



S.A.No.533 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	17.07.2025
Pronounced on	12.09.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A.No.533 of 2019

1. Saroja

2. Rangammal

3. Viruthambal

4. Muniammal

...Appellants

Vs.

Munusamy Mudaliar

...Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 21.09.2007 passed in A.S. No.110 of 2006, on the file of the Principal Subordinate Judge, Thiruvannamalai, confirming the Judgment and decree dated 28.09.2006 passed in O.S.No.299 of 2005, on the file of the Principal District Munsif, Thiruvannamalai.

For Appellants : Ms.AL. Ganthimathi, Senior Advocate
for Mr. L. Palanimuthu

For Respondent : Mr. P.G. Thiyagu



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JUDGMENT

In this Second Appeal, challenge is made to the decree and judgment dated 21.09.2007 passed in A.S. No.110 of 2006, on the file of the Principal Subordinate Judge, Thiruvannamalai, confirming the Judgment and decree dated 28.09.2006 passed in O.S. No.299 of 2005, on the file of the Principal District Munsif, Thiruvannamalai.

2. For the sake of convenience the parties are referred to as per their ranking in the trial court.

3. The appellants, as plaintiffs, filed the above suit in O.S.No.299/2005 for the following reliefs:

- a) To restrain the defendant, his men, agents and servants by means of permanent injunction from ever interfering in any manner with the 4th plaintiff's exclusive possession and enjoyment of the 1st item of the suit properties.
- b) To restrain the defendant, his men, agents and servants by means



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WEB COPY of permanent injunction from ever interfering in any manner with the plaintiffs' exclusive possession and enjoyment of the 2nd item of the suit properties.

c) Towards the costs of the suit payable by the defendant to the plaintiffs.

4. The case of the plaintiffs is that the suit properties originally belonged to one Parvathy Ammal, who alienated the same along with her children in favour of one Nandagopal Mudaliar, the father of the plaintiffs, for a valuable consideration of Rs.300/- under a registered sale deed dated 17.01.1947. Right from the date of purchase, the said Nandagopal Mudaliar was in possession and enjoyment of the suit properties. He then mortgaged the properties to one Rathina Naidu on 10.02.1956 for a sum of Rs.600/- and subsequently the mortgage was discharged by him. Thereafter, the said Nandagopal Mudaliar divided the suit properties into two halves and settled the eastern half in favour of the 4th plaintiff under a registered settlement deed dated 12.10.1983 and retained the western half share. The eastern and western half of the



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4.1. The plaintiffs' father executed a registered Will with respect to the 2nd item of the suit properties, which was retained by him, in favour of the plaintiffs' mother Chellammal on 03.08.1987. It is the last Will executed by Nandagopal Mudaliar, out of his free will and volition. After the death of Nandagopal Mudaliar, the plaintiffs' mother Chellammal became the absolute owner of the second item of the suit properties. She died intestate in the year 2003 at the residence of the 3rd plaintiff at Olakkur Village, Tindivanam Taluk. Hence the plaintiffs alone are the legal heirs to inherit the second item of the suit properties. The plaintiffs had one brother by name Kannan who died intestate after the death of Nandagopal Mudaliar leaving behind his wife Chandra and a son by name Chakrapani and a daughter by name Baby. They are residing at Pondicherry and they are in good terms with the plaintiffs.



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The suit properties are managed by the plaintiffs on their behalf. While so, the defendant herein, having no right over the suit properties, demanded the plaintiffs to alienate the properties for a meagre amount. Since the plaintiffs refused to alienate the properties, the defendant is attempting to trespass into the suit properties. Hence the plaintiffs were constrained to file the above suit for permanent injunction.

