



A.S.No.551 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.08.2024
Delivered on: 03.01.2025

CORAM

THE HONOURABLE MRS. JUSTICE J. NISHA BANU
&
THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

A.S.No.551 of 2023
and CMP.No.24093 of 2023

1.G.Karthikeyan
2.K.Priya Karthikeyan ... Appellants/Defendants

Vs.

Dr.G.Thirumalaivasan ... Respondent/Plaintiff

Prayer : Appeal suit filed under Section 96 of CPC read with Order 41 Rule 1 of CPC, as against the judgment and decree dated 09.12.2022 passed by the XVIII Additional City Civil Court Judge, Chennai, in O.S.No.2080 of 2019.

For Appellants : Mr.P.M.Bakthavatsalam

For Respondent : Mr.J.Selvarajan



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JUDGMENT

WEB C **J.NISHA BANU, J.**

This Appeal suit is filed by the appellants/defendants as against the decretal of the suit in O.S.No.2080 of 2019 dated 09.12.2022.

2. The respondent herein is the plaintiff and filed a suit in O.S.No.2080 of 2019 on the file of XVIII Additional City Civil Court, Chennai, praying for the relief of mandatory injunction directing the defendants to vacate and handover or deliver the vacant possession of the suit properties to the plaintiff without any condition and for the consequential relief of permanent injunction that the defendant should not in any manner interfere with the peaceful possession and enjoyment of the property and cost for the suit.

3. (a) The defendants are the appellants herein. The Plaintiff/respondent filed a suit for the relief of Mandatory injunction as stated above. The Plaintiff/respondent is the younger brother of the 1st defendant/1st appellant and the 2nd defendant/2nd appellant is the wife of the 1st defendant. The plaintiff and the 1st defendant are the sons of Ganesamurthy and G.Nageswari.



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(b) The plaintiff completed M.B.B.S course in the year January 2000 and worked at Kerala and Chennai. Thereafter, he was working at London. He used to send all his earnings to his HSBC Bank Account, Mylapore Branch, Chennai bearing Account No.041-115262-006-savings account -NRE and he has given power to his father to utilize some amount for their livelihood.

(c) In 2004, based on the plaintiff's instructions, his father purchased a house property on Kutchery Road, Mylapore, Chennai, in his mother's name. The property, measuring 954 sq. ft., was purchased through a registered sale deed on 21.01.2004, for the consideration of Rs.22,00,000, which the plaintiff paid directly from his account to the property vendor.

(d) After purchasing the property, the plaintiff's parents moved into it, bringing the first defendant also, who was unemployed and financially dependent on the parents. The plaintiff would visit India once in a year to see his parents in Chennai. In 2006, the plaintiff's mother transferred the suit property into plaintiff's name, through a registered settlement deed on 14.06.2006.

(e) The 1st defendant married the 2nd defendant in the year 2008. After marriage, the 1st defendant continued to live with the plaintiff's parents in the suit property. Plaintiff insisted his parents as well as the defendants to vacate the suit



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property. Despite repeated requests from the plaintiff, the defendants refused to vacate the suit property. Taking advantage of the plaintiff's absence in India, the defendants continued their stay in the suit property and that the defendants are trespassers, unlawfully occupying the suit property.

4. The plaintiff came to India during January 2018, but the 1st defendant has prevented the plaintiff from entering into the suit property. Despite several efforts, the plaintiff was unable to enter into the suit property, therefore, plaintiff lodged a police complaint on 03.03.2018 before the Inspector of Police, E-1 Mylapore Police Station who issued CSR No.149/2018. Since no action was taken by the police, he filed another complaint on 28.03.2018 with the Deputy Commissioner of Police, Mylapore, but again no legal action was taken. Therefore he approached High Court under Article 226 of the Constitution of India, by filing a Writ Petition in W.P.No.8467/2018 . The said writ petition was dismissed with observation that the plaintiff should pursue his remedy by filing a civil suit for eviction of the defendants.

5. The plaintiff came to know that the 1st defendant filed a suit in



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O.S.No.2812/2017 for injunction before the VI Assistant City Civil Court. The said suit was dismissed for default on 26.10.2017. Subsequently, the 1st defendant filed I.A.No.3210 of 2018 seeking for restoration of the suit where the plaintiff appeared in the suit, filed his counter, and after an inquiry, the learned VI Assistant City Civil Judge dismissed the 1st defendant's restoration petition on 25.04.2018.

6. According to the plaintiff, the defendants have no right or interest in the suit property. Out of plaintiff's hard-earned money, the suit property was purchased and hence, the present suit is filed.

