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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
15.12.2023	20.12.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD)No.134 of 2017
and
C.M.P(MD)Nos. 2132 of 2017 & 855 of 2022

V.Murugesan

... Appellant

/Vs./

1. V.Marimuthu

2. M.Kalarathinam

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and decree passed by the Learned VI Additional District Judge, Madurai, dated 25.10.2016 in A.S.No.53 of 2015 reversing the Decree and Judgment dated 17.06.2015 passed by the Learned III Additional Subordinate Judge, Madurai, in O.S.No.389 of 2008.

For Appellant : Mr.S.Natesh Raja

For Respondents : Mr.M.R.Sreenivasan



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JUDGMENT

The present Second Appeal is filed by the defendant in the suit to set aside the Judgment and Decree dated 25.10.2016 passed in A.S.No.53 of 2015 by the VI Additional District Court, Madurai by reversing the Judgment and Decree dated 17.06.2015 passed in O.S. No.389 of 2008 by the III Additional Sub Court, Madurai.

2. The defendant is the appellant herein and the plaintiffs 2 & 3 are the respondents herein. For the sake of convenience, the parties shall be referred to as plaintiffs and defendant as per the ranking in the suit.

3. The plaintiffs have filed O.S.No.611 of 2002 on the file of District Munsif Court, Madurai, thereafter the same was transferred and renumbered as O.S.No.294 of 2002 on the file of District Munsif Court, Thirumangalam, again transferred and renumbered as O.S.No.389 of 2008 on the file of III Additional Sub Court, Madurai.



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4. The plaintiffs had filed the suit for declaration to declare that the defendant has got no common ownership in Item No.1 of the suit property, consequential prayer for mandatory injunction directing the defendant to clear the trespass and restoring the possession to the plaintiffs and permanent injunction restraining the defendant from interfering with the possession and enjoyment of the suit property by the 2nd plaintiff.

5. The suit was filed by the 1st plaintiff C.Velusamy and the 2nd plaintiff V.Marimuthu and they claim that the 1st plaintiff C.Velusamy is the adopted father of the 2nd plaintiff. After the demise of the 1st plaintiff on 29.10.2003, the 2nd plaintiff was recorded as legal representative of the 1st plaintiff as per order dated 28.01.2004. Then the 3rd plaintiff was impleaded as per order dated 23.01.2008.

6. The brief facts as stated in the plaint is the 1st plaintiff C.Velusamy is the adopted father of the 2nd plaintiff V.Marimuthu. The 3rd plaintiff is the wife



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of the 2nd plaintiff. The 1st plaintiff father had filed the suit stating that he and his wife Panchavarnathammal had adopted the 2nd plaintiff as their adopted son while he was 6 days old and he was named as Marimuthu and all were living together as members of Hindu Joint Family. Thereafter that the marriage of the 2nd plaintiff with one Kalarathinam, the 3rd plaintiff was celebrated on 22.05.1996 at Madurai and she hails from their own caste Aasari. The 1st item of the suit property was purchased by the deceased 1st plaintiff and his wife jointly vide registered sale deed, dated 13.05.1964 and they were in possession and enjoyment of the same. Then the 1st plaintiff and his wife had executed registered Will dated 16.10.2000 in respect of the 1st item of the suit property bequeathing the same to the 2nd plaintiff. The 1st plaintiff's wife died in the plaintiffs' residence on 30.05.2001 and her last rights were performed by the 2nd plaintiff, adopted son.

7. After the demise of the 1st plaintiff's wife, the plaintiffs are living as members of the Hindu Joint Family. The 1st plaintiff had sold the 1st item of the said property for valid consideration in favour of the 2nd plaintiff and 2nd item in favour of the 3rd plaintiff under registered sale deeds, dated 25.06.2001. As per



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Will, dated 16.10.2000 the 1st item of the suit property was inherited by the 2nd plaintiff as adopted son, after the lifetime of the said Panchavarnathammal and the 1st plaintiff. The 1st plaintiff had added the adopted son 2nd plaintiff in order to avoid any technical objection. The 1st plaintiff further stated that the defendant falsely claim that he is the adopted son of the 1st plaintiff and his wife Panchavarnathammal, had performed the last rights of 1st plaintiff's wife and item No.1 of the suit property solely belongs to Panchavarnathammal and after her death he is entitled for his share and to that effect he made an advertisement in Daily Thanthi, dated 07.07.2001 and the 1st plaintiff has also issued an advertisement denying the same. The 2nd item of the suit property belongs to the 1st plaintiff absolutely by right of purchase through his own income vide sale deed, dated 01.04.1974 and the 1st plaintiff is in possession and enjoyment of the same and he has also executed a registered Will dated 12.10.1996 bequeathing the 2nd item of the suit property in favour of the 2nd plaintiff with an intention to give the property after his life time.

