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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD)No. 276 of 2015

C.A.Karuppaiah (died)

1. C.A.Adaikalam Kathan

2. C.A.Chidambaram

... Appellants

/Vs./

1.C.Sekar

2. R.Indhra

3. Porkodi

S.Chinnavinavi (died)

4. Subramanian (died)

5. Kasi Viswanathan

...Respondents

[5th respondent is recorded as LR of the deceased 4th respondent vide order of this Court, dated 02.02.2023]

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree dated 20.03.2014 passed in A.S.No.83 of 2011 on the file of the Sub Court, Pudukkottai,



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confirming the Judgment and Decree passed in O.S.No.50 of 2004 dated 29.07.2011 on the file of the District Munsif Cum Judicial Magistrate Court, Thirumayam.

For Appellants : Mr.K.Baala Sundharam,
Senior Counsel, for
R.Paranjothi

For Respondents : Mr.R.Balakrishnan, for R-1, 2, 3 & 5
R-4 died

JUDGMENT

This Second appeal is filed by the plaintiffs to set aside the Judgment and Decree dated 20.03.2014 passed in A.S.No.83 of 2011 on the file of the Sub Court, Pudukkottai, confirming the Judgment and Decree passed in O.S.No.50 of 2004 dated 29.07.2011 on the file of the District Munsif Cum Judicial Magistrate Court, Thirumayam.

2. The plaintiffs in the suit are the appellants herein and the defendants in the suit are the respondents herein. For the sake of convenience, the parties shall be referred to as plaintiffs and defendants as per the ranking in the suit.



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3. The suit in O.S No.50 of 2004 is filed for bare injunction.

The brief facts of the case are that the suit property is classified as Natham. The plaintiff's father C.A. Karuppiah Thevar had purchased the suit properties for adequate sale consideration from one Adaikki through a sale deed dated 09.07.1951. After his demise the plaintiffs had inherited the properties as legal heirs. When a mistake regarding the one of the boundaries was came to the knowledge, a rectification deed was executed in favour of C.A.Karuppaiah. The judgment in O.S.No.552 of 1944 is in favour of the plaintiff. The plaintiffs are in possession and enjoyment by put up house, rearing cattle, placing haystack etc. In the "Natham Nilavari Thittam" the plaintiffs were granted patta for certain portions. Natham patta will be issued if the person is in possession as on the date of issuing patta. The plaintiffs were in continuous possession hence patta was issued to the plaintiffs. But the defendants are not in possession, but by furnishing wrong particulars had obtained patta and were in possession based on the illegal patta. While that being so, on 05.02.2000 the defendants along with some other persons had come to



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plaintiffs' place and disturbed the plaintiffs' possession of the suit property. The defendants are having money power and muscle power. Hence the suit for bare injunction.

4. The written statement filed by the 1st defendant is adopted by the defendants 2 to 4. It is not correct to state that the father of the plaintiffs had purchased the property on 09.07.1951 from its original owner, the rectification deed is incorrect. The said Adaiki had no right over the suit properties at any point of time, since at the time of executing sale deed the said Adaiki would be far below 18 years of age. It is only make-belief affair created fictitiously or forgery or impersonation. In any event the plaintiffs could not claim any title to the suit properties under the said sale deed since it cannot be covered under the sale deed. It is false to state that plaintiffs are enjoying the suit properties as appurtenant to their house. The allegation that the plaintiffs are enjoying by rearing cattle, storing manure, hayrick is false. It is incorrect and misleading to state the defendants had obtained patta.



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Infact, the plaintiffs appear to have obtained patta for some portion for which alone they had title and not for any other portion.

5. The allegation the defendants are not having any right or possession is denied, the other contrary allegations are denied, the defendants deny the validity, genuineness and binding nature of sale deed dated 09.07.1951, deny the description of properties. Originally, the suit property was purchased by one Malaikolundhu in the name of his daughter from one Karuppaiah under the registered sale deed dated 10.12.1947 in the then Natham S.No.150. Thereafter, the 1st defendant had purchased the same and are enjoying as domestic garden. In the south to the said property is the ancestral house property of the defendant in S.No.1218/15, which is in dilapidated condition. Neither the plaintiffs nor their predecessors had or has any right over these properties. In the house site presently is located in S.No.1209/8, the western portion is the property of the 4th defendant's husband's family. The remaining portion in the west are the acquired by the 3rd defendant



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and her husband under two different sale deeds for full and proper sale consideration and the same has been purchased from the previous lawful owners.

