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SA No. 823 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-02-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

**SA No. 823 of 2015 and
C.M.P. No.12123 of 2016**

1. Jamunarani W/o Late Radhakrishnan.
2. Jayaprakash S/o Late Radhakrishnan.

..Appellant(s)

Vs

Rajabagiyam W/o Mathivanan.

..Respondent(s)

PRAYER: The Second Appeal has been filed under Section 100 of Civil Procedure Code as against the decree and judgment passed by the Subordinate Judge, Chidambaram in A.S. No.10 of 2014 dated 31.03.2015 confirming the decree and judgment passed in O.S. No.2 of 2011 dated 22.01.2013 on the file of the Additional District Munsif, Chidambaram.

For Appellant(s): M/s.A.Muthukumar

For Respondent(s): M/s.G.Sumitra

JUDGMENT

The Second Appeal has been preferred as against the decree and judgment passed by the Subordinate Judge, Chidambaram in A.S. No.10 of 2014 dated 31.03.2015. The appellants herein are the defendants in the main Suit filed by the Plaintiff for the relief of permanent injunction. Before the trial



Court, the Plaintiff, who is the respondent in this Second Appeal, filed the Suit for permanent injunction and the same was decreed. Aggrieved by the said decree and judgment, the defendants filed an appeal and the First Appellate Court dismissed the appeal confirming the decree and judgment passed by the trial Court. Aggrieved by the said decree and judgment, the Second Appeal has been filed by the defendants.

2. The gist of the Plaint are as follows:-

The Suit properties belonged to the Plaintiff's father Kannusamy and the said Kannusamy executed a registered Will dated 15.12.1997 bequeathing the Suit properties in favour of the Plaintiff and her sister Rajayal. The Plaintiff and the said Rajayal are the daughters of the said Kannusamy. One Radhakrishnan is the son of Kannusamy and the said Radhakrishnan got Government job at Sethiyathope and he lived with his family and settled therein. Since the said Radhakrishnan has not taken care of his father Kannusamy and the daughters of said Kannusamy looked after their father, he executed a Will dated 15.12.1997 in favour of his daughters i.e., the Plaintiff and her sister Rajayal. The Kannusamy died on 02.04.2008. The mother of the Plaintiff namely Chellapangi was also under the custody of the Plaintiff. The said Radhakrishnan died intestate on 22.04.2009 leaving behind the defendants and mother Chellapangi as his legal heirs. The said Radhakrishnan, during his lifetime, had purchased some properties in his name, while he was in the job.



His mother Chellapangi has share in the properties of Radhakrishnan. The Plaintiff for and on behalf of her mother demanded the share of Chellapangi with the defendants. Enraged at this, the defendants attempted to trespass upon the Plaintiff's possession of the Suit properties on 27.12.2010 and the same was prevented by the Plaintiff. Therefore, the Plaintiff filed a Suit for permanent injunction restraining the defendants from interfering with the Plaintiff's peaceful possession and enjoyment of the Suit properties.

3. **The brief averments of written statement filed by the defendants are as follows:-**

The Suit is not maintainable. It is true that the Plaintiff, one Rajayal and Mr. Radhakrishnan are the children of Mr.Kannusamy. Since Radhakrishnan was a Government servant, he had not lived in the locality and after his retirement, he had been in possession and enjoyment of the property along with his family. After the demise of said Radhakrishnan, the defendants are under possession and enjoyment of the property. The averments that the father of the said Radhakrishnan namely Mr. Kannusamy was looked after by the Plaintiff and the Radhakrishnan had not looked after his father and the said Kannusamy executed a Will in favour of the Plaintiff and her sister Rajayal and the said Kannusamy died on 02.04.2008 are all denied. The averments that after the demise of mother of the Plaintiff, she demanded the share of her mother and thereby, the defendants are attempting to interfere with the possession and



enjoyment of the property are also denied. The defendants are in possession and enjoyment of the property. Therefore, the Plaintiff has only to prove all the facts and the Suit is liable to be dismissed.

4. Based on the above said pleadings and after hearing both sides, the trial Court has framed the following *issues*:

Issues:

- a. Whether the Plaintiff is in possession and enjoyment of the Suit propert.*
- b. Whether the Plaintiff is entitled for the relief of permanent injunction as prayed for.*
- c. To what other reliefs, the Plaintiff is entitled for?*

5. Before the trial Court, on the side of the Plaintiff, PW1 to PW3 were examined and Ex.A.1 to Ex.A.8 were marked. On the side of the defendants, DW1 and DW2 were examined and no documents were marked on the side of defendants. ***The trial Court***, after evaluating the oral and documentary evidences adduced on both sides, ***decreed the Suit***. Aggrieved by the said decree and judgment, the defendants have preferred an appeal Suit in A.S. No.10 of 2014 on the file of the Subordinate Judge, Chidambaram.