8. The 1st plaintiff further stated that he has no male or female issues



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through his wife, namely Panchavarnathammal and the 2nd plaintiff is the only legal heir and he is an adopted son of the 1st plaintiff and the said Panchavarnathammal. The defendant is living with his parents and he belongs to Pillaimar community and married a lady who belongs to Muthaliyar community. In the marriage invitation his name was mentioned as son of P.Marimuthu and Rakkaiyeammal. On the other hand, in the invitation of the 2nd plaintiff, it is mentioned that the 2nd plaintiff is the son of the 1st plaintiff and Panchavarnathammal and his wife also belongs to Aasari community and the 2nd plaintiff is living with 1st plaintiff along with his wife and children.

9. He further states that in order to curtail the false claim of the defendant in respect of the suit property he has already taken steps to sell the same to the 2nd plaintiff by way of registered sale deed for consideration (sold subsequently vide sale deed, dated 24.06.2001). The defendant is not the adopted son of the 1st plaintiff and his wife Panchavarnathammal and they never adopted the defendant and his claim is false. On 31.06.2001 by 10.00 a.m., the defendant along with his men attempted to interfere in the peaceful possession and



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enjoyment of the 1st item of the suit property and on 14.07.2001 attempted to interfere with the peaceful possession and enjoyment of the 1st plaintiff along with his men. The defendant had filed written statement on 23.01.2003, after trespassing into the 1st item on 22.09.2001, cannot claim any common right in 1st item of the suit property. The 1st item was leased to one Sakti who vacated the property and handed over the same to the 2nd plaintiff on 01.09.2001. After that the 2nd plaintiff kept the property under lock and key and the defendant illegally trespassed over the property and clandestinely put up another lock over the lock of the 2nd plaintiff. Hence, a police complaint was lodged and after enquiry, the lock was removed and the parties were directed to settle the issue legally. The defendant is having money power and muscle power, he took law in his hands and forcibly evicted the 1st plaintiff and adopted son from the suit properties. Hence, the suit for declaration and injunction was filed in O.S.No.611 of 2002 which was transferred and renumbered as O.S.No.294 of 2002, again transferred and renumbered as O.S.No.389 of 2008.

10. The defendant had filed written statement denying the allegations



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stated in the plaint as false. The defendant has denied the adoption of 2nd plaintiff when he was 6 days old by the 1st plaintiff and his wife Panchavarnathammal, denied the plea that after demise of Panchavarnathammal the plaintiffs are living as Hindu Joint Family, denied that from the date of purchase of the 1st item of the suit property, the 1st plaintiff and his wife Panchavarnathammal were in joint possession and enjoyment of the same and has also denied the allegation stated in paragraph Nos.7 to 17 in the plaint are false. The plaintiffs have not approached the Court with clean hands and the plaintiffs have suppressed the truth, hence, they are not entitled to equity relief of injunction. The defendant submitted that the defendant is the adopted son of the 1st plaintiff and Panchavarnathammal. The defendant was given in adoption by his natural parents Marimuthu and Rakkaye on 16.09.1968, when the defendant was 30 days child and the adoption was accepted by the adopted parents, 1st plaintiff and his wife and there are documents to prove the same.

11. From and after the date of adoption, the defendant was residing with his adopted parents, was doing the profession of making jewels and has also



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obtained Goldsmith license. And the defendant was assisting the 1st plaintiff in the jewel Pattarai. Further the defendant was living with his adopted parents, at No. 19, Muthukaruppanan Pillai till his marriage and there are documents to prove the same. Further stated that the 2nd plaintiff is an orphan, hence the 1st plaintiff had given him employment along with food and shelter. In the course of time, the 1st plaintiff treated the 2nd plaintiff treated as his own family member, but the 2nd plaintiff is not the adopted son of the 1st plaintiff as alleged in the suit. The 1st plaintiff and Panchavarnathammal adopted the defendant on 16.07.1968 itself. After the marriage of the 2nd plaintiff with the 3rd plaintiff, difference of opinion arose among the ladies of the family, hence in order to maintain family reputation, at the request of the 1st plaintiff the defendant has to reside in 1st item of the suit property. Hence, the allegations in the plaint are contrary to the above facts and hence the allegations in the plaint are false.

12. The defendant further stated that the 1st item of the suit property was purchased jointly in the name of the defendant's adoptive parents and adoptive mother died intestate on 13.05.2001 and the defendant had performed all



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the last rights for his adoptive mother. Subsequent to the demise of his adoptive mother, the defendant and his adoptive father had inherited the property. The defendant is the co-owner of the 1st item of the suit property. Further, the defendant's adoptive mother had not executed any Will as alleged by the 1st plaintiff and the alleged Will is concocted with the connivance of the 2nd plaintiff to deprive the right of claim and share in the suit property. The 2nd plaintiff should prove the execution of the alleged Will, dated 16.10.2000 and the dispossessing state of mind of Panchavarnathammal on the date of the alleged Will. The defendant had reserved the right to file additional statement and subsequently had filed additional written statement after the plaintiffs have amended the plaint, wherein the defendant had denied the allegation stated in paragraph No.7 of the amended plaint, that the 1st plaintiff had sold the 1st item of the suit property for valuable consideration in favour of the 2nd plaintiff and the 2nd item of the suit property in favour of the 3rd plaintiff are all false. The said sale deeds were not supported by any consideration and were created only for the purpose of defeating the rights of the defendant and the sale deeds are sham and nominal and will not confer any title of the 2nd and 3rd plaintiffs.