5. The claim of the plaintiffs was resisted by the defendant by stating that the plaintiffs' father Nandagopal Mudaliar sold his joint family properties and purchased the present suit properties. He had a male child by name Kannappan and the plaintiffs through his wife Chellammal. Nandagopal and Kannappan constituted the Hindu undivided Joint family and they partitioned the suit properties in which the eastern 15 feet was allotted to Nandagopal and the western 23 feet was allotted to the share of Kannappan. From the date of the said oral partition, the respective sharers are in possession and enjoyment. From the year 1980, the 4th plaintiff had been residing with her parents. Out of love and affection, Nandagopal executed a settlement deed in respect of



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his share. The western property was allotted to Kannappan which is a vacant land. The said Kannappan settled his family at Pavazha Kunru Street, Tiruvannamalai Town. On 25.11.1986, the said Kannappan sold his share of property to one Anna Durai, son of Velu, who took possession of the suit property and constructed a thatched shed and he was tethering cattle in the said shed enjoying the same as original owner. The said Anna Durai sold the property in favour of the defendant's son Shankar on 22.04.2005 for a valuable consideration of Rs.15,000/-. The defendant's son Shankar took possession of the second item of the suit properties and he started to construct a terraced house in the said property and also put up a basement. Under such circumstances, the plaintiffs have come forward with the present vexatious suit in order to make wrongful gain. Even now the defendant's son Shankar is continuing his construction work. By getting an *ex parte* order of injunction, the plaintiffs are harassing the defendant. The registered Will date 03.08.1987 was created with an intention to defeat the rights of Anna Durai. The plaintiffs and Kannappan's legal heirs are away from the suit properties for the past 15 years. This defendant never attempted to



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Hence the suit is liable to be dismissed.

6. The trial court upon considering the pleadings and appreciating the evidence let in by the plaintiffs and the defendant and considering the arguments put forth by the respective counsel for the parties, dismissed the suit against which the plaintiffs preferred an appeal suit in A.S.No.110/2006 on the file of the Principal Sub-Court, Tiruvannamalai. The said appeal suit was also dismissed by the learned Principal Subordinate Judge, Tiruvannamalai, confirming the judgment and decree passed in O.S. No.299/2005 passed by the trial court. Challenging the same, the present Second Appeal has been preferred by the plaintiffs.

7. The following substantial questions of law were raised in the memorandum of second appeal.

- i. Whether the courts below are correct in dismissing the suit for non joinder of parties?
- ii. Whether the courts below are correct in observing that the



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iii. Whether the courts below are correct in dismissing the suit without going into the documents and evidence which prove the plaintiffs' possession and enjoyment of the suit property?

8. The learned counsel for the appellants/plaintiffs would submit that the plaintiffs' father has executed a Will in respect of Item No.2 of the suit property in favour of the plaintiffs' mother, who died intestate and as such the plaintiffs became absolute owners of the suit properties. She would further submit that though the defendant had pleaded that there was an oral partition between the plaintiffs' father and brother, the same has not been proved and therefore, the suit ought not to have been dismissed. Her further submission is that the Will executed by the plaintiffs' father in respect of Item No.2 of the suit property has been produced by the plaintiffs. However, the courts below failed to accept the said Will and title of the plaintiffs. She would submit that once the

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plaintiffs have proved the case by producing the Will of their father and in the event the Will is not denied by the defendant, the suit ought to have been decreed. Since the suit is only for bare injunction against the defendant who tried to interfere with the possession and enjoyment of the plaintiffs, it is not for the plaintiffs to implead the legal representatives of the deceased brother from whom the defendant alleged to have purchased the property.