6. The First Appellate Court framed the following *points for determination*:

- (i) Whether the Plaintiff is in possession and enjoyment of the Suit properties.*
- (ii) Whether the Plaintiff is entitled to permanent injunction as prayed for.*
- (iii) To what other reliefs, the Plaintiff is entitled to.*

7. After hearing both sides and perusing the records including the judgment and decree passed by the trial Court, *the First Appellate Court confirmed the judgment and decree of the trial Court and dismissed the appeal*. Aggrieved by the said decree and judgment, the present second appeal has been preferred.

8. At the time admitting the second appeal, this Court has formulated the following *substantial questions of law*:

- 1. Whether the Courts below erred in law in holding that the mere Suit for injunction is maintainable in law particularly when the Plaintiff bases her case solely on the basis of Will alleged to have been executed by her father and the first defendant's husband was also a legal heir to the testator.*



2. *Whether the Courts below erred in law in upholding the Will, Ex.A.1, when the testator has not signed the same but affixed thumb impression in a Suit for injunction without a prayer for declaration.*

9. For the sake of convenience and brevity, ‘the parties’ hereinafter will be referred to as per their status / ranking in the Trial Court.

10. The learned counsel appearing for the appellants would submit that the appellants are the defendants in the main Suit. The Plaintiff has filed the Suit for permanent injunction relying upon the Will executed by her father dated 15.12.1997. In the Suit for permanent injunction, the Courts below have relied upon the Will and decided the validity of the Will and the same is not permissible. Without seeking relief of declaration, mere permanent injunction is not maintainable and the Plaintiff is not in possession and enjoyment of the property. Per contra, the 1st defendant’s husband is one of the legal heirs of the deceased Kannusamy and the husband of the 1st defendant was a Government servant and due to his nature of job, he used to stay outside the property and after his retirement, he along with his family members, shifted his residence to his native village and they stayed in the Suit properties and the defendants are in possession and enjoyment of the property. But the Courts below have failed to consider that the Plaintiff has not proved her exclusive possession and the defendants are in possession and enjoyment of the property and the Will cannot



be tested in the injunction Suit and moreover, in the Will, the Testator has not signed and he has affixed his thumb impression. The Testator used to sign in other documents, however, in the Will, he has affixed his Thumb impression and the validity of the Will cannot be tested in the injunction Suit and the Will has so many suspicious circumstances. Without praying for declaration, mere Suit for injunction is not maintainable, but the Courts below failed to consider the same and decreed the Suit by relying upon the Will. Therefore, the Courts below have erred in decreeing the Suit and therefore, the decree and judgments passed by the Courts below are liable to be set aside and prayed to allow this appeal.

11. The learned counsel appearing for the respondent would submit that originally the Suit properties belonged to the father of the Plaintiff namely Kannusamy and the Plaintiff along with her sister looked after their father and the son of the said Kannusamy namely Radhakrishnan, who is the husband of the 1st defendant and father of the 2nd defendant, was working in a Government job and he did not take care of his father, thereby, the father of the Plaintiff namely Kannusamy had executed a Will dated 15.12.1997 and thereby, they are in possession and enjoyment of the property pursuant to the Will. Though the Suit is only for permanent injunction, there is no cloud over the title of the property and thereby, the Courts below have correctly appreciated the facts and decided that the Plaintiff is entitled to the property through Will dated



15.12.1997 and the Will has been proved in accordance with law and the Plaintiff is in possession and enjoyment of the property. Therefore, the Courts below have correctly decreed the Suit and there is no any illegality or perversity in the judgments and decree passed by the Courts below. The Courts below have appreciated the facts in a proper perspective manner and correctly arrived at fair conclusion and there is no any substantial question of law involved in this case and therefore, the second appeal is liable to be dismissed.