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13. The allegation in paragraph No.16A of the amended plaint are false and it is a story created for the purpose to suit the convenience of the plaintiffs. The allegation that after trespassing in 1st item of the suit property on 22.09.2001, the defendant cannot claim common right in 1st item of the suit property, is false and unknown to law. It is also false to allege the 1st item was leased out to one Sakthi, who have vacated the premises and handed over possession to the plaintiffs on 01.09.2001 and it is also false after the same the 2nd plaintiff kept the property under lock and key and it is also false to state the defendant illegally trespassed into the property and when prevented the defendant clandestinely put up another lock over the lock of the 2nd plaintiff and a complaint was lodged in the police station and after enquiry the lock was removed and the parties were directed to settle the dispute legally.

14. The allegation that the defendant has no right title or interest in the suit properties is incorrect since the defendant is also claiming right as legal heir of the 1st plaintiff and denying the Will and sale deed alleged to have been executed by the 1st plaintiff. The plaintiffs ought to have prayed for declaration of



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the title to the suit properties and recovery of possession, in such circumstances suit is valued less. The relief of mandatory injunction to remove a person from the possession is not maintainable. The defendant has already produced ample documentary evidence in the injunction application to prove the possession of the 1st item of the suit property and on that basis the injunction application was rightly dismissed by the Learned District Munsif, Thirumangalam. Against which the plaintiffs had not preferred any appeal, hence the rejection of injunction had attained finality and binding on the plaintiffs. Hence, the plaintiffs cannot seek relief of injunction against the said order and in different form when in sum and substance the relief sought is only for declaration of their exclusive and absolute title and recovery possession. In view of the same, the value of the plaint is not correct and the Court fees is insufficient. The plaintiffs should value the suit as per market value which is more than Rs.50,00,000/-. In that case the Court has no pecuniary jurisdiction. The issue of pecuniary jurisdiction ought to be heard as a preliminary objection and prayed to dismiss the suit.



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15. The plaintiff had marked Ex.A1 to Ex.A60 and examined PW1 to PW5. The defendant had marked Ex.B1 to Ex.B19 and examined DW1 to DW4. The PW2 had marked Ex.X1. With the above pleadings, documents, deposition, the parties went for trial and the suit was dismissed. Aggrieved over the same, the plaintiffs have preferred first appeal and the same was allowed. Aggrieved over the same, the defendant has preferred the present second appeal.

16. This Second appeal is admitted on the following substantial questions of Law.

- 1. Whether the relief of mandatory injunction seeking possession of the property can be valued and the court fees paid under Section 27(c) of the Tamil Nadu Court Fees and Suit Valuation Act?*
- 2. Whether the plaintiff can prove the negative aspect and seek the relief of the Court that the defendant was not the adopted son?*

And this Court is modifying the substantial questions of law as under:



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1.(i) Whether the relief of mandatory injunction seeking possession of the property can be valued and the court fees paid under Section 27(c) of the Tamil Nadu Court Fees and Suit Valuation Act?

1.(ii) Whether the plaintiff can prove the negative aspect and seek the relief of the Court that the defendant was not common owner of the property?

2. Whether the plaintiff can prove the negative aspect and seek the relief of the Court that the defendant was not the adopted son?

17. The 1(i) and 1(ii) substantial question of law is whether the relief of mandatory injunction seeking possession of the property can be valued and the court fees be paid under Section 27(c) of the Tamil Nadu Court Fees and Suit Valuation Act. The contention of the defendant is that the plaintiffs in order to evade payment of court fees has sought mandatory injunction to clear the trespass and restore the possession to the plaintiffs. The plaintiffs are claiming as if defendant had trespassed in 1st item of suit property. But the fact was the defendant was in possession of the property. Hence the prayer of the plaintiffs



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ought to be recovery of possession. Further the plaintiffs ought to have prayed for declaration to declare they are the owner of the property, but had sought negative prayer to declare the defendant has got 'no common ownership' in 1st item of the suit property. And the said prayer is against section 34 of Specific Relief Act, hence the said prayer cannot be entertained. In short, the plaintiff's prayer ought to be declaration to declare the plaintiffs are the owner of the property with consequential prayer of recovery of possession and the court fees payable is market value under section 25 of the Court Fess Act. On the other hand, the contention of the plaintiffs is that the 1st item of suit property was leased out to one Sakthivel, hence the defendant was not in possession of the property. In order to prove the same, the said Sakthivel was examined as PW5, wherein he has stated that he was a tenant in the 1st item of the property and has marked Ex.A34, which is the receipt for receiving the advance amount which was paid at the time of rental agreement and the same would prove the said Sakthivel was in possession.