9. On the other hand, the learned counsel appearing for the respondent/defendant submits that once the defendant claims that the plaintiffs are not in possession or do not have right to the property, it is essential for the plaintiffs to prove otherwise through concrete evidence. If they failed to do so, the Court need not consider the case of the plaintiffs and grant the relief sought for. He would further submit that when the defendant disputes the title of the plaintiffs, a suit for mere injunction is not suffice and that it is well settled by catena of judgment of this Court and the Hon'ble Apex Court that in each and every case, where the defendant disputes the title of the plaintiff, it is not necessary



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that in all those cases, the plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, the plaintiff cannot maintain a suit for bare injunction. To support his contentions, the learned counsel for the respondent has relied upon the judgment in the case of *Jharkand State Housing Board vs. Didar Singh* reported in **2018 SCC online SC 2170**. Therefore, the learned counsel submits that the courts below have properly analysed the documents filed by the plaintiffs and the defendant. Moreover, the title of the defendant has been clearly demonstrated by virtue of the title deed marked as Ex.B3 and it clearly supports the version that the 2nd item of the suit properties is owned by the defendant's son. Hence the finding of the courts below warrants no interference by this Court.

10. Heard on both sides. Records perused.



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WEB COPY 11. Admittedly it is a suit for bare injunction. According to the plaintiffs, one Nandagopal Mudaliar, father of the plaintiffs purchased the suit properties through a registered sale deed marked as Ex.A1 dated 17.01.1947. He then divided the suit properties into two equal portions and settled the eastern half in favour of the 4th plaintiff under a registered settlement deed dated 12.10.1983 and retained the western half. The eastern and the western half are referred to as first and second item of the suit properties respectively. The further case of the plaintiffs is that the said Nandagopal executed a registered Will on 03.08.1987 in respect of the second item of the suit properties bequeathing the same in favour of his wife Chellammal, who died intestate in the year 2003. As such, the plaintiffs, legal heirs of Chellammal entitled to inherit the second item of the suit properties. The further case of the plaintiffs is that they had a brother namely Kannan who also died intestate leaving behind his wife and children. The suit properties are managed by the plaintiffs on behalf of all the legal heirs. While so, the defendant without any right whatsoever attempted to trespass into the suit properties, which compelled the plaintiffs to file the above suit for the relief of permanent



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injunction.

11.1. Whereas the case of the defendant is that the said Nandagopal and his son Kannappan divided the suit properties in which the eastern stretch of 15 feet was allotted to Nandagopal and the western stretch of 23 feet was allotted to Kannappan in an oral partition. Thereafter, the said Nandagopal executed a settlement deed in favour of the 4th plaintiff. The said Kannappan sold his share of the property to one Annadurai who took possession of the property and constructed a thatched shed and used the same for tethering his cattle. Thereafter, on 22.04.2005, the said Annadurai sold his property to the defendant's son namely Shankar, under a registered sale deed. While so, when the defendant intended to construct a terraced house on the second item of the suit properties, the plaintiffs have come forward with this vexatious suit under the guise of fabricated Will dated 03.06.1987 with an intention to defeat the valuable rights of Annadurai and the defendant's son.



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WEB COPY 11.2. The alleged Will said to have been executed by Nandagopal

in the year 1987 is marked as Ex.A4. The property tax receipts in the name of the 4th plaintiff were marked as Ex.A5 to Ex.A9 and the tax receipts in the name of Chellammal were marked as Ex.A10 and Ex.A11. The sale deed executed by Kannappan in favour of Annadurai is marked as Ex.B2 and the sale deed executed by Annadurai in favour of the defendant's son Shankar dated 22.04.2005 is marked as Ex.B3. The trial court has held that the documents relied upon by the plaintiffs do not relate to the second item of the suit property and that the plaintiffs failed to produce the relevant documents to substantiate that the said Chellammal, mother of the plaintiffs, was in possession of the suit property. The trial court further held that the cross examination of P.W.1 indicates that the plaintiffs were aware of the fact that their brother had sold the suit property and also about the sale deed in favour of the defendant's son. Therefore, the trial court concluded that the suit property was not in possession of the plaintiffs. Moreover, under Ex.B3 the said Kannappan has sold the property in the year 1986, whereas Ex.A4 Will was executed in the year 1987. Hence the trial court