7. The defendants filed Written Statement stating that he was working as singer in various orchestras, an event organizer, a track singer, and a voice coordinator with many music directors, earning Rs. 50,000 per month. He also ran his own orchestra troupe in the name and style "Karthick Ragamaliga," generating significant income from which he used to support his parents and pay for the plaintiff's education in pursuing MBBS and MRCP courses. From 1995 onwards, he himself alone was taking care of his parents and the plaintiff, meeting all their



needs.

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8. The plaintiff and the 1st defendant, as members of a joint family, contributed their incomes to their parents. While the 1st defendant's income was used for family expenses, the plaintiff's income was saved as joint family income. Out of the said joint family income, the suit property was purchased on 21.01.2004, in the name of their mother, Mrs. Nageswari, for the sale consideration of Rs. 22,00,000/-. For the payment of said sale consideration amount, Rs. 20,60,000/- was paid from the plaintiff's HSBC bank account, which was saved as joint family income, and Rs.1,40,000/- was paid from their father Mr. Ganesamurthi's Syndicate Bank account. The property was acquired as per the family's decision using joint family income.

9. In the written statement, it is submitted by the defendants that in 2006, the mother of the first defendant settled the suit property to the plaintiff through a registered deed dated 14.06.2006, despite the property having been purchased with joint family income. When the first defendant asked his mother about this, she explained that the plaintiff had requested the settlement in his name for the purpose of obtaining a British passport. The plaintiff promised to eventually



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return the suit property to her after securing the passport. The first defendant,

keeping in mind the welfare of the plaintiff, did not chose to make any dispute.

10. According to the defendants, the settlement deed executed by the mother in favor of the plaintiff is not legally binding on the 1st defendant. The 1st defendant and his parents jointly occupied and enjoyed the property without interruption from the time of purchase until 2015. The first defendant has a valid title, right, and interest in the property and is entitled to his share. The plaintiff, holding rights only to his share, cannot claim the entire property as it was purchased with joint family income and jointly enjoyed by family members. Therefore, prayed for dismissal of the suit.

11. The trial court after going into the averments in the plaint as well in the written statement, framed issues in the suit as under:-

(i) Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for ?

(ii) Whether the plaintiff is entitled to the relief of permanent injunction as



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prayed for ?

WEB COPY (iii) Whether the suit in O.S.No.2812/2017 has been filed by the 1st defendant and on assurance of the plaintiff withdrawn ?

(iv) To what other relief the plaintiff entitled to ?

12. The learned Judge of the Trial court answered the issues and held as follows:-

(i) Defendant No.1 who was examined as D.W.1 has not filed any evidence to support the case that he also contributed towards the purchase of property brought under Ex.A.4 sale deed.

(ii) Even if he would have contributed money prior to date of registration of sale deed i.e. 21.04.2004, the 1st defendant cannot claim any right, title over the suit property as the same is prohibited under Benami Prohibition Act 1988.

(iii) P.W.2 Ganesamurthy, father of plaintiff and 1st defendant deposed that the property has been purchased in the name of his wife Nageswari by withdrawing the cash which his son/plaintiff sent from London out of his known source of income.

(iv) P.W.1 deposed that for the sale deed registered, as per his instruction,



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Rs.15,60,000/- has been paid to the vendor by a cheque dated 17.1.2004 HSBC

Bank Mylapore Branch which is opened and maintained by the plaintiff which was authorized to be operated by his father Ganesamurthy examined as P.W.2 and upon such instruction, consideration was paid by withdrawing cash from plaintiff's account and another sum of Rs.1,40,000/- was paid by way of Demand Draft from Syndicate Bank.

(v) By way of Ex,A.5 settlement deed, the property has been transferred to Plaintiff by P.W.3. EX.A.5 dated 14.06.2006 has been subscribed by P.W.2 and P.W.3 / father and mother of the plaintiff that plaintiff became the absolute owner of the suit property and the plaintiff deemed to be owner of the property from the day he purchased the property under Ex.A.4 on 21.1.2004. Plaintiff, P.W.2 and P.W.3 have taken efforts securing the vacant possession from the defendants and the same has been proved by documentary evidence.

(vi) Plaintiff given complaints to Deputy Commissioner, Mylapore stating that the defendants are keeping the parents of the plaintiff under threat. D.W.1 admitted in the cross examination that the police has enquired him upon the complaint- Ex.A.11 given by plaintiff and admitted that he has filed a suit in O.S.No.2812/2017 against his parents and the plaintiff for bare injunction. The



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said suit was dismissed for non prosecution on 26.10.2017. The 1st defendant

allowed the above civil suit to be dismissed for non prosecution which is clear abuse of process of court to perpetuate his illegality to squat inside the suit property as trespasser.

