



S.A.(MD) No.879 of 2008

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A. (MD) No.879 of 2008

Kaliammal

... Appellant

-VS-

1.Thangaraj

2.Veeriah

3.Mariappan

4.Amutha

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 24.01.2008, passed in A.S.No.27 of 2006 on the file of Sub-Court, Srivilliputhur, confirming the judgment and decree, dated 19.01.2006, passed in O.S.No.133 of 2002 on the file of Additional District Munsif, Srivilliputhur.



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For Appellant : Mr.V.Shathurthi Raja,
for Mr.S.Kadarkarai.

For Respondent 1 : Mr.M.Ashok Kumar

For Respondents 2 to 4 : No appearance

JUDGMENT

The first defendant in the suit is the appellant. The first respondent herein filed a suit for bare injunction. The suit was decreed by the trial Court and the first appeal filed by the first defendant was dismissed. Challenging the concurrent findings, the first defendant is before this Court.

2. According to the first respondent/plaintiff, the suit property originally belonged to his paternal grandfather – Pethaiyar Thevar and he died in the year 1991. The only son of Pethaiyar Thevar, namely, Nataraj Thevar, father of the plaintiff, pre-deceased his father. Therefore, after the death of Pethaiyar Thevar, the plaintiff succeeded to his property and has been in possession and enjoyment of the same by paying house tax to the Government. The defendants, without having any manner of right over the suit property, attempted to interfere with the plaintiff's possession over the suit property and hence he was constrained to file a suit for bare injunction.



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3. The first defendant filed her written statement and the same was adopted by the defendants 3,4 and 5. It was the case of the defendants that the plaintiff's grandfather - Pethaiyar Thevar had one son and two daughters and the first defendant was one of the daughters of Pethaiyar Thevar. The plaintiff's father was none other than the brother of the first defendant. It was also claimed that the suit property was purchased by the mother of the first defendant and wife of Pethaiyar Thevar, namely, Natchiarammal under a sale deed, dated 23.12.1959. The suit property, after purchase, had been in possession and enjoyment of the family, including the first defendant and the plaintiff's father. The original owner – Natchiarammal mortgaged the suit property with one Lakshmiammal for a sum of Rs.400/- and the same was redeemed by the first defendant by spending her own funds. It was also claimed that the father of the plaintiff died at a young age, leaving minor plaintiff and he was brought up by the first defendant only. It was further claimed by the defendant that Natchiarammal executed a settlement deed, dated 22.04.1993, settling certain properties in favour of the first defendant. The suit property was orally gifted in favour of the first defendant and as such the first defendant had been in possession and enjoyment of the suit property. On these pleadings, the defendants sought for dismissal of the suit.



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4. Before the trial Court, the plaintiff was examined as P.W.1 and one of his paternal aunts, namely, the sister of first defendant was examined as P.W.2. On the side of the plaintiff, 4 documents were marked as Exs.A-1 to A-4. The first defendant was examined as D.W.1 and yet another witness was examined as D.W.2. 6 documents were marked on the side of the defendants as Exs.B-1 to B-6.

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff established his possession over the suit property and consequently granted a decree for permanent injunction. Aggrieved by the same, the first defendant preferred an appeal in A.S.No.27 of 2006 on the file of Sub-Court, Srivilliputhur. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the first defendant is before this Court.

6. At the time of admission, this Court formulated the following substantial question of law, by an order, dated 10.06.2024 :



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Whether the Courts below are justified in granting a decree for injunction against the first defendant, who is entitled to be treated as a co-owner of the property, after the death of original owner Natchiarammal ?

7. The learned counsel appearing for the appellant submitted that the suit property was originally purchased by the mother of the first defendant and the plaintiff's father, namely, Natchiarammal under a registered sale deed, dated 23.12.1959, marked as Additional Document No.1 before the first appellate Court. When it is proved that the suit property belonged to Natchiarammal, after her death, both the first defendant and the plaintiff's father – Nataraja Thevar and P.W.2 were entitled to 1/3 share each. In such circumstances, the first defendant is the co-owner of the suit property along with plaintiff and P.W.2. Therefore, the suit for injunction against the co-owner would not lie.

8. The learned counsel appearing for the first respondent vehemently contended that tax receipts produced by the plaintiff as Ex.A-1 clearly established that he has been in physical possession of the suit property and,



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therefore, the defendant is not entitled to disturb the physical possession of the plaintiff, except by due process of law.

9. From Document No.1, filed before the first appellate Court as Additional Document, it is proved that the property was purchased by Natchiarammal, mother of the first defendant and the plaintiff's father – Nataraja Thevar. Even otherwise, the title of Natchiarammal was admitted by the plaintiff when he was examined as P.W.1. He clearly admitted that the suit property was purchased by Natchiarammal under a registered sale deed from one Rukmaniammal and the said document was marked as Additional Document No.1 before the first appellate Court. Therefore, the title of the plaintiff's paternal grandmother and first defendant's mother – Natchiarammal is established by the evidence available on record. Once it is established that the suit property originally belonged to Natchiarammal, then, the first defendant becomes the co-owner of the property along with plaintiff and P.W. 2. The plaintiff is the son of Natchiarammal's son – Nataraja Thevar. First defendant and P.W.2 are daughters of Natchiarammal. In such circumstances, the first defendant is entitled to 1/3 share in the suit property and she becomes co-owner of the property.



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10. It is settled law that a suit for injunction against co-owner by another co-owner is not maintainable.

11. The learned counsel appearing for the appellant submitted that the physical possession of the plaintiff is proved by Ex.A-1, tax receipts, and therefore, he is entitled to limited injunction, restraining the defendant from interfering with his possession, except by due process of law.

12. It has been settled by a catena of decisions that the possession of a co-owner is not only for his benefit but also for the benefit of other co-owners. Therefore, when the plaintiff claimed that he is in possession of the property, he is deemed to be in possession of the property on behalf of the other co-owners also. In such circumstances, the plaintiff is not entitled to seek the relief of injunction against the co-owner of the property, namely, the first respondent. Both the Courts below failed to consider this aspect and granted a decree for permanent injunction, restraining the co-owner from interfering with the possession of the plaintiff. Hence, the substantial question of law, framed at the time of admission, is answered in favour of the appellant and against the respondent.



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13. The Second Appeal is allowed, setting aside the judgments and the decrees passed by the Courts below. The suit filed by the first respondent/plaintiff stands dismissed. However, it is made clear that it is always open for the parties to work out their remedy in a suit for partition. No costs.

05.07.2024

NCC : Yes
Index : Yes
Internet : Yes

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To:

- 1.Subordinate Judge,
Srivilliputhur.
- 2.Additional District Munsif,
Srivilliputhur.
- 3.Section Officer,
V.R. Section,
Madurai Bench of Madras High Court.



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S.SOUNTHAR, J.

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