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dismissed the suit stating that the legal heirs of the said Kannappan are the necessary parties to the suit and further held that a bare injunction suit is not maintainable since there is a cloud on the title of the suit property. The first appellate court also held that when the defendant is setting up a rival title in favour of his son, the plaintiffs ought to have amended the plaint seeking the relief of declaration of title against the defendant's son and further held that the suit is bad for non joinder of necessary parties since the legal heirs of he said Kannappan were not made parties to the suit. Moreover, the first appellate court held that since the defendant in the written statement pleaded that he is in no way connected with the suit property and that his son is the owner of the suit property who is possession and enjoyment of the same, the plaintiffs, despite of the above averments, failed to take any steps to implead the defendant's son as party to the suit. Accordingly, the first appellate Court confirmed the judgment and decree passed by the trial court.

11.3. Admittedly in a suit for bare injunction, the plaintiffs must first prove their possession. Moreover, when the defendant claims right



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over the suit property under Ex.B3 sale deed, the genuineness of the Will cannot be determined in a suit for injunction alone. Moreover, it is not established on the side of the plaintiffs that Ex.A10 and Ex.A11 house tax receipts pertain to the suit properties. Except for the above documents, the plaintiffs have not produced any other documents to show that they are in possession and enjoyment of the suit properties.

11.4. As discussed above, the tax receipts Ex.A10 and Ex.A11 do not establish the possession and enjoyment in the suit property by the plaintiff since it lacks essential details such as door number, etc. Even otherwise, as rightly pointed out by the learned counsel for the respondent, when there is a cloud over the title of the plaintiffs and particularly when the defendant disputed the title of the plaintiffs, a bare injunction suit is not sufficient. Though in all cases where the defendant disputes the title of the plaintiff, it is not necessary that the plaintiff has to seek the relief of declaration, but, when the defendant raises a genuine dispute with regard to the title, then necessarily in those circumstances, the plaintiff cannot maintain a suit for bare injunction. The plaintiff, in



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such circumstances, ought to have sought for the relief of declaration. In ***Anathula Sudhakar Vs. P Buchi Reddy & ors*** reported in ***AIR 2008 SC 2033***, the Hon'ble Supreme Court clarified the general principles as to when a mere suit for permanent injunction will lie and when it is necessary to file a suit for declaration and or possession with injunction as consequential relief, which is extracted as under.

13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

13.2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

13.3. Where the plaintiff is in possession, but his title to the



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property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

11.5. Moreover, the courts below categorically held that the defendant's title to the suit property is established through a chain of title originating from the plaintiffs' brother Kannappan and that the suit is bad for non joinder for necessary parties since the same cannot be adjudicated without defendant's son being part of the proceedings. Therefore, the courts below rightly dismissed the suit for non joinder of parties. Moreover, the property in dispute is originated from the plaintiffs' brother Kannappan, who alienated it to one Annadurai. Evidently, the defendant's son purchased the property from Annadurai. The chain of title involves the plaintiffs brother and the defendant's claim to the property is mainly based on title. Therefore, the legal heirs of the



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Moreover, in a suit for bare injunction, the burden is upon the plaintiffs to prove the possession and enjoyment of the suit property. No infirmity or perversity is found in the findings of the courts below which warrants interference by this court. Therefore, I do not see any question of law much less a substantial question of law in order to enable me to entertain this appeal.

12. In the result,

- i. The Second Appeal is dismissed. No costs.
- ii. The decree and judgment dated 21.09.2007 passed in A.S. No.110 of 2006, on the file of the Principal Subordinate Judge, Thiruvannamalai, confirming the Judgment and decree dated 28.09.2006 passed in O.S. No.299 of 2005, on the file of the Principal District Munsif, Thiruvannamalai, is upheld.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order
bga

To

1. The Principal Subordinate Judge, Thiruvannamalai.
2. The Principal District Munsif, Thiruvannamalai.
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J
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Pre delivery Judgment in
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