



S.A.(MD)No.287 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD)No.287 of 2011

and

M.P(MD) No.1 of 2011

1.P.Chinnammal

2.A.Elumalai Konar (died)

3.Chandra

4.Amutha

5.Venkatesan

6.Thavasimani

... Appellants

(Appellants 3 to 6 are brought on record as LR's of the deceased second appellant vide Court order dated 28.06.2022 made in C.M.P(MD) No.872 to 874 of 2016)

Vs

1.N.Seva Konar (died)

2.Nallammal

3.Rangammal

4.Chandrasekar

5.Chellam

6.Papathi



S.A.(MD)No.287 of 2011

7.Vellaiammal

8.The District Collector,
Pudukottai District.

9.The Thasildhar,
Illupur Taluk Office,
Pudukottai District.

10.Rengasamy @ Ratthiyarajan
(10th Respondent set ex parte in the first appellate Court.
So notice is not necessary to him)

11.Ulagayee

12.Subramani

13.Anjala

14.Nallu

15.Chinnasamy

16.Rengasamy

17.Ramachandran ... Respondents

(Memo dated 07.06.2022 in USR No.14121 is recorded and name of the 14th respondent is amended vide Court order dated 06.06.2022 made in C.M.P(MD) No.875 of 2016 in S.A(MD) No.287 of 2011)

(Respondents 11 to 17 are brought on record as LR's of the deceased first respondent vide Court order dated 06.06.2022 made in C.M.P(MD) No. 875 of 2016 in S.A(MD) No.287 of 2011)

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the decree and judgment in A.S.No.58 of 2007 on the file of the Sub Court, Pudukottai, dated 18.11.2010, reversing the decree and judgment in



S.A.(MD)No.287 of 2011

O.S.No.214 of 2000, on the file of the District Munsif cum Judicial Magistrate, Keeranoor, dated 31.10.2006.

For Appellant : Mr.K.P.Narayanakumar

For R2, R3 R5 to R7 : Mr.AN.Ramanathan

For R4, R11 to R13,
R15 to R17 : Mr.H.Arumugam
for Mr.P.Murugesan

For R8 & R9 : Mr.S.R.A.Ramachandran
Additional Government Pleader

JUDGMENT

The plaintiffs are the appellants 1 and 2. They have filed a suit for injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit properties. The plaintiffs also sought for a mandatory injunction directing the defendants 3 and 4 to make necessary entry in the revenue records by including the names of the plaintiffs after removing the names of the defendants 1 and 2. The suit was decreed by the trial Court and the findings of the trial Court were reversed by the first appellate Court. Aggrieved by the same, the plaintiffs are before this Court.



S.A.(MD)No.287 of 2011

2. According to the plaintiffs, the suit properties were originally devolved on one Kadakonar, father-in-law of the first defendant. The said Kadakonar died leaving behind three sons Sevakonar, Chinnathambikonar and Palaniandikonar. The first plaintiff is the wife of Palaniandikonar and the second plaintiff is the uterine brother of the first plaintiff. It was also averred by the plaintiffs that the sons of Kadakonar divided the properties orally among them. Three sons of Kadakonar were allotted $\frac{1}{3}$ rd share each in the suit properties. The first son Sevakonar was allotted with $\frac{1}{6}$ th share in the well found in the suit properties. The second son was allotted with $\frac{1}{3}$ rd share in the well and the first plaintiff's husband Palaniandikonar allotted with a half share. After partition, the eldest son Sevakonar sold his $\frac{1}{3}$ rd share in the suit properties and $\frac{1}{6}$ th share in the suit well in favour of the first plaintiff's husband Palaniandikonar under Ex.A1 dated 26.10.1952. The other brother Chinnathambikonar died 40 years back leaving behind his wife Nallammal and his minor sons and daughters. The said Nallammal sold Chinnathambikonar's $\frac{1}{3}$ rd share in the suit properties along with the share in the well in favour of the plaintiffs' father Andikonar for herself and also on behalf of minor children under Ex.A3 dated 28.05.1965. The plaintiffs' father Andikonar had given the property purchased by him



S.A.(MD)No.287 of 2011

from Nallammal in favour of first plaintiff as Srithana property.

However, the property has been managed by second plaintiff on behalf of first plaintiff. The patta for the suit properties were originally granted in the name of the first plaintiff's husband Palaniandikonar and later on, it was wrongly entered in the name of defendants 1 and 2. After acquiring knowledge about the entry in the revenue records in their favour, the defendants 1 and 2 attempted to interfere with the possession of the plaintiffs over the suit property and hence, the above said suit was laid for injunction.

3.The contesting defendants 1 and 2 filed a written statement denying the right claimed by the plaintiffs over the suit property. It was their case that the suit properties originally belonged to Sevakonar, father of the Kadakonar referred in the plaint. It was claimed by the defendants that the above said senior Sevakonar had two sons namely, Kadakonar and Nallankonar. The first plaintiff's husband Palaniandikonar and two others namely Sevakonar junior and Chinnathambikonar were the sons of Kadakonar and the defendants 1 and 2 are the sons of Kadakonar's brother Nallankonar. It was also claimed by the defendants that the suit properties were originally belonged to the joint family and they have



S.A.(MD)No.287 of 2011

been in exclusive possession and enjoyment of the suit properties. It was also claimed that the first plaintiff after death of Palanandikonar married one Nallukonar and the plaintiffs possession over the suit property was also denied by the defendants. Thus, asserting exclusive right and possession over the suit properties, the defendants sought for dismissal of the suit.