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18. On perusal of Ex.A34 receipt, it states that the receipt is issued to Velusamy and Marimuthu for the property in Door No.15A, which was taken for rent Rs.1300/- and an advance amount of Rs.10,000/- was paid. The said advance amount is received and keys are handed over, for which the present receipt is issued. Generally, any receipt would contain “received Rs.10,000/- the advance amount being paid for the tenancy. On such receipt of amount the keys are handed over. There are no arrears of rent”. But the specific mentioning of the names Velusamy and Marimuthu, especially the name of Marimuthu gives a suspicion the same is created for the purpose of the present case. During deposition, the said Sakthivel had stated he had entered into the tenancy agreement only with Velusamy, took possession from Velusamy, then handed over to Velusamy. This statement of the said Sakthivel confirms the suspicion. Further the mentioning of the rent of Rs.1300/- amount etc., at the time of termination of lease would indicate that the plaintiff has created the said lease. Except this receipt, no other documents filed to prove the alleged lease.



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19. Furthermore, the said Sakthivel has stated in his deposition that he has not filed any records to show that he was a tenant from 1997 onwards. When a specific question was asked whether for the payment of rent for each month, receipt would be issued, he had replied an entry would be made in pocket note but the same was not produced before the Court. These statements would prove that the alleged tenancy was created for the purpose of the suit. When the alleged tenancy is claimed by the plaintiffs, then burden is on the plaintiff to prove the tenancy by producing documentary evidence, especially from when the tenancy agreement was entered into. Except for the alleged receipt the plaintiffs had not produced any other document to prove the alleged tenancy. Therefore, this Court is of the considered opinion that the plaintiff had not proved that a tenant was occupying in the 1st item of the property. And the plaintiff had not proved that the defendant had trespassed in the property. As rightly pointed out by the defendant the finding rendered in the order passed in interim injunction application would indicate the plaintiff had not proved that alleged tenant was in possession of the suit property. When the plaintiffs had not proved the alleged trespass, then the prayer to remove the trespass is incorrect, in fact there is no



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such cause of action as alleged. When the plea of trespass was rejected then the possession ought to have been with the defendant and not with the plaintiffs. If there is no trespass, then the prayer ought to be recovery of possession. Consequently, the court fee paid under section 27(c) is improper.

20. The 1(ii) substantial question of law is whether the plaintiff can prove the negative aspect and seek the relief of the Court that the defendant was **not common owner** of the property. In short, the plaintiffs are seeking the negative prayer of declaration. The Learned Counsel appearing for the defendant/appellant had relied on the judgment dated 25.10.2010 passed in C.R.P.(NPD) No. 2261 of 2009 in the case of Arulmigu Mariamman Temple Vs. M.Thangavel and others wherein the Hon'ble Court has held that,

“9. In the aforesaid circumstances, the reasons given by the lower court in refusing to admit the application filed by the petitioner u/s. 47 C.P.C is quite all right and is in accordance with law. Therefore, the request of the learned Senior counsel that the petitioner should be given an opportunity and an opportunity to get the application



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numbered be given to the 1st respondent and other respondents to file counter and the application may be disposed on merits cannot be accepted simply for the reason that the petitioner cannot ask for any negative prayer without claiming any right for herself. Therefore, I find no infirmity in the order passed by the lower court and there is no reason for interfering with the orders passed by the lower court. Therefore, the revision fails and is liable to be dismissed.”

21. The Learned Counsel has also relied on the judgment dated 21.09.2010 rendered in R.N.Shanmugavadivel & another Vs. R.N. Myilsami in S.A.No.484 of 2006 wherein in it is held as under:

“6. As rightly pointed out by the learned Senior Counsel appearing for the respondents, a negative declaratory relief has been sought for by the appellant. In other words, the plaintiff has sought for a declaration that the defendants do not have any right to the properties described in the plaint Schedule. Having thus prayed for, the said relief was valued under Section 25(d) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955.

7. As per Section 34 of The Specific Relief At, 1963, a declaratory relief can be sought for by a person who is entitled to any legal



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character or to any right as to any property. He shall file a suit only as against a person denying or interested to deny his title to such character or right. A discretion has been vested with the Court to grant such a relief of declaration. In case, such a person who could have sought for further relief than a mere declaration of title omitted to seek such further relief, even such a declaratory relief sought for by such person cannot be granted.

8. The appellant herein asserts his right to the subject property in the plaint pleadings. He has also averred to in the plaint that the respondents denied the lawful right of the appellants. Having thus pleaded as per Section 34 of The Specific Relief Act, the appellant should have come out with a positive prayer for declaration of right and title claimed by the appellants. But unfortunately, a negative prayer has been sought for by the appellants in order to evade payment of court fee u/s.25(b) of the Tamil Nadu Court Fees and Suit Valuation Act.

9. As rightly pointed out by the learned Senior Counsel appearing for the respondents, a negative prayer in such circumstances cannot be sought for by the appellants.

