, Coonoor.

For Appellant : M/s.D.Krishna Pradeep.

For Respondent : Mr.A.Bobbie [R.1 and R.2] – Vide
Court order dated 15.02.2024 in
C.M.P.Nos.3356, 3355 and 3357 of 2024.



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JUDGEMENT

The defendant is the appellant before this Court. The facts culminating in the filing of the Second Appeal is herein below set out briefly and the parties are referred to in the same ranking as before the Trial Court.

2. The deceased plaintiff, Onniammal had filed the suit O.S.No.30 of 2009 on the file of the District Munsif, Coonoor for a permanent injunction restraining the appellant herein, his men and agents or any other person claiming under him from interfering with her peaceful possession and enjoyment of the suit property.

3. The suit property is herein below described:-

BOUNDARIES

North	: K.J.Sunderajan's Property
South	: T. Bellie and Padma's Property
East	: Government Bus Road



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West : Ajjan's Property.

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4. The deceased plaintiff would submit that her husband late K.B.Vasudevan became entitled to the suit property. He had died intestate leaving behind him the deceased plaintiff and her sons as his legal heirs and the plaintiff has been in possession and enjoyment of the property ever since the date of the death of her husband without any kind of interruption whatsoever from anyone. She had also mutated the revenue records in her name.

5. While so, the defendant who had no right to the property attempted to trespass into the property and the deceased plaintiff was constrained to issue a legal notice dated 10.04.2009. Though the defendant had received the said notice, he had not sent any reply. However, since the threat was a continuing one the deceased plaintiff had filed the above suit.



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6. Pending the suit, the sole plaintiff had passed away and the plaintiffs 2 to 10/respondents herein were brought on record as her Legal Representatives.

7. The defendant had filed a written statement inter alia contending that the property belonged to one Hiriya Gowder. The said Hiriya Gowder had 4 sons, (i) Belly Gowder, (ii) Matha Gowder, (iii) Kulla Gowder and (iv) Sevana Gowder. The deceased plaintiff's husband is the son of Belly Gowder and the defendant is the son of Matha Gowder. The defendant would submit that the properties have not been divided by metes and bounds and the same are being enjoyed jointly. However, the 4 branches were enjoying specific portions. He would further add that on the death of Vasudevan neither the deceased plaintiff nor her sons had come anywhere near the property and they had voluntarily relinquished their rights to the property.



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Further, the documents that have been filed are all of a recent origin which would not prove possession.

8. An additional written statement was also filed by the defendant wherein the only statement that was made was that the boundaries of the property had been wrongly given.

9. The learned Trial Judge had framed the issues *as to whether the deceased plaintiff was entitled to a permanent injunction? and to what other relief deceased plaintiff is entitled to?*

10. The 3rd respondent herein had examined himself as P.W.1 and marked Ex.A.1 to Ex.A.12. The defendant did not examine himself but had examined 3 other witnesses and marked Ex.B.1, a Chitta extract.

11. Before the Trial Court, it was the admitted case of the



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parties that the suit property originally belonged to Hiriya Gowder under whom the parties claim a right. The defendant had admitted that the properties had not been partitioned and the properties continued to be joint. Therefore, the right and title of the plaintiff could not be disputed. However, since the property had not been partitioned and the documents filed by the plaintiff are closer to the date of the filing of the suit, the Trial Court had dismissed the suit. Challenging the same, the plaintiffs had filed A.S.No.56 of 2017 on the file of the Sub Judge, Coonoor.

12. The learned Appellate Judge held that the documents filed on the side of the plaintiffs would show that the properties had been orally partitioned as under Ex.A.7. That apart, the defendants had admitted to the possession of the suit property by Vasudevan till his death and thereafter it is their case that the plaintiffs had relinquished their right in respect of the suit property which statement has not been



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proved. Therefore, taking into consideration the Patta which was issued in the name of the deceased sole plaintiff in the year 1987 in respect of the suit properties and the other documents, the Lower Appellate Court had held that the plaintiff was in possession of the property and attempts were being made by the defendant to interfere with their peaceful possession and enjoyment of the suit property. Ultimately, the Lower Appellate Court had allowed the appeal. Challenging the same the appellant/defendant is before this Court.

13. The plaintiffs/respondents had entered caveat in the above matter and today the matter is listed for admission.

14. Heard the learned counsels on either side.

15. As held by the Lower Appellate Court the plaintiff has established the case that she claimed under the original owner Hiriya



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Gowder under whom the defendant also claims a right. Ex.A.1 has been filed to show that Patta has been granted in the name of the deceased sole plaintiff as early as in the year 1987. The plaintiff has also filed Ex.A.2 to Ex.A.4, Ex.A.9 to Ex.A.12 to show her possession and enjoyment of the suit schedule property. The defendant has no doubt produced Ex.B.1. Chitta extract. However, this Chitta extract is after Ex.A.1. That apart, the appellant/defendant in his pleadings has admitted that K.B.Vasudevan, the husband of the sole plaintiff was in joint possession of the property and though the property was joint, each branch was enjoying specific portions. He had also taken a stand that Vasudevan and his legal representatives have given up their right in respect of the suit property which statement has been denied by the respondents/plaintiffs and the appellant/defendant has not taken any steps to prove the same.

16. The suit is one for a bare injunction. Considering the fact



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that the respondents/plaintiffs have produced documents to show their possession and also taking into account the fact that the appellant/defendant had not got into the box to adduce evidence, the lower Appellate Court has rightly reversed the judgement and decree of the Trial Court and granted an injunction. It is no doubt true that injunctions are not normally granted against a co-owner. However, in the light of the specific pleadings by the defendant/appellant that each branch was in enjoyment of their specific portion and taking note of the revenue records standing in the name of the respondents/plaintiffs in respect of the suit property, the Lower Appellate Court was right in granting the decree for injunction. I see no reason to interfere with this judgement and decree of the Lower Appellate Court. Further, no Substantial Question of law have been made out in the above Second Appeal, accordingly, the Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.



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Index: Yes/No

Speaking order/non-speaking order

Neutral Citation: Yes/No

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To

1. The Subordinate Judge, Coonoor
2. The District Munsif, Court, Coonoor.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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