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S.A.No.1248 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No.1248 of 2009 and
M.P.No.1 of 2009 and
CMP.No.9568 of 2020

A.C.R.Mani

... Appellant / Defendant

Vs.

1.K.J.Janarathanan

... Respondent / plaintiff

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 21.08.2009 in A.S.No.55 of 2008 on the file of the Sub Court, Arani, confirming the judgment and decree dated 19.06.2008 in O.S.No.1037 of 1990 on the file of the District Munsif Court, Arani.

For Appellant : Mr.R.Subramanian

For Respondent : Mr.P.Chandrasekar



JUDGMENT

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This Second Appeal has been filed to set aside the judgment and decree dated 21.08.2009 in A.S.No.55 of 2008 on the file of the Sub Court, Arani and the judgment and decree dated 19.06.2008 in O.S.No.1037 of 1990 on the file of the District Munsif Court, Arani.

2. Heard Mr.R.Subramanian, learned counsel for the appellant and Mr.P.Chandrasekar, learned counsel for the respondent and perused the materials available on record.

3. The defendant in O.S.No.1037 of 1990 who had suffered a decree of permanent injunction in the suit filed by the respondent by judgment dated 19.06.2008 and also suffered a remand order in the appeal filed by him in A.S.No.55 of 2008 before the Sub-Court, Arani, is before this Court filing this Second Appeal.

4. The learned counsel for the appellant insisted that the second Appeal had been admitted on 05.01.2010 and two substantial questions of law had been framed as follows:



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"1. Whether in law are not the Courts below wrong in decreeing suit when the prayer in the suit had become infructuous as seen from Exhibit A4 dated 07.02.1995 in which O.S.No.47/1989 had been dismissed?

2. Are not the Courts below wrong in overlooking that the plaintiff being owner of undivided share is not entitled to seek injunction against other co-owner?"

5. I must also state that the noting in that regard is not available in the Court bundle. Be that as it may, the suit in O.S.No.1037 of 1990 had been filed by the plaintiff / respondent seeking permanent injunction restraining the defendant / appellant from interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiff without taking legal steps in O.S.No.47 of 1989 pending before the Sub Court, Arani. O.S.No.47 of 1989 had been filed by a purchaser under Court auction of an undivided 1/6th share from one of the co-owners of the suit schedule property. He sought partition and separate possession of the undivided 1/6th share. That suit was decreed on 31.10.1990 and I am informed that a final decree application has been filed and it is pending. In the meanwhile, the other co-sharer had filed O.S.No.1037 of 1990 before the District Munsif Court,



Arani restraining the appellant / defendant from interfering with his undivided 1/6th share.

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6. The learned counsel for the appellant argued that the right of the appellant to have purchased the property cannot be denied or disputed, since the vendor had lawful title to dispose of his undivided 1/6th share. The learned counsel then pointed out the reasoning of the First Appellate Court wherein, it has been observed that the sale is hit under Section 52 of the Transfer of Property Act, since the sale was effected pending the suit. However, the appellant had purchased only an undivided 1/6th share which was the share of his vendor. Therefore, the learned counsel for the appellant argued that one co-owner cannot have the privilege of injunction against the other co-owner. One of the substantial questions of law under which the Second Appeal has been admitted is whether an injunction could be granted against the co-owner on a suit filed by the another co-owner.

7. The facts in this case are a little peculiar in the sense that it is not a suit between two co-owners, but a suit between the owner of an undivided 1/6th share and the subsequent purchaser of another undivided 1/6th share.

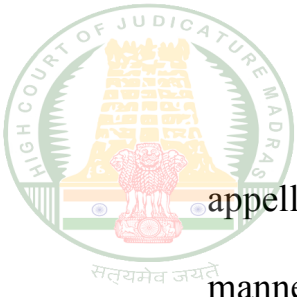


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The appellant had stepped in the shoes of his vendor who himself had purchased his undivided 1/6th share in the Court auction. The purchaser therefore was well aware of the fact that the property was under litigation and still had taken the risk of purchasing the undivided 1/6th share. Having purchased the undivided share, it would only be appropriate that he files a suit for partition and separate possession of the said undivided share. Even if he does not file a suit, he can always seek to implead himself in the pending litigation. The litigation is already pending seeking partition and separate possession in O.S.No.47 of 1989 before the Sub-Court, Arani. The suit in O.S.No.1037 of 1990 had been filed with the following relief:

"a) That the defendant may be restrained by a decree of permanent injunction from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff, without taking legal steps in Arani Sub-Court in O.S.No.47 of 1989."