10. In a case where a Bank guarantee is sought to be invoked, the party aggrieved can file a suit for declaration that the defendants are not entitled to invoke the Bank guarantee against the plaintiff. In a case where a fraudulent decree was obtained as against the plaintiff in an earlier litigation, such a plaintiff can seek for a negative declaratory relief that such a decree obtained fraudulently as against the plaintiff is



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not binding upon him. The plaintiff who challenges a compromise allegedly entered into between the plaintiff and the defendants, can very well seek for a negative declaratory relief to the effect that the compromise projected by the defendant is not binding upon the plaintiff. In a case where the termination from service is challenged by the employee, he can very well seek for a negative declaratory relief that the defendant has no authority to terminate him from service.

11. In all the above sample cases, it appears that the negative prayer has a direct bearing or impact on the plaintiff. The relief sought for negatively against the defendant in those sample cases has direct nexus with the plaintiff. But in the present case, the negative relief sought for hangs in the balance and it does not impact directly on the plaintiffs. Therefore, in such circumstances the plaintiffs cannot seek for a negative relief. Further, such a negative relief even if granted is not at all found to be a workable one, in as much as it does not bind the plaintiffs and the defendants in the suit. Further, the plaintiffs cannot usurp the title to the property without seeking for proper declaration of his right and title to the property.

12. In view of the above, accepting the submission made by the learned Senior Counsel appearing for the respondents, it is held that, in the peculiar circumstances of this case, the negative relief of declaration sought for by the plaintiffs is not maintainable. Therefore, the plaintiffs will have to couch the relief in a proper form.



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13. *In the instant case, a declaratory relief has been sought for relating to immovable property. Of course, consequential injunction with respect to the said property also has been prayed for by the plaintiffs. It is not as if a relief has been sought with respect to some intangible right of the plaintiffs, as contented by the learned counsel appearing for the plaintiffs. Therefore, a declaratory relief sought for with consequential relief of injunction with respect to the immovable property will have to be valued only under Section 25(b) and not under Section 25(d) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955.*

14. *On a careful perusal of the order passed by the trial court, it is found that the trial court, having finally arrived at a decision that the suit has been undervalued, has not given an opportunity to the plaintiff to pay the Court fee. Having arrived at a conclusion that the negative prayer sought for as such is not maintainable and the Court fee has also not been properly valued and paid by the appellants, the trial Court has simply rejected the plaint against a spirit of Order 7 Rule 11 of the Code of Civil Procedure.*

15. *As per Order 7 Rule 11 of the Code of Civil Procedure, where the relief claimed is found undervalued, the court shall give sufficient time to the plaintiff to correct the valuation and pay the Court fee within a time to be fixed and in case the plaintiff failed to comply with such direction to pay the required Court fee, the trial court is well within its powers to reject the plaint. But unfortunately, the trial court has not*



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given sufficient time to the plaintiffs to correct the valuation and pay the proper Court fees before ever it rejected the plaint.

16. In view of the above, the order passed by the trial court and the judgment passed by the First Appellate Court is modified. An opportunity is given to the plaintiffs to amend the prayer in a proper form and value the suit if it is for a declaratory decree under Section 25(b) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955. The appellants are also given one month time from the date of receipt of this judgment to pay the proper Court fee payable under Section 25(b) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 after amending the first relief relating to declaration suitably.”

22. In the present case, the prayer is to declare that the defendant has **“no common ownership”** in 1st item of the suit property and consequential mandatory injunction directing the defendant to clear the trespass and restoring the possession to the plaintiffs. The intention and claim of the plaintiffs are that they are the owner of the 1st item of the suit property but had sought to declare the defendant has no common ownership, which is negative prayer. Under section 34 of the Specific Relief Act, 1963 any person has right over a property and the other person denies the right, then the person is entitled to seek the relief of declaration,



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then the court at its discretion grant such declaration that the person has right over the property. The section 34 is culled out hereunder:

34. Discretion of court as to declaration of status or right.— Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

The provision states the person is entitled for the prayer of declaration to declare the person has right over the property. Therefore, any suit filed for negative declaration that the other person is not having right cannot be maintained and if claimed the same is against the provisions of section 34. Further the judgment in R.N.Shanmugavadivel's case the Hon'ble Court had held that negative prayer cannot be sought to usurp the title to the property without seeking for proper declaration of his right and title to the property. Applying the provision of section



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34 and the aforesaid judgment this Court is of the considered opinion that the negative prayer in the suit is only to usurp the title.

23. In the above circumstances, the issue of court fees ought to be determined. This Court has held that the plaintiffs ought to have sought the prayer of declaration and recovery of possession. If so, the plaintiffs are bound to pay court fee under Section 25 of the Tamil Nadu Court Fees and Valuation Act, 1955. But by praying negative prayer of declaration that there is no common ownership and mandatory injunction to remove the trespass and hand over possession the plaintiffs had paid court fees under Section 27(c) of the Act. The provision of Section 25 and Section 27(c) are extracted hereunder:

25. Suits for declaration

In a suit for a declaratory decree or order, whether with or without consequential relief, not falling under section 26 --

(a) where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the property or on [rupees one thousand and five hundred], whichever is higher;

(b) where the prayer is for a declaration and for consequential injunction and the relief sought is with reference to any immovable property, fee shall be computed



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on one-half of the market value of the property or on [rupees one thousand], whichever is higher;

(c) where the prayer relates to the plaintiff's exclusive right to use, shall, print or exhibit any mark, name, book, picture, design or other thing and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or on [rupees two thousand], whichever is higher;

(d) in other cases, whether the subject-matter of the suit is capable of valuation or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on [rupees one thousand], whichever is higher.