6. After the said purchase the entire portion in S.No.1209/8 are in continuous possession and enjoyment of the defendants 3 & 4 and their family. The property in S.No.1209/36 belongs to the 3rd defendant and her husband and they are in continuous possession and enjoyment which is evident from the Judgment and Decree passed in O.S. No.19 of 2001 on the file of the District Munsif Court, Thirumayam. In the said portion there is still traces of the house of the defendants 3 and 4 in a dilapidated condition. Therefore, the husband of the 3rd defendant and husband of the 4th defendant are necessary and proper parties in the suit, admittedly they have title and interest in the property described as the 3rd item in the plaint. Hence the suit is defective for non-joinder of necessary and proper parties. The suit property as per averments in the plaint is the vacant site. The defendants emphatically deny the title



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claimed by the plaintiffs to the suit property. Hence, the valuation of the suit under Section 27(c) of the Tamil Nadu Court fees Act, is incorrect. The property has not been properly valued. Without seeking declaration of titled the present suit is not maintainable. The plaintiffs admittedly had claimed and obtained Natham re-settlement patta for the portion alone for which alone they have title. During the natham resettlement operation which had been carried out to the full knowledge of the plaintiffs. The plaintiffs had not claimed any patta for the suit property obviously because they have no title or possession of the same. The plaintiffs therefore are also estopped by their such conduct and acquiescence and this will prove that the plaintiffs have no right over the suit properties. The description of the properties given in the plaint is incorrect. The cause of action is denied and the same is false and fictitious. Hence, the defendants prayed to dismiss the suit.

7. Based on the said pleadings, the Trial Court had framed the following issues:



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- i. whether the sale deed dated 09.07.1951 is genuine and legally valid?
- ii. Whether the suit is defective for non-joinder of necessary parties.
- iii. Whether the plaintiff is entitled to the prayer of injunction?
- iv. Whether the documents filed by the plaintiff was created for the purpose of filing the suit?
- v. To what other reliefs?

8. The Trial Court has marked Exs.A.1 to A.11 and P.W.1 & P.W.2 was examined in favour of the plaintiffs. The defendants have marked Ex.B.1 to B.26 and D.W.1 to D.W.4 was examined in favour of the defendants. After considering the pleading, documents and the deposition the Trial Court had dismissed the suit.

9. Aggrieved over the same the plaintiffs had preferred the appeal suit in A.S.No.83 of 2011 and the same was dismissed. Aggrieved



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over the same the present second appeal is preferred raising the following substantial questions of law:

- i. Whether purchaser of non-agricultural immovable property from Hindu Women will acquire absolute title prior to the Hindu Succession Act, 1956?
- ii. Whether Hindu women can convey absolute title to a purchaser when she sells immovable property from her marriage expenses prior to Hindu Succession Act, 1956?
- iii. Whether the contents of document of 60 years old can be taken as genuine or not within the meaning of section 90 of Indian Evidence Act, 1892?
- iv. Whether document of title follows possession or not within the meaning of section 38 of Specific Relief Act, 1963?
- v. Whether the suit for bare injunction is maintainable without prayer for declaration when the defendants have got fabricated patta alone within the meaning of section 34 of Specific Relief Act, 1963?

10. Heard Mr.K.Baala Sundharam, the Learned Senior Counsel, for R.Paranjothi, appearing for the appellants and Mr.R.Balakrishnan, the Learned Counsel appearing for the respondent Nos.1, 2, 3 & 5 and perused the material documents available on record.



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11. The Trial Court has categorically rendered a finding that in the sale deed dated 09.07.1951, the vendor Adaiki had sold only 1/6th portion of the property to the plaintiffs' father but there is no detail regarding the remaining five persons. This Court perused the sale deed wherein the said Adaiki had sold only 1/6th share in the property stated in the sale deed. Therefore, the said Adaikki is entitled only for 1/6 share. When the entire property stated in the sale deed belongs to six co-owners, bare injunction cannot be sought for the entire property. When the plaintiffs had purchased the undivided share of the joint owners the appropriate remedy is to file partition suit. However, the present suit is filed only for bare injunction, which is not maintainable.

12. Further the defendants had raised seriously objection over the title of property thereby had set up cloud over the title of the suit properties. In such circumstances the plaintiff ought to have filed declaration and injunction. Therefore, the fifth substantial question of law is held against the plaintiff.



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13. Further this Court is of the considered opinion, since this Court has held the suit for bare injunction is not maintainable, the other substantial questions of law need not be considered and the same are left open.

14. Therefore, the Judgment and Decree passed by both the Courts are confirmed. Accordingly, this Second Appeal is disposed of with a liberty to the plaintiffs to file a fresh suit for declaration and other prayers. The parties are at liberty to raise all pleas.

15. It is stated that the plaintiffs have put up construction in the disputed site where the plaintiffs are only having 1/6th share alone. Further it is stated that the defendants are still in possession and enjoyment of the suit properties by raising domestic garden. The apprehension raised by the plaintiffs and defendants are that they would be disturbed their enjoyment.



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16. Considering the facts and circumstances of this case, this Court is granting interim protection to both the plaintiffs and the defendants. Both the parties are directed to maintain *status quo* for a period of Six weeks. In the meanwhile, the plaintiffs are directed to file a fresh suit, within a period of Six weeks from the date of receipt of the copy of this Judgment. If not filed, the defendants are at liberty to remove any encroachment made by the plaintiffs. No Costs. Consequently, connected Miscellaneous Petitions are closed.

11.11.2024

Index : Yes / No

NCC : Yes / No

KSA

Note :Registry is directed to return the original documents filed in C.M.P.(MD) No.3779 of 2023.



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TO:

1. The Sub Court, Pudukkottai.
2. The District Munsif Cum Judicial Magistrate Court, Thirumayam.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

KSA

Judgment made in
S.A.(MD)No.276 of 2015

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