



S.A.(MD) No.151 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 23.08.2024

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

S.A.(MD) No.151 of 2012
and
C.M.P.(MD) No.8697 of 2024

1.Veerappa Naicker (died)

2.Perumal

... Appellants

vs.

C.K.M.Abdul Jaffar (died)

1.C.K.M.Mubarak Ali

2.Mariyam Beevi

3.C.K.A.Shabira Banu

4.C.K.A.Hajara Banu

5.C.K.A.Rahila Banu

6.C.K.A.Ashik Ali

7.C.K.A.Aasiya Banu

...Respondents

Prayer:- Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree in A.S.No.61 of 2010 dated 24.02.2012 on the file of the Principal Sub Court, Karur, reversing the judgment and decree in O.S.No.986 of 2004 dated 09.10.2009 on the file of the Additional



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District Munsif Court, Karur.

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For Appellants : Mr.V.Balaji

For Respondents : Mr.R.Devaraj

JUDGMENT

The defendants 1 and 2 in the suit O.S.No.986 of 2004 on the file of the Additional District Munsif, Karur, are the appellants before this Court. They seek to challenge the judgment and decree of the learned Sub Judge, Karur in A.S.No.61 of 2010 in and by which the learned Judge had reversed the judgment and decree in O.S.No.986 of 2004 dated 09.10.2009.

2. The parties are referred to in the same litigative status as before the Trial Court.

3. The suit O.S.No.986 of 2004 was originally filed by one Abdul Jaffar for permanent injunction restraining the defendants/appellants herein from interfering with the peaceful possession and enjoyment of the suit schedule properties. Pending the suit, the said Abdul Jaffar had died on 28.06.2000 and therefore, his legal representatives were brought on record as plaintiffs 2 to 8.



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4. The case of the plaintiffs was that the suit properties and other properties were originally owned by the plaintiffs and by one Abdul Fari, who is the son of the first plaintiff and the brother of the second plaintiff. They had entered into a partition, which was reduced into writing on 26.07.1985 and registered. The 'B' scheduled properties in the partition deed was allotted to the share of the first plaintiff and the 'C' scheduled properties to the share of the second plaintiff. The entire properties were described as the 'A' schedule property. The 'B' and 'C' scheduled properties in this partition deed consist of the suit properties and the other properties. By reason of the partition deed, the plaintiffs would claim that they are entitled to a 1/2 share.

5. The suit properties consist of agricultural lands and thatched houses. Patta has also been granted to the plaintiffs and the plaintiffs are paying the taxes to the Revenue. Apart from claiming title under the partition deed, the plaintiffs would submit that they have been in open continuous and uninterrupted possession of the properties from the date of the partition deed dated 26.07.1985.

6. While so, the defendants, who have no right whatsoever over the suit property and were strangers to the suit property, have been interfering with the



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plaintiffs' peaceful possession and enjoyment of the suit properties. The defendants are taking advantage of the fact that they have the lands adjacent to the suit properties. An attempt was made on 18.03.2004 and the same was successfully prevented by the plaintiffs. Therefore, they have come forward with the suit in question.

7. It is the case of the defendants that item Nos.1 to 3, which totally is measuring an extent of 17.26 cents, originally belonged to Sheik Abdul Kadhar, S/o.Sheik Ali. In the year 1954, the first defendant's father, Lingappa Naicker had taken the property on lease from the said Sheik Abdul Kadhar under the oral lease. On the basis of the oral lease, Lingappa Naicker had taken possession of items 1 to 3 and has been cultivating the same. However, at the end of the year, the said Lingappa Naicker had not surrendered the property, but had continued as a cultivating tenant till 11.12.1964 and he has been remitting the lease rentals to the said Sheik Abdul Kadhar.

8. The plaintiffs and their brother, Abdul Fari had purchased item Nos.1 to 3 from Sheik Abdul Kadhar under sale deed dated 11.02.1964. The defendants' father, Lingappa had also attorned tenancy in their favour and he has been paying the lease rentals to them. Lingappa Naicker passed away in the



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year 1986. Thereafter, the first defendant and his brother, Narayanasamy Naicker were cultivating the lands. They had partitioned items 1 to 3 into north and south portions. The northern portion was enjoyed by Narayanasamy Naicker and the southern portion was enjoyed by the first defendant and they have been cultivating the same. On the death of Narayanasamy Naicker, his son Veeramalai, was enjoying the northern portion.

9. The defendants would submit that they have been cultivating the lands till date as cultivating tenants. The first defendant was paying a sum of Rs. 2,500/- per annum as lease rentals. They would submit that all these material facts have been cleverly suppressed by the plaintiffs as if they were in possession of the property, whereas in reality, it is the defendants, who are in possession.

10. The learned Additional District Munsif, Karur, by his judgment and dated 09.10.2009 was pleased to dismiss the suit. Challenging the same, the plaintiffs have filed an appeal in A.S.No.61 of 2010 on the file of the Principal Sub Court, Karur. The learned Principal Subordinate Judge, Karur, reversed the judgment and decree of the trial Court by contending that the defendants have not proved that they are in possession of the property in the capacity of



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cultivating tenants and that the Adangal and the land tax receipts indicate that the plaintiffs are in possession of the same. Challenging the same, the defendants had filed this second appeal. Pending the second appeal, the first defendant/first appellant passed away and the second defendant, who is his son, was recorded as his legal representative. This second appeal has been admitted on the following questions of law:

"a) Is not the appellate court wrong in placing the burden on the defendants to prove possession in a suit for bare injunction?

b) Is not the appellate court wrong in decreeing the prayer for permanent injunction inspite of suppression of material facts as to the dismissal of prior suit proceedings in respect of the very same property and very same relief?

c) Is not the appellate court wrong in granting the discretionary relief of injunction to a person who approaches the court with unclean hands and for suppression of material facts?"

11. It is now brought to the notice of this Court that the party, who has now taken out an application for impleading herself, namely P.Sujatha, has purchased the southern portion of the items 1 to 3 and Narayanasamy Naicker's son, Veeramalai had purchased the northern portion of item Nos.1 to 3.



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Therefore, the plaintiffs no longer have any interest whatsoever in the suit schedule property. The appellate Court has granted an injunction in favour of the plaintiffs.

12. Considering the fact that they have alienated the property in favour of the legal heirs of the defendants, this Second Appeal has to be allowed and the judgment and decree of the learned Subordinate Judge, Karur in A.S.No.61 of 2010 is set aside and the judgment in O.S.No.986 of 2004 on the file of the learned Additional District Munsif, Karur stands restored.

13. In fine, this Second Appeal stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
Internet : Yes/ No

23.08.2024

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To

1.The Principal Sub Judge,
Karur.

2.The Additional District Munsif,
Karur.



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3.The Section Officer, (2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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P.T.ASHA, J.

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