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27. Suits for injunction

In a suit for injunction --

(a) where the relief sought is with reference to any immovable property, and

(i) where the plaintiff alleges that his title to the property is denied, or

(ii) where an issue is framed regarding the plaintiff's title to the property, fee shall be computed on one-half of the market value of the property or on1[rupees seven hundred and fifty], whichever is higher;

(b) where the prayer relates to the plaintiff's exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other thing and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or on2[rupees two thousand], whichever is higher;

(c) in any other case, where the subject-matter of the suit has a market value or not, fee shall be computed on the amount at



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which the relief sought is valued in the plaint or on [rupees one thousand], whichever is higher.

When a person is claiming right over the property and when the possession is with the other party, then declaration and recovery of possession ought to be prayed. And the court fee payable in under section 25 by calculating the market value. But the plaintiffs in order to evade court fees under section 25, had sought negative prayer to declare the defendant has no common ownership and injunction for recovery of possession and had paid the court fee under Section 27(c) of the Act, hence the suit is liable to be dismissed on this ground of negative prayer and inadequate payment of court fees. The above cited case in R.N.Shanmugavadivel also dealt with the court fees issue, wherein it is held that a declaratory relief sought for with consequential relief of injunction with respect to the immovable property will have to be valued only under Section 25(b) and not under Section 25(d). In the present case the court fees are paid under section 27 but the plaintiffs are liable to pay under section 25 when the prayer is for declaration and recovery of possession.



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24. At this juncture, the Learned Counsel appearing for the plaintiffs submitted as held in the aforesaid judgment, the present case may be remitted back for modifying the prayer and to pay the appropriate court fees under section 25. It is seen in the aforesaid judgment the plaint was rejected hence the Court had held to grant an opportunity the case was remitted back. In the present case, the case had full trial and thereafter the judgment was rendered. Therefore, the plea of the plaintiffs is rejected. Moreover, on merits also the plaintiffs' plea cannot be considered, which is discussed in subsequent paragraphs of this judgment. The second substantial question of law is held against the plaintiffs and in favour of the defendant.

25. The second substantial question of law is whether the plaintiff can prove the negative aspect and seek the relief to declare the defendant is not the adopted son. The judgments referred above on the issue of negative prayer is applicable for this substantial question of law also.



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26. The 2nd plaintiff and the defendant are claiming that they are the adopted son of the 1st plaintiff. Now the Court proceeds to ascertain the rival pleas. The contention of the defendant is that all was going on well, until the 2nd plaintiff's marriage. It is seen from the pleadings that the defendant Murugesan was the first entrant into the family of Velusamy and Panchavarnathammal on 16.09.1968 and this was the date of adoption. The age of the defendant was stated as 32 years as on the date of filing of the suit. Then the 2nd plaintiff Marimuthu entered the family in the year 1972 and as on the date of filing the suit the 2nd plaintiff was 30 years old. It is pertinent to state the 2nd plaintiff had not stated the exact date of adoption. Further both the 2nd plaintiff and the defendant had not stated whether any adoption ceremony was conducted, whether the natural parents offered to give the child in adoption and whether adopted parents had accepted the child and thereby the conditions stated in the section 11 of the Hindu Adoption and Maintenance Act are fulfilled. Infact the plaint filed by the plaintiff is absolutely bereft of any pleadings to this effect. The written statement of the defendant only states the date of adoption. And the natural father had deposed



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before the Court, but had not stated that the adoption ceremony was conducted. Therefore, this Court is of the considered opinion that the adoption was not proved by the plaintiff and the defendant

27. As held supra the defendant was the first entrant in the family as adopted son, if so the adoption of 2nd plaintiff as 'adopted son' is barred under section 11(i) of the Hindu Adoption and Maintenance Act, since the provision states that,

(i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;

The provision categorically states when already a son is there, **whether legitimate blood relationship or adopted son**, then the adoptive parents cannot adopt another son. In the present case, when the defendant was already adopted in the year 1968 itself, the adoption of the 2nd plaintiff subsequently is barred by section 11(i) of the Act.