8. The plaintiff had only sought injunction and the aforementioned relief could be interpreted that the plaintiff had himself stated that the defendant need to take appropriate legal steps in O.S.No.47 of 1989 before interfering with the possession of the plaintiff. It would only imply that the



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appellant / defendant should demarcate his undivided 1/6 share in the manner known to law and thereafter, regularise his possession and may not interfere with the other remaining portions of the property. It would only be prudent if the property is divided into 6 equal parts and one part is allotted to the appellant. The right and title of the appellant is not being denied or disputed in any of the proceedings. The plaintiff has also not questioned the title of the defendant. The plaintiff only questioned the right of the defendant to possess the portion occupied by the plaintiff. No doubt since the property is undivided, each person would take up on himself and occupy 1/6th share of the total property, it is also appropriate if they get impleaded themselves in O.S.No.47 of 1989 before the Sub Court, Arani and demarcate the entire property into 6 six equal parts and thereafter, take possession.

9. There would have been much clarity if K.R.Ramachandara Bagavathar had purchased the property with definite boundaries in the Court auction, but that was unfortunately was not done. A preliminary decree was however granted in O.S.No.47 of 1989 which suit had been instituted by the vendor of the present appellant. Therefore, even under



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Order XXII Rule 10, the appellant has a vested right to get impleaded in O.S.No.47 of 1989, not merely under Order I Rule 10 of CPC. The appellant is a necessary party in the final decree proceedings which is pending in O.S.No.47 of 1989. Therefore, it would only be appropriate that either the parties in O.S.No.47 of 1989 in which the final decree application is pending, implead the appellant as a further party or necessary party or the appellant takes upon that responsibility and files an application to get himself impleaded in the final decree proceedings. The real solution for the appellant lies in prosecuting the final decree proceedings and by demarcating the undivided 1/6th share.

10. The First Appellate Court in the instant case had remanded back the matter to the Trial Court. Though an appeal could lie against the order of remand, it would only indicate that the facts are not settled. Though the Second Appeal had been admitted, the question of law under which it had been admitted revolve on the ground that O.S.No.47 of 1989 had been dismissed for non-prosecution and whether the co-sharer can have the benefit of injunction against the another co-owner. The issues are still nebulous, since the First Appellate Court had only remanded the matter



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back to the Trial Court. The appellant going back to the Trial Court in the suit for injunction would not enable him to get the actual possession of the property. For getting possession and demarcation of 1/6th share, the appellant has to get himself impleaded in some manner or the other in the final decree application in O.S.No.47 of 1989.

11. Additionally, it is also seen that the sole respondent in the Second Appeal had also died. The petitions have been filed for condone the delay in setting aside the abatement, to set aside the abatement and to bring on record his legal heirs. I would only allow the applications for condone the delay in filing an application to set aside the abatement and the application filed to set aside the abatement. The substantial questions of law are answered that the first substantial question of law has become redundant owing to the fact that the final decree application in O.S.No.47 of 1989 is still alive and pending. The second substantial question of law is answered that the appellant herein is only a subsequent purchaser who cannot have a larger right than the vendor and the vendor had filed a suit for partition and therefore it would only be appropriate if the appellant impleads himself and participates in the proceedings in O.S.No.47 of 1989.



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12. I dismiss this Second Appeal by granting liberty to the appellant to participate in the final decree proceedings in O.S.No.47 of 1989. In view of this order passed, I am not bringing on record the legal heirs of the deceased respondent and that would only be an otiose exercise and would not give any further relief to either party in the Second Appeal. C.M.P.No.9568 of 2020 is therefore dismissed.

13. In the result, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Speaking order / Non-speaking order

27.06.2025

Index : Yes / No

Neutral Citation : Yes / No

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S.A.No.1248 of 20



C.V.KARTHIKEYAN, J.

gsk

To

- 1.The Sub Court, Arani.
- 2.The District Munsif Court, Arani.

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M.P.No.1 of 2009 and
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