4.Before the trial Court, four witnesses have been examined on behalf of the plaintiffs as P.W.1 to P.W.4 and eight documents were marked as Ex.A1 to Ex.A8 and on behalf of the defendants, two witnesses were examined as D.W.1 and D.W.2 and five documents were marked as Ex.D1 to Ex.D5.

5.The trial Court, on appreciation of evidence available on record, came to the conclusion that the plaintiffs proved their right as well as exclusive possession over the suit properties and granted a decree as prayed for. Aggrieved by the same, the second defendant and the legal representative of first defendant filed an appeal in A.S.No.58 of 2007 on the file of the Sub Court, Pudukottai. The first appellate Court reversed the findings of the trial Court and allowed the appeal. Aggrieved by the



S.A.(MD)No.287 of 2011

same, the plaintiffs are before this Court.

WEB COPY

6.The learned counsel for the appellants submitted that the plaintiffs are claiming right over the suit properties under two registered sale deeds dated 26.10.1952 and 28.05.1965. The plaintiffs also produced the patta pass book in the name of first plaintiff's husband Palaniandikonar to show their exclusive possession over the suit properties in pursuance of the sale deeds in favour of Palaniandi. The learned counsel further submitted that the first appellate Court on an erroneous view held that title documents and the revenue documents in the name of husband of the first plaintiff, will not enable the present plaintiffs to maintain the suit. The first appellate Court as a final Court of facts failed to consider the title documents and revenue documents produced by the plaintiffs in proper perspective. Therefore, the judgement of the first appellate Court is liable to be set aside.

7.The learned counsel for the respondents submitted that even as per the averments found in the plaint, the suit properties are the ancestral properties of the family and the defendants 1 and 2 are none other than the Palanyandikonar's paternal uncle's sons. In the absence of any concrete evidence to establish partition of the property allotting the suit



S.A.(MD)No.287 of 2011

property to the branch of Palaniandikonar's father Kadakonar, the defendants shall be treated as co-owners of the property and the suit for injunction will not lie against the co-owners. The learned counsel further submitted that the plaintiffs' own averment created a cloud over the exclusive title of the plaintiffs and therefore, the suit for bare injunction filed by them is not maintainable.

8.A perusal of the plaint averment would suggest plaintiffs claimed that the suit properties were originally devolved on Kadakonar, the father-in-law of the first plaintiff. The defendants are sons the of said kadakonar's brother Nallankonar. Therefore, even as per the averments found in the plaint, it can be safely presumed that the suit properties are the ancestral properties of the plaintiffs' family. Though the plaintiffs filed sale deeds executed by Kadakonar's son Sevakonar and Chinnathambikonar in favour of Palanyandikonar and Andikonar, absolutely there is no evidence on record to suggest that the suit properties were exclusively allotted to the branch of Kadakonar in the family partition. The revenue documents namely, patta produced by the plaintiffs, stand in the name of Palaniandikonar, husband of first plaintiff. Merely because the revenue documents stand in the name of one of the members of the family, we cannot come to the conclusion that the



S.A.(MD)No.287 of 2011

properties were allotted to his share in the family partition in the absence of some evidence in support of the alleged allotment. Therefore, there is no evidence available on record to suggest that the family properties including suit properties were partitioned and the suit properties were allotted to the share of Kadakonar branch. The sons of Nallakonar will also have a share in the suit properties. Hence, the averments found in the plaint as if the suit properties devolved on Kadakonar creates a cloud over the exclusive title of the plaintiffs over the suit properties, in the absence of any evidence to show that there was a partition in the family allotting the suit properties exclusively to the share of Kadakonar. Therefore, the suit for bare injunction simpliciter filed by the plaintiffs is not maintainable and notwithstanding the dismissal of the suit, it is always open to the appellants to file a suit for declaration of title and establish their exclusive right over the suit properties.

9. It is also seen from the documents, especially, Ex.A8, the mutation in favour of defendants 1 and 2 under UDR scheme had taken place in the year 1985. The present suit filed by the plaintiffs is only in the year 2000. Some of the land tax receipts found in Ex.A7 series are also in respect of Patta No.1099, which stand jointly in the name of first



S.A.(MD)No.287 of 2011

defendant and first plaintiff's father-in-law. Therefore, the exclusive possession claimed by the plaintiffs is also not proved satisfactorily. In such circumstances, I do not find any substantial question of law to interfere with the conclusion reached by the first appellate Court and consequently, the Second Appeal is dismissed with clarification that it is open to the appellants to file appropriate suit for declaration of title to establish their right. No costs. Consequently, connected miscellaneous petition is closed.

15.04.2024

NCC : Yes / No

Index : Yes / No

cp

To

- 1.The Subordinate Judge, Pudukottai.
- 2.The District Munsif cum Judicial Magistrate,
Keeranoor.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



S.A.(MD)No.287 of 2011

S.SOUNTHAR, J.

cp

S.A.(MD)No.287 of 2011

15.04.2024