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28. The defendant was married on 20.11.1994 and the 2nd plaintiff was married on 22.05.1996. Until 1996 both the 2nd plaintiff and the defendant were living along with the 1st plaintiff and his wife, this is evident from the ration card issued for the year 1993-1998 marked as Ex.B8, wherein the name of the 1st plaintiff, his wife, the defendant and the 2nd plaintiff names are available and the defendant and the 2nd plaintiff was mentioned as sons of the plaintiff and his wife. Infact the said fact was admitted by the plaintiffs and stated in subsequent period the defendant name was deleted for which the plaintiffs had marked Ex.A31 which is an application given by the plaintiffs for the year 1998 to 2003 and the ration card for the year 1998-2003 was issued by mentioning 1st plaintiff, his wife, 2nd plaintiff and 3rd plaintiff (2nd plaintiff's wife), thereby the defendant was left out from 1998, to be specific from 1996 after the marriage of the 2nd plaintiff in the year 1996. The voters list for the year 1996 marked as Ex.B.5 shows the names of Velusamy, Panchavarnathammal, Murugesan, Marimuthu in consecutive serial numbers 1021, 1022, 1023 and 1024 respectively.



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29. Further the defendant had produced voters list for the subsequent years which are marked as Ex.B.7, 14, 17 & 19 and all states the same. Interestingly in the defendant Murugesan's marriage, a family group photo marked as Ex.B3 would show the father Velusamy, the mother Panchavarnathammal, the elder son Murugesan along with the bride and second son Marimuthu. Therefore, from 16.09.1968, the date of adoption of the defendant until 22.05.1996, the date of marriage of the 2nd plaintiff, for the past 28 years there was no dispute between the parents and their adopted sons. Immediately after the marriage of the 2nd plaintiff, within five months of marriage, the Velusamy, 1st plaintiff had executed registered Will dated 12.10.1996 bequeathing the 2nd schedule of property to the 2nd plaintiff. This is the first indication that all was not well within the family.

30. The 2nd plaintiff had filed several documents to show that he is the adopted son of the 1st plaintiff. The said documents are receipts issued for purchase of gold, bank pass book, school certificate etc. And the defendant had also filed several documents to show he is the adopted son of the 1st plaintiff. The



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said documents are the membership card issued by the Tamil Nadu Viswagarma Youth Assembly, wherein the defendant's name was shown as the son of the 1st plaintiff, bank pass book, receipts issued for purchase of gold etc. All these indicates that the 2nd plaintiff and the defendant were treated by the 1st plaintiff as his sons.

31. The PW3 is the father-in-law of 2nd plaintiff and father of the 3rd plaintiff, who had deposed that due to ill health the 1st plaintiff stopped going to gold pattarai for work. PW3 further deposed that he had reminded the 1st plaintiff Velusamy regarding the purchase of property from the dowry money of Rs. 2,00,000/- paid at the time of marriage, for which the 1st plaintiff had replied he had used the said money for his personal expenses, hence he had promised to sell the residing house to his daughter (3rd plaintiff herein) and had executed the sale deed dated 25.06.2001 marked as Ex.A19. On perusing the said sale deed, it is seen the consideration was shown as the money received by the 1st plaintiff from the 3rd plaintiff for his family expenses, for his paralysis treatment and huge debt incurred due to his medical expenses, maintenance expenses and family debts.



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Hence no consideration passed for the said sale deeds. Further the sale deeds states that the PW3 (father of the 3rd plaintiff) was having liquid cash which is the money received from selling the PW3 mother's property. In the deposition the PW3 stated that he was not aware where the mother's property was situated and the said property was sold 14 years back and stated that he is not aware of the sale of the said property, only his father knows about the sale. There is total inconsistency in the deposition of the PW3, on one hand he says the dowry amount was used for purchasing the property in his daughter's name and on the other hand he states he got money which is the sale proceeds by selling his mother's property 14 years back.

32. On perusing the above deposition and the sale deed, especially while noting the fact that the 1st plaintiff had sold the property to meet the medical expenses for his paralysis treatment and physiotherapy, this Court is of the considered opinion that the 1st plaintiff was not in safe environment. In the cases of this nature human affairs often have to be judged on the basis of probabilities. Therefore, this Court is of the considered opinion that the 2nd plaintiff claiming he



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is the adoptive son to the 1st plaintiff, but has not cared to support the father for his medical expenses. And the 2nd plaintiff along with his wife (3rd plaintiff) and PW3 (father-in-law of 2nd plaintiff and father of 3rd plaintiff) had usurped the property of the 1st plaintiff. In this background, the statement of the defendant that all was well until the marriage of the 2nd defendant is acceptable.

