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SA No. 1214 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS



DATED: 18-11-2025

CORAM

THE HON'BLE DR.JUSTICE R.N.MANJULA

SA No. 1214 of 2012

and

MP.NO.1 of 2012

- 1 R.Mallika
W/o Venkatesh
- 2 Minor V.Ashika
D/o Venkatesh
Rep By Mother And Next friend
Mr.S.R.Mallika

Both Are Residing At No.103
Balaji Ngr,Avarampalayam Rd.,
Coimbatore.

... Appellants.

Vs.

- 1 Andal
W/o Sivaraman
- 2 S.Anand
S/o Sivaraman
Both Are Residing At No.103
Balaji Ngr Avarampalayam Rd,
Coimbatore.

.... Respondents.



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Prayer:

This second appeal is filed under Section 100 of C.P.C. Against the judgment and decree in A.S.No. 10 of 2011 on the file of the I Additional Subordinate Judge, Coimbatore reversing the judgement and decree dated 09.12.2010 passed in OS.No.1123 of 2008 on the file of the Principal District Munsif of Coimbatore.

For Appellant(s): Mr.K.Rajkumar
for
Mr.R.Bharathkum
ar

For Mr.T.Ganesan
Respondent(s):

JUDGMENT

The appellant is the plaintiff. The suit has been filed for the relief of permanent injunction. The trial court has decreed the suit, and on the first appeal preferred by the defendant, the first appellate Court has set aside the judgement and decree of the trial court and allowed the first appeal. Aggrieved that the second appeal has been preferred.

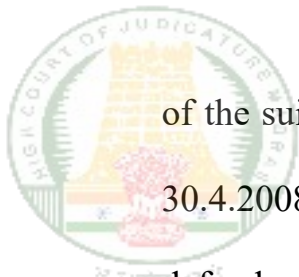
2. The short facts pleaded by the plaintiff:



The second plaintiff is the daughter of the first plaintiff. The defendant is the mother-in-law of the 1st plaintiff. The 2nd defendant is the brother-in-law of the 1st plaintiff. The suit property belongs to the grandfather (Sivaraman) of the 2nd plaintiff, who died on 2.11.1998. The 1st plaintiff's husband, Venkatesh, is one of the legal heirs for his father, Sivaraman. After marrying the 1st plaintiff and giving birth to the 2nd plaintiff on 4.1.2000, the plaintiff's husband was found missing from 10.2.2008. The 2nd defendant has given a police complaint by the plaintiff's husband that cannot be traced out. The plaintiffs are living in the suit property, and they have the right over the suit property. By taking advantage of the absence of the 1st plaintiff's husband, the defendants are trying to drive away the plaintiff from the suit property, and hence, they have filed a suit for permanent injunction.

3. The written statement filed by the 1st defendant and adopted by the 2nd defendant is, in brief, as under:

The facts about the relationship between the parties are admitted. And the fact that the suit property belonged to the 1st defendant's husband, Sivaraman, is also not denied. The plaintiffs are not residing in the suit property, and the defendant has rented out the ground floor in three portions, and the rent was being used to repay the loan obtained by the deceased husband of the 1st defendant. The plaintiffs are actually residing in Gandhi Nagar in a rented building. The 1st plaintiff and her parents had filed a suit for partition in respect



of the suit properties, and hence, the 1st defendant had issued a legal notice

30.4.2008. The plaintiff's husband has his 1/4 share in the suit property, and the defendants are ready to give that share to the plaintiffs. As the suit has been filed without any cause of action, it is liable to be dismissed.

4. Based on the above pleadings, the trial court has framed the following issues:

'1. Whether the plaintiffs are entitled for the relief of permanent injunction?

2. To what other relief?

Additional issues:

1. Whether the plaintiffs are entitled to the right of residence in the suit property?"

5. During the course of the trial, on the side of the plaintiff, one witness has been examined as PW.1, and Ex.A1 to A3 were marked. On the side of the defendant, one witness has been examined as DW.1, and Ex.B1 to B8 were marked.