(vii) The defendant No.1 who agreed to vacate from the suit property with the police, is still squatting in the suit property without any authority of law by making use of the real owner and also by unduly making use of the elderly parents who could not take any harsh action against the defendants.

(viii) The abuse of process of court of the defendants is proved by the adjudication sheet that they did not file their written statement in O.S.No.2080/2019, till 01.08.2019. On 20.08.2019, defendants were set exparte and by way of I.A.2/2019, petition of the defendants was allowed on 11.11.2019. O.S.2812 of 2017 filed by the defendants was dismissed for default on 26.10.2017 and after full contest, on 25.04.2018, suit was dismissed, therefore, the claim of the defendants in this suit is barred under the doctrine of Res judicata.

(ix & x) The defendants have not claimed any permissive occupation. Since the defendants are claiming that their possession is based upon the co-ownership on the premises, that the property was purchased in the name of 1st defendant's



mother and his mother settled the said property under Ex.A5 in the year 2006 in

the name of the plaintiff, the 1st defendant could not even claim co-ownership within the ambit of coparceners.

xi) As 1st defendant could neither claim title to the suit property as co-owner and also coparcener/coparcenary, the 1st defendant also could not plead and prove the Benami as against his mother, in whose name, the property was purchased in the year 2004.

(xii) The plaintiff has successfully proved that he has instructed his mother in India to purchase the suit property in her name instead of purchasing the same in the name of his father (PW2) by using the money of the plaintiff.

xiii) The 1st and 2nd defendant have got no right to challenge dispossession made by Mrs.Nageswari under Ex.A5 settlement deed and thus the suit filed by the plaintiff in the capacity that he is the absolute owner on or after Ex.A5 settlement deed is unchallengeable.

xiv) The defendants being relatives (1st defendant brother of plaintiff, 2nd defendant sister-in-law of plaintiff) unsuccessfully misusing such relationship and constantly engaging in abuse of process of court.

xv) The other documents filed under the side of plaintiff viz. Ex.A12 property



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assessment order, Ex.A13 corporation drinking water connection, Ex.A14 and

Ex.A15, EB Connection, also would vouch that the plaintiff is doing all attendant statutory compliances in so far as owning and enjoying the suit property (house) within the Greater Chennai Corporation.

xvi) The suit filed by the plaintiff for mandatory injunction seeking possession and for consequential injunction is maintainable; plaintiff proved the case for both his reliefs of mandatory and permanent injunction. Hence the defendants are directed to vacate and hand over the vacant possession to the plaintiff within two months from this day the defendants are permanently restrained from interfering into the peaceful possession and enjoyment of the suit property. Issues 1 to 4 are answered accordingly in favour of the plaintiff

13. The learned Judge, trial court, thus decreed the suit as prayed for and directed the defendants to vacate and hand over or deliver the vacant possession of the suit to the plaintiff within two months. It is further held that the plaintiff is entitled for permanent injunction restraining the defendants from any manner interfering with the plaintiff's possession and enjoyment of suit property. No cost".



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14. The foremost contention of the learned counsel for the appellants/defendants is that the trial court has not considered the fact that his mother who is the settlor, purportedly granted ownership of the property to the plaintiff/respondent by way of settlement deed, ignoring the fact that suit property is a common stock which was purchased out of common pool fund. The property was purchased using a mixture of retirement funds from the father and contributions from joint family income. The appellants claim is that the suit property is a part of the joint family estate.

15. The second contention of the learned counsel for the appellants/defendants is that the purchase was a benami transaction under the name of his mother for the benefit of the family and stated that his mother had no independent income to purchase the property. The defendants asserted that they lived in the suit property since the purchase of the said property and continuously they were living over the period of 12 years till 2018, which would establish the adverse possession, with the knowledge of the plaintiff.



16. The third contention of the learned counsel for the appellants/defendants is that the settlement deed is shrouded in mystery and cloud over the title, for which the plaintiff has not sought a declaration of title. Therefore, the Settlement Deed should be viewed as potentially sham or fictitious document.

17. The fourth contention of the learned counsel for the appellants/defendants is that the recital of the settlement deed revealed that disposition would come into existence only on the death of the executant. Thus impugned settlement is having both the characters of will and settlement is invalid and relied on the following decisions.

(i) Seelayi/deceased Vs Valliammal @ Pappu status 2015 (2) CTC 365.

(ii) Anathula sudhakar Vs P.Buchi Reddy (dead) dated 11.03.2009./

2008 (6) CTC 237

18. The learned counsel for the respondent/plaintiff would submit that the suit property which was purchased in his mother's name under a registered sale deed dated 21.01.2004 was for a sale consideration of Rs.22,00,000/-. Out of the said amount Rs.20,00,000/- was paid to the vendor from the



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Respondent/plaintiff's HSBC Account and the balance amount was paid by way of

demand draft and the said fact was admitted by the defendants and the defendants had not filed any evidence to contravert the findings of the learned Judge, trial court in respect of the said aspect. There is absolutely no evidence to show that the 1st Appellant had contributed any amount for purchasing the suit property. In fact it was admitted by him before the trial court that he was not having any permanent employment.

