



S.A.No.770 of 2000

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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1.A.Abdul Aziz Khan Kathari

2.Begum Jan (died)

3.Jeelani Begum (died)

4.Subahani Begum

5.Rabbani Begum

6.Jakkir Hussain Khan

7.Khafil Khan

8.A.Mohammed Rafik Khan

9.G.Ahamed Sharif

10.Shanavaz

11.A.Sajitha Begam

12.A.Mohammed Sathik

... Appellants

(Appellant 8 is brought on record as LR.
of the deceased second appellant)



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(Appellants 9 to 12 are brought on record as LR.
of the deceased third appellant)

-VS-

1.C.Kannammal

2.K.Chockalingam (died)

3.Ponnammal

4.Latha

5.Visalakshi

... Respondents

(Respondents 4 & 5 are brought on record as LR.
of the deceased second respondent)

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree, dated 18.08.1999 passed in A.S.No.32 of 1999 on the file of Principal District Judge, Karur, confirming the judgment and decree, dated 30.04.1992, passed in O.S.No.677 of 1990 on the file of District Munsif, Karur.

For Appellants 4 to 12 : Mr.N.Balakrishnan
for Mrs.S.Prabha

For Respondents 1, 3 to 5 : Mr.N.Sathish Babu

Respondent 2 : Died



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JUDGMENT

The defendants in the suit are the appellants. The suit was for bare injunction. The suit was decreed by the trial Court. The findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the defendants have come by way of this Second Appeal.

2. According to the respondents/plaintiffs, the suit property was originally purchased by the mother of the plaintiffs 2 and 3, namely, Kaliasammal. The first plaintiff is the wife of the second plaintiff. After the death of Kaliasammal, the plaintiffs have been in possession and enjoyment of the suit property jointly. The suit property with an extent of 40 x 22 ft. was purchased by Kaliasammal from one Vasutheva Rao under a sale deed, dated 08.11.1946. From that date onwards, she had been in possession and enjoyment of the suit property. Subsequently, the suit property was mortgaged by the said Kaliasammal in favour of one Chinnappa Gounder under Ex.A-2, dated 13.10.1949. The said mortgage was discharged by her under Ex.A-3, dated 28.05.1974. Thereafter, Kaliasammal executed a settlement deed in favour of the first plaintiff under Ex.A-4, dated 24.06.1974. It was claimed by



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the plaintiffs that from the date of settlement deed, the first plaintiff had been in possession and enjoyment of the suit property and the defendants had no manner of right over the same. It was further avarred in the plaint that the correct survey number of the suit property was S.No.847 and in the settlement deed executed in favour of the first plaintiff, it was wrongly mentioned as S.No. 211. It was also claimed by the plaintiffs that in the sale deed, executed by the first defendant and his brothers, dated 02.07.1949, the suit property was referred to as original owner Kaliasammal's property and hence the right of the plaintiffs and their predecessors-in-interest had been accepted by the defendants. In view of a misunderstanding, the defendant attempted to interfere with the plaintiffs' possession. Therefore, the plaintiffs were constrained to file the suit for bare injunction.

3. The defendants filed their written statement and resisted the suit by denying the title as well as the possession of the plaintiffs over the suit property. It was claimed by the defendants that the suit property had been in possession and enjoyment of the defendants' family as ancestral property. It was also claimed that the defendants had put up a building in the suit property and let out the same to number of persons. It was further claimed by the defendants that the first plaintiff was one of the lessees under the



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defendants. The defendants also denied the sale deed in favour of Kaliasammal and the mortgage deed, allegedly executed by her. The defendants also claimed that they filed a suit for injunction in respect of Survey Nos.847/A2 and 847/A1 and obtained a decree against the Railways. Thus, denying the title of the plaintiffs as well as their possession over the suit property, the defendants sought for dismissal of the suit.

4. Before the trial Court, the second plaintiff was examined as P.W.1 and 8 documents were marked as Exs.A-1 to A-8. The first defendant was examined as D.W.1 and 15 documents were marked on behalf of the defendants as Exs.B-1 to B-15.

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiffs proved their possession over the suit property and granted a decree as prayed for. Aggrieved by the same, the defendants preferred an appeal in A.S.No.32 of 1999 on the file of Principal District Court, Karur. The first appellate Court affirmed the findings of the trial Court and dismissed the appeal. Aggrieved by the concurrent findings, the defendants are before this Court.



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6. At the time of admission, this Court formulated the following substantial questions of law, by an order, dated 21.09.2023 :

(1) Whether the trial Court is right in granting declaration without any prayer in a suit for permanent injunction ?

(2) Whether the plaintiffs have proved Ex.A-4/ Gift Deed in the manner known to law before the Court below ?

