
(1998) 04 MAD CK 0007
In the Madras High Court
Case No : S.A. No. 974 of 1985

Kamalammal and 3 others

APPELLANT

Vs

Indirani Ammal

RESPONDENT

Date of Decision : 03-04-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Specific Relief Act, 1963 — Section 41(j)

Citation : (1998) 04 MAD CK 0007

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : K. Doraiswami, for the Appellant; D. Vijay, for the Respondent

Final Decision : Dismissed

Judgement

K. Sampath, J.—Plaintiffs are the appellants. They filed suit O.S. No. 1273/80 before the District Munsif of Poonamallee for a permanent

injunction restraining the respondent from interfering with their possession and enjoyment of the suit property except by due process of law. Their

case was that the property originally belonged to one Munuswami Mudaliar, that the first appellant was his legally wedded wife and other

appellants were their children, that the respondent was the daughter of the first wife of the said Munuswami Mudaliar, that the said Munuswami

Mudaliar was living with the appellant in the A Schedule house till his death in the year 1974, that after his death, the appellant continued to live

there, that the respondent claiming the whole of the A schedule property under a registered settlement deed dated 20.3.1950 sent a notice dated

20.4.1974 calling upon the appellants to quit and deliver vacant possession, that the appellants resisted the claim of the respondent's title, to the

whole of A schedule property and claimed title in themselves in respect of the entire property, that the respondent though entitled to claim title and

recovery of possession of the whole A Schedule property, omitted the whole of A schedule property in order to avoid payment of Court fee and

chose to file a suit O.S. No. 1519/74 against the appellants in respect of only a portion of A schedule and the suit was decreed, that under the

guise of executing the decree for possession of B Schedule holding threats for the last two weeks to dispossess the appellants from the rest of the

A schedule, namely, C and D schedule and that the suit was therefore necessitated. The respondent resisted the suit contending inter alia follows:

The suit property was her absolute property that the first appellant became a tenant under late Munuswami Mudaliar and was paying the rent at the

rate of Rs. 20/- per month during his life time. She caused a notice to be issued to the appellants and the appellants claimed absolute title and

therefore the respondent filed suit in respect of the property in her possession in O.S. No. 1519/74 and in that suit it was held that the settlement

deed in her favour was true and valid and she was absolutely entitled to the entirety of the present A schedule property and when pursuant to the

decree in her favour, she had taken execution, the suit came to be filed. The appellants had no right to question the title of the respondent once

again since the same was barred u/s 11 of the Code of Civil Procedure. She was the lawful owner of the A schedule and the appellants did not

have any right over the same. Even assuming that the appellants were in possession of the property, it was unlawful and such possession could not

be protected.

2. The trial Court accepted the case of the appellants and decreed the suit holding that the respondent could not disturb the possession of the

appellants except by due process of law. The respondent filed appeal A.S. No. 7/84 before the Subordinate Judge of Chengalpat by his judgment

and decree dated 29.6.1984 reversed the decision of the trial court, allowed the appeal and dismissed the suit. Aggrieved, the present Second

Appeal has been filed.

3. At the time of admission, the following substantial question of law was framed for decision in the Second Appeal.

Whether the lower appellate Court can reverse the judgment and decree of the

trial court without reversing the finding rendered by the trial Court.

4. It is contended by the learned Counsel for the appellants that the appellants were in possession and their possession was a matter of admission by the respondent and such possession must be protected notwithstanding the character of the possession. It is to be immediately noticed that the appellants claimed absolute title, to the A schedule property in the prior proceedings. It was held in the prior proceedings that the first appellant was not the legally wedded wife of Munuswamy Mudaliar and she had no right in any portion of the suit property. It was also held that the settlement deed under which the respondent claimed title was true and valid. When once it was held that the respondent (Sic) did not have any semblance of right, title or interest in the suit property, her possession was rightly held to be unlawful possession. Starting from *Alagi Alamelu Achi v. Ponniah Mudaliar* (1962 I MLJ 383), the courts have consistently held that a trespasser's possession would not be protected. Even recently, the Supreme Court in *Mahadeo Savlaram Shelke and Others Vs. Puna Municipal Corporation and Another, and Premji Ratansey Shah and Others Vs. Union of India (UOI) and Others*,) has affirmed that view. In *Premji Ratansey Shah's* case the Supreme Court has held as follows:

Issuance of an order of injunction is absolutely a discretionary and equitable relief. In a given set of facts, injunction may be given to protect the possession of the owner or person in lawful possession. It is not mandatory that for mere asking such relief should be given. Injunction is a personal right u/s 41(j) of the Specific Relief Act, 1963; the plaintiff must have personal interest in the matter. The interest of right not shown to be in existence, cannot be protected by injunction. It is equally settled law that injunction would not be issued against the true owner. Therefore, the courts below have rightly rejected the relief of declaration and injunction in favour of the petitioners who had no interest in the property. Even assuming that they had any possession, their possession was wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner.

5. In *Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and*

Others, it has been held that judicial procedure cannot be used to protect or to perpetuate a wrong committed by a person who approaches the Court. It has been found by the lower appellate court that the possession of the appellants was not referable to any legal right. The dismissal of the suit by the lower appellate Court was perfectly justified and the substantial question of law is therefore answered against the appellants and the Second Appeal is dismissed. However there will be no order as to costs.