19. It is further submitted by the respondent counsel that the Appellants/defendants had not filed any partition suit claiming co-ownership of the suit property which they allege as the joint family property. Further, the appellants/defendants had also not questioned the settlement deed except saying that it will not bind the the 1st Appellant/1st defendant. The learned counsel would further contend that unless the appellants establish that the property was purchased from and out of the joint family funds, the mother is the absolute owner of the property and she is competent to deal with the said property. Therefore, the settlement deed executed by their mother is a valid one. To substantiate his case the learned counsel for the respondent/plaintiff relied on the following decisions:-



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1. 2022 Live Law (SC) 552-Bharat Bhushan Gupta Vs Pratap Narain Verma & Anr, dated 16.06.2022.
2. 1985 2 SCC 332- Sant Lal Jain Vs Avtar Singh, dated 12.03.1985

20. Heard the learned counsel for the Appellants/defendants as well the learned counsel for the respondent/plaintiff and perused the materials available on record.

21. After hearing both sides and on analysing the judgment of the trial court, it is transpired that the 1st appellant/1st Defendant has not let in any evidence to support the case that he also contributed towards the purchase of property brought under Ex.A.4 sale deed. So the 1st defendant cannot claim right and title over the suit property.

22. Secondly, it is very well inferrable from the evidence that the property has been purchased in the name of Nageswari (mother of defendant No.1 and plaintiff) as per the instructions of plaintiff and the amount has been withdrawn from plaintiff's account. Thereafter, by way of Ex.A.5-settlement deed, the property has been transferred to Plaintiff. Ex.A.5 dated 14.06.2006 has been



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subscribed by P.W.2 and P.W.3 / father and mother of the plaintiff that plaintiff became the absolute owner of the suit property and the plaintiff deemed to be owner of the property from the day he purchased the property under Ex.A.4 on 21.1.2004. Plaintiff, P.W.2 and P.W.3 have taken efforts securing the vacant possession from the defendants and the same has been proved by documentary evidence.

23. The 1st defendant who filed civil suit in O.S.No.2812 of 2017 against his parents and plaintiff (brother) for bare injunction, came to be dismissed for non prosecution. However, he perpetuated his illegality by squatting the suit property as trespasser. Subsequently, the suit was restored and after full contest, suit was dismissed. Thereafter, on police complaints, defendant No.1 agreed to vacate the suit property, but failed to vacate.

24. It is pertinent to note that the defendants have not claimed any permissive occupation, but claiming that their possession is based upon the co-ownership on the premises on the ground that the property was purchased in the name of 1st defendant's mother. However, the fact is that mother settled the said



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property under Ex.A5 in the year 2006 in the name of the plaintiff, therefore, the

1st defendant could not even claim co-ownership within the ambit of coparceners.

25. The plaintiff/respondent herein proved that he has instructed his mother in India to purchase the suit property in her name instead of purchasing the same in the name of his father (PW2) by using the money of the plaintiff. In such circumstances, the 1st and 2nd defendant have got no right to challenge dispossession and the plaintiff is the absolute owner after the execution of Ex.A5 settlement deed.

26. The learned Trial Judge, has given clear findings that the defendants being brother and sister-in-law of plaintiff unsuccessfully misusing such relationship and constantly engaging in abuse of process of court.

27. The learned Trial Judge held that the plaintiff proved the case for both the reliefs of mandatory and permanent injunction and directed the defendants to vacate and hand over the vacant possession to the plaintiff within two months and further the learned Trail Judge, permanently restrained the defendants from



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interfering with the peaceful possession and enjoyment of the suit property.

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28. The case laws cited by the learned counsel for the appellants/defendants will not in any way help the case of the appellants, since, absolutely there is no evidence to show that 1st appellant had contributed any amount for purchasing the suit property. Therefore, the trial court has rightly allowed the case of plaintiff.

29. Since the just and proper relief has been granted by the trial court in favour of the plaintiff/respondent, the appellate court cannot take a different view. In the result, we find no illegality in the judgment of the trial court warranting our interference. Hence, this Appeal suit is dismissed. No costs.

[J.N.B.,J.] [R.K.M.,J.]
03.01.2025

nvsri

To

The XVIII Additional City Civil Court Judge, Chennai.

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**J. NISHA BANU, J.
and
R.KALAIMATHI, J.**

nvsri

Judgment in

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