

(1976) 02 MAD CK 0001
In the Madras High Court
Case No : S.A. No. 748 of 1973

D. Akkamma (died) and others	Vs	APPELLANT
P. Kannamma and others		RESPONDENT

Date of Decision : 23-02-1976

Acts Referred:

Citation : (1976) 02 MAD CK 0001

Hon'ble Judges : Ismail, J

Bench : Single Bench

Advocate : A. Nagarajan, for the Appellant; S. Nainarsundaram and V. Natarajan, for the Respondent

Judgement

Ismail, J.—The plaintiff in O.S. No. 1280 of 1966 on the file of the City Civil Court, Madras, who lost in part before the courts below, is

the appellant herein. The suit was instituted by the appellant for recovery of possession of the portion marked ""A"" and ""Koodam"" in the plaint plan,

for permanent injunction restraining the respondents-defendant from interfering with the appellants' possession regarding the other portions of the

suit premises and for future mesne profits. The appellant succeeded before the Trial Court as well as the first appellate court except with regard to

the portions marked ""A"" and ""Koodam"" in the plaint plan and with regard to that property the appellant's suit was dismissed. There is not much of

controversy with regard to the facts of this case. There was a suit, O.S., No. 532 of 1958 on the file of the City Civil Court, Madras which was

for partition. Since the property could not be divided between all the persons entitled to the same, the same was sold in court auction on 18th,

August 1963 and the appellant purchased the said property. She obtained the sale certificate on 9th October 1963. Thereafter she instituted the

present suit for recovery of possession of the property on the basis of the said court auction sale. The first respondent herein, whose husband is the

second respondent and whose daughter and son-in-law are the fourth and third respondents respectively, put forward the contention that one

person by name Narasimhalu; father of the first respondent who was also entitled to a share in the property, was not impleaded in O.S. No. 532 of

1958 on the file of the City Civil Court, Madras, and that therefore the sale of the suit property was not valid and binding.

2. The Courts below accepted the contention of the first respondent and therefore dismissed the suit of the appellant so far as the portions marked

A"" and Koodam"" in the plaint plan are concerned and it is the correctness of this conclusion of the courts below that is challenged before me in

this Second Appeal.

3. There is no controversy before me that Narasimhalu was entitled to a share in the property. He died in 1930 itself and he was stated to have

been survived by two sons, by name. Theagarajan and Kotiah. Therefore in O.S. No. 532 of 1958. Theagarajan or Kotiah or their sons should

have been impleaded as parties to the suit. The first respondent herein is only the daughter of Narasimhalu and therefore she was not entitled to be

impleaded as a party to that suit on even as a person entitled to the share of Narasimhalu who died in 1930 itself. It is in view of this only, the

learned I Additional Judge came to the conclusion that the possession of the first respondent was not lawful. Therefore it is clear that the first

respondent herein was in the position of a trespasser only. Consequently the only question that had to be considered was whether the appellant

herein having purchased the interest of all the coparceners except that of Narasimhalu was entitled to maintain the present suit for ejectment against

the first respondent who was a trespasser. The learned I Additional Judge after referring to some decisions, in Paragraph 10 of his Judgment,

namely Kanna Plsharody v. Narayana Somyajopad, ILR 3 Madras 234 Balakrishna Moreshwar Kunte v. Municipality of Mahad ILR 10 Bombay

32 Shanmuga Moopnar v. Subbayya Moopnar 42 M.L.J. 133 Vedakannu Nadar and Others Vs. Nanguneri Taluk Singikulam Annadana

Chatram through its huktdars Medai Dalavoi Ranganatha Mudaliar and Others, and Adiyappa v. Rachappa AIR 1948 Bom. 211 (F.B.) held that

one of the several coshares or trustees cannot maintain a suit against a stranger. None of the above decisions appears to have laid down any such proposition of law. All that is stated is, if several co-sharers are entitled to the property, they should be impleaded as parties either as plaintiffs or as defendants. None of these decisions has laid down the proposition that one of the several co-sharers cannot maintain a suit for ejectment against a trespasser. However, the learned I Additional Judge wrongly took the view that the said decisions laid down that one of several co-owners or Trustees cannot maintain a suit against strangers and stated that the counsel for the appellant who appeared before him did not draw his attention to any decision holding that one of the co-owners is entitled to sue for recovering possession of the property belonging to the co-owners from a trespasser. Really speaking the decisions of this court are all the other way. The decisions of this Court have taken the view that whatever may be said with regard to recovery of possession of property from a tenant, for recovery of possession of the property from a trespasser, one of several co-owners can certainly maintain a suit, without impleading the other co-owner as parties.

4. Syed Ahmed Sahib Shutari v. The Magnetite Syndicate, Limited ILR 39 Mad. 501 is one such case. A Bench of this Court in that case held :

Although there is a difference of opinion regarding the right of one of the tenants in common to eject the lessee from the leased premises, there is no doubt that as against a trespasser any one of the co-owners can maintain an action Radha Proshad Wasti v. Esuf (1881) ILR 7 Cal. 414.

Haredra Nariah Chowdhury v. Moran (1888) ILR 15 Cal. 40 Hira Lal v. Bhairon (1883) ILR 5 All. 602 and per Best, J. in Gopalaswami v.

Periaswami Thevar 1898-6 M.L.J. 27. Even in Gopal Ram Mohuri v. Dhakeswar Pershad Narain Singh 1908 ILR 35 Cal. 807 which lays down

that one of the co-shares is not entitled to sue that lessee in ejectment, it is recognised that that case of a trespasser will be different.

5. Another Bench of this Court in K. Veeranakutty v. Pathumma Kutty Umma and others AIR 1956 Mad. 514 laid down the principle to the same

effect by holding that a co-owner has got a right to recover possession of the property from a trespasser. The same view was followed by

Srinivasan, J., in Karuppan v. Ponnarasu Ambalam 78 L.W. 86 wherein the learned Judge has held that it is open to one of the co-owners to be in

possession of the entirety of the property belonging to the co-owners, that as against a trespasser any one of the co-owners may claim to be

entitled to the entirety of the property, that it is not open to the defendant in a suit who is merely in the position of a trespasser to say that as the

plaintiff claims through only one co-owner, his claim should be restricted only to the fractional interest of that co-owner and that any one of the co-

owners can maintain an action in ejectment against a trespasser.

6. In view of the principle laid down in the above decisions which are binding on me, it is clear that the learned I Add. Judge was wrong in holding

that one of the several co-owners cannot maintain an action against a trespasser. Hence, the second appeal is allowed and the Judgments and

decrees of the courts below in so far as they have dismissed the suit are set aside and the suit instituted by the plaintiff-appellant will stand decreed

in respect of the portions marked ""A and Koodam"" in the plaint plan also. The parties will bear their respective costs throughout. No leave.