12. This Court heard both sides and perused the entire materials available on record.

13. In this case, the Plaintiff has filed a Suit for permanent injunction restraining the defendants, their men, agents and persons claiming under them from in any manner interfering with Plaintiff's peaceful possession and enjoyment of the Suit properties. According to the Plaintiff, the Suit properties belonged to her father namely Kannusamy and he executed a Will dated 15.12.1997 in favour of the Plaintiff and her sister Rajayal. One Radhakrishnan who is the brother of the Plaintiff, husband of the 1st defendant and father of the 2nd defendant, had not taken care of his father Kannusamy and he was also residing in the place where he was working in a Government job. Therefore, the said Kannusamy executed a Will dated 15.12.1997 in favour of his daughters, that is the Plaintiff and her sister Rajayal. The said Kannusamy died



on 02.04.2008. After the demise of Kannusamy, the Will came into effect and the Plaintiff is in possession and enjoyment of the properties.

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14. The main contention raised by the defendants is that the Plaintiff has filed the Suit only for the relief of 'permanent injunction' and without seeking relief of 'declaration', she filed the Suit. Therefore, the Suit is not maintainable. The another contention raised by the defendants is that in the Suit for permanent injunction, the Courts below need not decide the title of the property through Will.

15. This Court heard both sides and perused the records. It is an admitted fact that the Plaintiff, one Rajayal and the husband of the 1st defendant / father of the 2nd defendant are the children of one Kannusamy. The Suit properties belonged to the said Kannusamy and the said properties are self-acquired properties of the said Kannusamy. The Plaintiff has filed the Suit for permanent injunction alleging that as per the Will executed by her father Kannusamy, the properties were bequeathed in her favour and her sister Rajayal and the Plaintiff is in possession and enjoyment of the properties. Before the trial Court, the Plaintiff, in order to prove her case, examined PW1 to PW3 and marked Ex.A.1 to Ex.A.8. On the side of the defendants, DW1 and DW2 were examined and no documents were marked on the side of defendants. The Plaintiff has examined the attesting witness to prove the Will and the trial Court came to a



conclusion that the Will has been proved and the Plaintiff is in possession and enjoyment of the properties and the defendants failed to prove their possession and enjoyment of properties and thereby, decreed the Suit.

16. The learned counsel appearing for the appellants has relied upon judgment of Hon'ble Supreme Court in *T. Venkata Narayana and others v. Venkata Subbamma (Smt.) (dead) and others reported in (1996) 4 Supreme Court Cases 457*, wherein the Hon'ble Supreme Court held that *“mere suit for injunction cannot be converted into suit for probate of a Will whereat the Will is to be proved. If the Will is to be proved according to law, it has to be by way of a probate in the Court having competency and jurisdiction according to the procedure provided under the Indian Succession Act 1925. That procedure cannot be converted in a Suit for mere injunction as a probate Suit and direct the parties adduce evidence, be it primary or secondary evidence as the circumstances may warrant”*. Further this court, also after referring above said judgment of Hon'ble Supreme Court in *T. Venkata Narayana and others v. Venkata Subbamma (Smt.) (dead) and others reported in (1996) 4 Supreme Court Cases 457* held that *“Without proving the Will in the manner known to law, they cannot claim title over the Suit property and until the Wills are proved by the respective party according to law, both the appellant and the respondent can be treated only as co-owners of the Suit property which was absolutely owned and possessed by their father. Being co-owner of the*



property, one co-owner cannot file a Suit for prohibitory injunction against the other co-owner and hence, the Suit is not maintainable”.

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In the case on hand, the probate does not arise, as the Will has been executed at Chidambaram, Cuddalore District. The Hon’ble Supreme Court in the said case in ***T. Venkata Narayana and others v. Venkata Subbamma (Smt.) (dead) and others reported in (1996) 4 Supreme Court Cases 457***, observed that mere Suit for injunction cannot be converted into a Suit for probate of a Will, whereat the Will is to be proved, if the Will is to be proved according to law, it has to be by way of probate in the Court having competency and jurisdiction according to the procedure provided under the Indian Succession Act. That procedure cannot be converted in a Suit for mere injunction as a probate Suit and direct the parties to adduce evidence, be it primary or secondary evidence as circumstances may warrant.

17. In this case, since there is no necessity to probate the Will, the parties can adduce evidence in respect of the Will and the Will has been proved in accordance with Section 63 of the Indian Succession Act and Section 68 of Evidence Act by examining competent witness. Therefore, the argument of the learned counsel appearing for the appellants is not acceptable. Even assuming that in the injunction Suit, the Will cannot be tested upon, the Suit is for the relief of permanent injunction. As far as the relief of permanent injunction is



concerned, the Court has to see the possession and enjoyment of the properties.

Since the possession is with the Plaintiff and the Plaintiff also proved her possession by producing sufficient documents for her possession, it is appropriate to grant permanent injunction, when the Plaintiff is in possession and enjoyment of the properties. The defendants have, so far, not filed any Suit for partition claiming partition over the properties and the conduct of the party shows that they have no right over the properties.

