

(1995) 10 MAD CK 0011
In the Madras High Court

Nachal and Another

APPELLANT

Vs

C. Arjunan and Another

RESPONDENT

Date of Decision : 13-10-1995

Acts Referred:

Citation : (1996) 1 MLJ 338

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—The suit was filed by one Peria Karuppan Ambalam for declaration of his right in the suit properties and for an injunction

restraining the defendants from interfering with his enjoyment of the properties. According to him, the defendants are trespassers and have no right

whatever in the suit properties. Pending the suit, the said Periakaruppan died and his daughter and wife came on record as his legal representatives.

After the legal representatives came on record, the prayer in the plaint reads that their right in the suit properties should be declared and the

defendants should be restrained by an injunction from interfering with their enjoyment of the properties.

2. The trial court accepted the contention of the plaintiff and held that the defendants were not having any interest whatever in the suit properties.

Consequently, the trial court passed a decree declaring the rights of the plaintiffs and granting an injunction restraining the defendants from

interfering with the possession of the plaintiffs. No doubt the wordings of Clause 1 of the decree of the trial court are not appropriate. It reads as if

the entire suit properties belong to the plaintiffs exclusively. The declaration should have been that the plaintiffs are having rights of ownership in the

suit properties.

3. The defendants filed an appeal in the appellate court. One of the main contentions there was that the other co-owners, who were admittedly entitled to shares in the suit properties, were not impleaded in the suit and therefore, it was not maintainable. That contention has been accepted by the appellate court and the judgment of the trial court was set aside and the matter was remanded for fresh disposal for amendment of the plaint and impleading the other co-owners. It is the said order of remand, which is challenged by the plaintiffs in the present second appeal.

4. The view expressed by the appellate court is not correct in view of the fact that the plaintiffs have admitted the rights of the other co-owners in the suit properties. Insofar as the defendant is concerned according to the case of the plaintiffs, they are trespassers and they have no right in the properties. In such a situation, any one co-owner can file a suit as against the alleged trespassers and claim reliefs. This proposition has been laid down by a Division Bench of this Court in *P. Thimmayya Vs. P. Siddappa*, . In this case, there is no necessity for impleading the co-owners as parties to the suit, as their rights are not denied by the plaintiffs. It is only a dispute between the defendants, who are alleged to be trespassers and the plaintiffs, who are alleged to be in possession of the properties. The trial court has found possession of the plaintiffs and negatived the claims of the defendants. It is the duty of the appellate court to go into the question as to whether the plaintiffs are in possession and whether the defendants are entitled to any right in the suit properties. Hence, the order of remand passed by the appellate court is unsustainable and it is hereby set aside.

5. The appeal is allowed and A.S. No. 27 of 1995 is restored to the file of Sub Court, Devakottai. The Subordinate Judge shall dispose of the appeal on merits in accordance with the principles of law in the light of the observations made in this judgment on or before 31.12.1995 and report to this Court. There will be no order as to costs. The appellants will be entitled to the refund of the court-fee paid on the memorandum of appeal.