6. After the conclusion of the trial and considering the evidence available on record, the trial court has decreed the suit as prayed, and on the first appeal preferred by the defendant, the first appellant court allowed the appeal by reversing the judgement of the trial court. Aggrieved that the second appeal has



been preferred. The second appeal is admitted on the following substantial questions of law:

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“a. Whether the lower appellate court being the final court of fact is correct in law, in dismissing the suit by not reversing the finding of fact rendered by the trial court, which is a sine qua non or coming to a different conclusion?”

b. When the lower appellate court is bound to render judgement in accordance with section 96 read with order 41 Rule 31 of the Code of Civil Procedure, when the impugned judgement of the First Appellate Court rendered in violation of the said provisions, is sustainable in law?”

7. The learned counsel for the appellant submitted that the defendant did not deny the plaintiff's entitlement in the suit property, as the plaintiffs are the legal heirs of her husband, who has been missing since 2008. At the time when the suit was filed, the plaintiff was residing in the suit property and she was not allowed to live in the suit property peacefully. When she went outside and then returned to the suit property, she was not allowed to enter, and that necessitated the plaintiff filing the suit for a permanent injunction. Even the first Appellate Court did not deny the right of residence of the plaintiff in the suit property but had chosen to reverse the judgement of the trial court without any basis. Even though the plaintiff wanted to save the right to reside and relief has been sought



in that manner, the first appellate court had set aside the judgement of the trial court, which is not correct.

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8. The learned counsel for the respondent/defendant submitted that the defendant did not deny the share of the 1st plaintiff's husband in the suit property. But she was not residing in the suit property, and without being in actual possession, she has filed a suit for permanent injunction, and the trial court has granted it without proper appreciation of facts. As the 1st appellate court has rendered a finding on the admission of the plaintiff not residing in the suit property without establishing that the plaintiffs are residing in the suit property, they are not entitled to the relief of permanent injunction as prayed. Hence, the second appeal should be dismissed.

DISCUSSION

9. The relationship between the parties is not denied. The fact that the suit property belonged to the 1st defendant's husband Venkatesan's father, Sivaraman, is also not in dispute. Even according to the respondent/defendant, the plaintiff's husband, who is one of the sons of the 1st defendant, has been missing since 2008. It is not the contention of both sides that at any point the plaintiff's husband was found out or returned. As of today, the plaintiffs are living without knowing where the 1st plaintiff's husband had gone. It is not



known whether both sides had at any point in time filed any proceeding declare the civil death of the 1st plaintiff's husband.

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10. As the 1st plaintiff's husband has not been known for several years, in the event of declaring the civil death of the 1st plaintiff's husband, the plaintiffs will become the legal heirs of Venkatesan. So the suit property belongs to the 1st defendant's husband, Venkatesan's father. After the demise of Venkatesan's father, by name Sivaraman, Venkatesan, along with the defendants, is entitled to a 1/3 share in the suit property. The plaintiffs, who can be legal heirs of the missing Venkatesan, can also get 1/3 share in the suit property. But the present suit has not been filed for partition. But it has been filed for the relief of a permanent injunction to prevent the defendants from disturbing the plaintiff's right to reside in the suit property.

11. There is difference between the right to reside and actual possession. The right to reside in the present case is the right of the plaintiffs coupled with their entitlement to the share in the suit property. It was not proved before the trial court that the plaintiffs had been in actual possession of the suit property at the time when the suit was filed. But during the cross-examination of the first plaintiff, she stated that she has been living in Ganapathy Nagar, which is not the suit property. As the plaintiffs are the legal heirs of Venkatesan, even if Venkatesan has got joint rights in the suit property, So far as the possessory



right of co-owners is concerned, one co-owner's possession over the s
property will be construed as residing in the possession of the other co-sharers
also.