18. The Plaintiff has filed the documents viz., patta, house tax receipts to prove their possession and the defendants have not produced any documents before the trial Court. However, during the appeal, they produced some documents and the said documents were also received as Ex.B.1 to Ex.B.11. On a careful perusal of the said documents from Ex.B.1 to Ex.B.11, they are not related to the Suit properties. Therefore, the defendants have failed to prove their possession. Even assuming that the defendants are the co-owners, when the Plaintiff is able to prove her exclusive possession, she is entitled to protect her possession by way of permanent injunction and she seeks permanent injunction. The Courts below have not framed issues in respect of the Will and only framed issues about the possession, in order to find out the possession, the Courts below discussed about the Will. Therefore, the Courts below have correctly decreed the Suit.



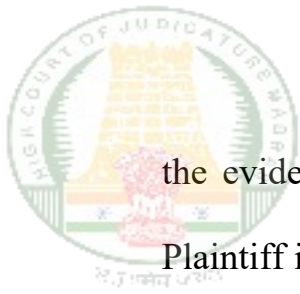
19. As far as the *substantial questions of law that 1) Whether the Courts below erred in law in holding that the mere Suit for injunction is maintainable in law particularly when the Plaintiff bases her case solely on the basis of Will alleged to have been executed by her father and the first defendant's husband was also a legal heir to the testator* is concerned, the Suit is filed for bare injunction, since the defendants are attempting to interfere with the Plaintiff's peaceful possession and enjoyment of the properties. The Plaintiff is relied upon the Will executed by her father and she also examined the attesting witness and proved the Will in the manner known to law. There are no suspicious circumstances and the Courts below have rendered findings in respect of the Will and those concurrent findings need not be interfered without any grounds. Since there is no cloud over the title of property and without seeking relief of declaration, the Suit for permanent injunction is maintainable. Though the 1st defendant's husband is also a legal heir of the Testator, when the Plaintiff is able to prove her exclusive possession, she is entitled to the relief of permanent injunction and the Plaintiff also produced the revenue records to prove her exclusive possession, thereby, she is entitled to permanent injunction. The First Appellate Court also framed issues in respect of possession and the entitlement of the relief of permanent injunction and no issues in respect of the Will and only incidentally discussed about the Will. Therefore, the contention of the learned counsel appearing for the appellant that 'in the Suit for injunction, Will cannot be tested' is not acceptable and the Courts below are right in



holding that the Suit for injunction is maintainable in law. Thus, the *1st substantial question of law is answered.*

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20. As far as the *2nd substantial question of law that “Whether the Courts below erred in law in upholding the Will, Ex.A.1, when the testator has not signed the same but affixed thumb impression in a Suit for injunction without a prayer for declaration”* is concerned, the Courts below have relied upon the evidence adduced on the side of the Plaintiff. The Plaintiff has examined the attesting witness PW2 and he deposed about the state of mind of the Testator and the evidence of PW2 has not been impeached through cross examination. Therefore, the Plaintiff has proved the execution of the Will, merely because the Will contained thumb impression, it cannot be treated as suspicious circumstance. PW2, the attesting witness, has categorically stated that due to shivering, the Testator Kannusamy, in spite of signing, put his Thumb impression and there is an endorsement in the Will Ex.A.1, to that effect. Therefore, the trial Court had given his reasons for decreeing the Suit. The First Appellate Court also in the judgment, discussed about the thumb impression. Moreover, the said Radhakrishnan had already filed a Suit for declaration and the same was dismissed for default and thereafter, no steps have been taken, thereby the Plaintiff need not seek for declaration. Moreover, the Courts below have not granted permanent injunction only based on the Will. But decided the case based on the other documents, viz., revenue records and



the evidences adduced by both the parties and came to a conclusion that the Plaintiff is in possession and enjoyment of the property and the defendants were out of possession and thereby, decreed the Suit. Thus, the **2nd substantial question of law is answered.**

21. Therefore, the Courts below have rendered concurrent findings based on the available evidences and this Court need not interfere with the decree and judgments passed by the Courts below.

22. In view of the above said discussions and answers to the substantial questions of law, this Court is of the opinion that the second appeal has no merits and the same is liable to be dismissed.

23. Accordingly, the Second Appeal is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

10-02-2026

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

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To

1. The Subordinate Judge, Chidambaram.
2. The Additional District Munsif, Chidambaram.

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P.DHANABAL, J.

MJS

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