7. The learned counsel appearing for the appellants vehemently contended that the Courts below committed an error in deciding the question of title of the plaintiffs in a suit for bare injunction and hence the findings of the Courts below with regard to the title of the plaintiffs is liable to be set aside. The learned counsel further submitted that Ex.A-4- Gift Deed, allegedly executed by Kaliasammal in favour of the first plaintiff, was seriously disputed by the defendants, however, no steps have been taken to prove the said document in the manner known to law. Therefore, it is the contention of the learned counsel that the title of the first plaintiff over the suit property has not been proved satisfactorily and the conclusion reached by the Courts below as if the property was settled by Kaliasammal in favour of the first plaintiff was erroneous.



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8. The learned counsel for the respondents, by taking this Court to the findings of the Courts below, submitted that on appreciation of the evidence available on record, the Courts below have given factual finding that the plaintiffs proved their right as well as possession over the suit property and the said factual finding need not be interfered with in the Second Appeal.

9. The plaintiffs seek right over the suit property under one Kaliasammal. The plaintiffs 2 and 3 are children of Kaliasammal and the first plaintiff is her daughter-in-law. In other words, the first plaintiff is the wife of the second plaintiff. The plaintiffs' predecessor-in-title Kaliasammal purchased the suit property with an extent of 40 x 22 ft under Ex.A-4 with four specific boundaries. In respect of the very same property, the plaintiffs have filed the present suit for injunction. It is also seen from Ex.A-2, mortgage deed, executed by Kaliasammal in favour of Chinnappa Gounder, and Ex.A-3, mortgage discharge receipt, that Kaliasammal exercised control over the suit property after purchase. Ex.A-4 is the Gift Deed executed in favour of the first plaintiff. It was contended by the learned counsel for the appellants that the Gift Deed, which was challenged by the defendants, has not been proved in the manner known to law by leading any acceptable evidence. The present



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suit is for only bare injunction. Therefore, if the Court is satisfied with the prima facie title of the plaintiffs, the same is sufficient and burden is not very heavy on the plaintiffs as in the case of suit for declaration of title. Even assuming that Ex.A-4, settlement deed, executed by Kaliasammal in favour of the first plaintiff fails, still, the plaintiffs 2 and 3, as legal heirs of Kaliasammal, are entitled to the suit property. The first plaintiff, being the wife of the second plaintiff, is entitled to reside along with the second plaintiff in the suit property. Therefore, by producing Ex.A-1, sale deed, in favour of Kaliasammal and Exs.A-2 and A-3, mortgage deed and discharge receipt, the plaintiffs proved the prima facie right of Kaliasammal over the suit property. Being the legal heirs of Kaliasammal, the plaintiffs 2 and 3 are entitled to succeed to her estate after her death. Once the plaintiffs' right over the suit property is proved by Exs.A-1 to A-3, the Courts below, by taking into consideration that the suit property was enjoyed by the plaintiffs by putting up a thatched shed, presumed that they had been in possession of the suit property, as there will not be any other document to prove their possession. In this regard, the boundary description in Ex.A-8, sale deed, executed by the first defendant and his brothers assumes significance. In Ex.A-8, sale deed, executed by the first defendant and his brothers in favour of third parties, the suit property has been shown as eastern boundary of the property conveyed under Ex.A-8.



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Therefore, Ex.A-8 supports the claim of the plaintiffs over the suit property and their possession. In fact, in the pleading itself, the defendants admitted the possession of the first plaintiff as a lessee in respect of a portion of the suit property.

10. Taking into consideration the totality of the circumstances, the Courts below came to the conclusion that the plaintiffs proved their title as well as possession over the suit property and granted a decree for injunction. The said conclusion is based on proper appreciation of evidence available on record and the same is not vitiated by any perversity in approach. The finding of the Courts below with regard to title of the parties in a suit for bare injunction is only a prima facie finding and the same will not affect the rights of both the parties in a suit for title. Therefore, the first question of law, framed at the time of admission, is answered against the appellants and in favour of the respondents. As far as the second question of law is concerned, even if the Gift Deed executed in favour of the first plaintiff is not proved in the manner known to law, still as legal representatives of the deceased - Kaliasammal, the plaintiffs 2 and 3 are entitled to the suit property and the first plaintiff, as the wife of the second plaintiff, is entitled to be in possession of the suit property along with the second plaintiff. The second question of law is



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answered accordingly. In view of the answers to both the questions of law, the judgment and the decree passed by the Courts below are confirmed and the Second Appeal stands dismissed. No costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

- 1.Principal District Judge,
Karur.
- 2.District Munsif,
Karur.
- 3.Section Officer,
V.R. Section,
Madurai Bench of Madras High Court.



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S.SOUNTHAR, J.

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