33. Infact the 1st plaintiff and his wife were cautious while making the decision for adoption. Even though the marriage invitation of 2nd plaintiff marked as Ex.A2 states that the 2nd plaintiff is “adopted son” (சுவிகாரப்படுத்திரன்), but had not stated the 2nd plaintiff as “adopted son” in the two Wills marked as Ex.A13 dated 16.10.2000 and Ex.A14 dated 12.10.1996, but has stated the 1st plaintiff and his wife had treated the 2nd plaintiff as son (மகனாக பாவித்து). Therefore, this Court is of the considered opinion that the 1st plaintiff has treated the 2nd plaintiff as “foster son” and not as adopted son. Even in the case of defendant the 1st plaintiff had treated him as “son” without any adjective or qualifications which is evident from his marriage invitation marked as Ex.B12, wherein the said invite was printed as if the 1st plaintiff and his wife are inviting



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the family and friends for the marriage function. And along with the names of the natural parents the 1st plaintiff and his wife names were also printed as parents (தங்கள் அன்புள்ள, சி.வேல்ச்சாமிவே.பஞ்சவர்ணம், 19,முத்துக்கருப்பபிள்ளை சந்து, தெற்குவெளி வீதி, மதுரை). Hence the defendant was also considered as foster son and not adopted son. Further in both the adoption the 2nd plaintiff and the defendant have not pleaded and proved there was valid adoption as held supra. Therefore, this Court is of the considered opinion that the 1st plaintiff and his wife Panchavarnathammal had treated both the 2nd plaintiff and defendant as foster sons and not adopted sons. Therefore, the second substantial question of law is held against the plaintiffs.

34. The Appellate Court had that the Will is proved through the scribe. But none of the witness were examined and the plaintiffs have not stated any reason for not examining the witness. Further the suspicious circumstances were not considered by the Appellate Court. The Ex.A14 Will dated 12.10.1996 was executed by the 1st plaintiff Velusamy for the 2nd item of property, the said Velusamy had affixed his signature. The Ex.A13 dated 16.10.2000 Will dated was



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executed by the 1st plaintiff Velusamy and the wife but both had affixed thumb impression. In the said Will reason has also been stated that the said Velusamy could not affix his signature due to paralysis. Again the said Velusamy had executed a sale deed in Ex.A19 dated 25.07.2001 for the 2nd item of suit property in favour of 3rd plaintiff and had affixed thumb impression only and same reason of paralysis is stated in the sale deed itself. Again the said Velusamy had executed a sale deed in Ex.A35 dated 25.07.2001 for the 1st item of suit property in favour of 2nd plaintiff and had affixed thumb impression only and same reason of paralysis is stated in the sale deed itself. However the said Velusamy was able to affix signature in the police complaint Ex.A26 dated 02.09.2001 alone.

35. Admittedly the police complaint is subsequent to the Ex.A19 dated 25.07.2001. Further the said Velusamy had affixed his signature in the police complaint marked as Ex.A28 dated 30.09.2001, police complaint marked as Ex.A29 dated 20.09.2001, statement before police marked as Ex.A41 dated 21.11.2001. In other words, the said Velusamy was **not able** to affix signature in the Will dated 16.10.2000 and sale deeds dated 25.07.2001 due to paralysis. But



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the said Velusamy **was able** to affix signature in the police complaints dated 02.09.2001 (just after 38 days from the date of sale deeds), on 20.09.2001, 30.09.2001 and 21.11.2001 alone. Therefore, this Court is of the considered opinion the said two Sale Deeds 25.07.2001 and Will dated 16.10.2000 were executed in suspicious circumstances. And the same cannot be legally sustained. Further this Court is of the considered opinion the marriage of the 2nd plaintiff itself would have been conducted with the condition to bequeath the 2nd item of the property, that is why the said property was bequeathed within five months from the date of marriage of the 2nd plaintiff with the 3rd plaintiff.

36. After the execution of the two sale deeds for the two properties, the earlier Wills executed for the said two properties had lost its legal validity. This Court had held that the two sale deeds dated 25.07.2001 and the Will dated 16.10.2000 are executed in suspicious circumstances and the same is liable to be set aside and accordingly set aside. Hence the two properties are available for partition among the 2nd plaintiff and the defendant. Instead directing the parties to file partition suit, this Court is of the considered opinion that the 2nd item of the



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suit property shall be allotted to the 2nd plaintiff and the 1st item of the suit property shall be allotted to the defendant. It is seen the extent of the 2nd item of the suit property is 799 square feet and the extent of the 1st item of the property is only 379 square feet. Therefore, to allot equally the 2nd plaintiff shall pay some compensation to the value of balance square feet. To be precise $799 - 379 = 420$, the said 420 divided by two comes to 210 square feet. The 2nd plaintiff shall pay Rs.4,00,000/- to the defendant for the said 210 square feet of land in the 2nd item of the suit property. The 2nd plaintiff and the defendant shall pay the appropriate court fees for the above said relief.

37. Therefore, both the substantial questions of law are answered in favour of the defendant and against the plaintiffs.

38. Accordingly, the Second Appeal stands allowed with the above directions. The Judgment and decree, dated 25.10.2016 in A.S.No.53 of 2015 on the file of VI Additional District Judge, Madurai, is hereby set aside. The Judgment and decree, dated 17.06.2015 passed in O.S.No.389 of 2008 on the file



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of III Additional Sub Court, Madurai, is hereby confirmed with certain modifications. No costs. Connected Civil Miscellaneous Petitions are closed.

20.12.2024

Index : Yes / No

NCC : Yes / No

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TO:

1. The VI Additional District Court,
Madurai.
2. The III Additional Subordinate Court,
Madurai.
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. 134 of 2017

20.12.2024