12. Unless and until it is established that a co-sharer has been ousted from the property or he has relinquished his right, no co-sharer or co-owner can claim that the other co-owner's right of joint possession or ownership is taken away. Here is a suit where the appellant/plaintiff has sought the relief of injunction for restraining the respondents/defendants from interfering with the plaintiff's right to reside in the suit property. It would have been appropriate if the plaint had been framed in such a way that the plaintiff was entitled to the relief of a declaration that she has got the right to reside in the suit property. It is understandable that the plaintiffs cannot seek relief for partition without knowing whether the 1st plaintiff's missing husband is going to return or going to be traced out. It would have been a better case for the appellants/plaintiffs had she claimed the right to reside in the suit property by seeking appropriate relief under the Prevention of Domestic Violence Act.

13. The observation is relevant only at the relevant point of time, the plaintiffs had been in actual possession of the suit property by exercising their right to reside by considering the suit property as the marital home of the 1st plaintiff and that their residential right was prevented and they have been



threatened by the defendant. That was not the action taken by 1

appellant/plaintiff at that point of time. The relief of injunction can be granted only to prevent the defendant from invading or threatening to invade the plaintiff's right to or enjoyment of the property. Without establishing the actual possession over the suit property, the plaintiff cannot claim the relief for injunction. It would have been even more appropriate if the plaintiff had sought the relief of a declaration to declare her entitlement right to reside.

14. In this regard it is appropriate to refer to Sec. 34 of the Specific Relief Act, where it has been stated as under:

“Section 34 in The Specific Relief Act, 1963

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. Explanation.—A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not in existence, and whom, if in existence, he would be a trustee.”



15. But the frame of the suit is in such a way that the appellant/plaintiff has sought a relief of permanent injunction and not the relief of declaration of a right to reside in the suit property. Though the trial court has rendered a finding that the plaintiffs have got the right to reside, it has failed to distinguish between the nature of the relief sought by the parties before the court. For the cause of action that would entitle the plaintiff to seek the relief of declaration, the plaintiff has been seeking the relief of permanent injunction, and that cannot be granted. The trial Court has failed to make this distinction. When the first appeal was filed, the first Appellate Court had made an observation about the situation when the plaintiff could be granted with the relief of permanent injunction.

16. The First Appellate Court has observed that the plaintiff has failed to prove the actual possession over the suit property, and hence she is not entitled to get the relief of permanent injunction. So this is not a case where the First Appellate Court had failed to render a finding in its capacity as the final court of fact in order to reverse the judgement of the trial court. In fact, both the trial court and the first appellate court did not venture to make a distinction between the cause of action which would entitle the plaintiff to seek a relief of declaration or a relief of permanent injunction.

17. Even though the plaintiff has got the entitlement over the suit property, and other sharers' possession can also be construed as the possession



representing all co-sharers, the plaintiff would have got the entitlement to 1

relief of permanent injunction only if the actual possession over the suit property was disturbed by any of the co-owners. There is a difference between the entitlement for title and possession or construction of joint possession and the actual possession. The plaintiff is not in actual possession of the suit property in order to get the relief of permanent injunction as sought by her. As the very frame of the suit filed by the plaintiff itself is erroneous, the substantial questions of law cannot be answered in favour of the appellant. The first appellate court had recorded a finding as to the absence of actual possession of the plaintiff in the suit property. I find no reason to interfere with the judgement of the first Appellate Court.

In the result, the Second Appeal stands **dismissed**. The judgement and decree dated 09.12.2010 passed in AS.No.10 of 2011 on the file of the First Additional Subordinate Judge, Coimbatore is confirmed. No costs. The connected miscellaneous petition is closed.

18-11-2025

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

JRS



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SA No. 1214 of 2012



DR.R.N.MANJULA, J.

JRS

To

- 1.The I Additional Subordinate Judge, Coimbatore.
- 2.The Principal District Munsif of Coimbatore.

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and

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