

(1975) 09 MAD CK 0018
In the Madras High Court

Ramasamy Moopanar

APPELLANT

Vs

Rathnammal and Others

RESPONDENT

Date of Decision : 26-09-1975

Acts Referred:

Easements Act, 1882 — Section 60

Citation : (1976) 89 LW 650 : (1976) 2 MLJ 363

Hon'ble Judges : V. Sethuraman, J

Bench : Division Bench

Judgement

V. Sethuraman, J.—The defendant is the appellant. The plaintiff, who is running an elementary school on the suit property, filed a suit against

the defendant for an injunction restraining him from interfering with his possession and enjoyment. The site, on which there is said to be a school

building, was classified as Government poramboke or natham land. The plaintiff claimed that he and his predecessor-in-title had been in occupation

for over 70 years. The defence was that the suit property belonged to the defendant and that under a licence granted by his father, the plaintiff was

running the school in the property. The defendant relied on a partition of 1918, in which this property was dealt with by his family. The defendant's

case was that the plaintiff was not entitled to the relief claimed.

2. The trial Court took the view that neither the plaintiff nor the defendant had established title to the suit property. It, however, granted an

injunction, as the plaintiff was in possession. The learned Subordinate Judge, to whom the respondent appealed, held, on the basis of Exhibits B-3

to B-7, a partition-deed and certain other sale-deeds, in which in the description of boundaries, the present property was referred to as the

defendant's property, that the predecessor-in-title of the defendant had dealt with the suit property as their own, though it was natham land. He

also held, on the basis of possession, that the suit for an injunction had to be decreed. Hence the present second appeal by the defendant.

3. The learned Counsel for the appellant, who lost in both the Courts, submitted that the learned appellate judge having found that the appellant

and his predecessor-in-title had treated the property as their own, should not have granted an injunction in favour of the plaintiff who had no title to

the suit property. He further contended that the plaintiff was in the position of a trespasser on his own showing and that a trespasser could not seek

to hold his possession against the lawful owner. For the respondent, the submission was that the defendant had filed a title suit subsequently in which

the question of title would have to be gone into. He, therefore, submitted that the lower Courts did not act wrongly in granting the injunction, so

that the injunction, could continue till the disposal of the title suit.

4. The learned Counsel for the appellant brought to my notice the decision in T.S. Govindaraj Vs. A.B. Kandaswami Goundar and Another, . It is

to support the proposition that the plaintiff cannot change his case and rely on the defendant's stand. In the present case, I am not satisfied that the

plaintiff is trying to change his case. The plaintiff relies on his own possession for the purpose of getting the relief of injunction. I am, therefore, not

satisfied that the decision in T.S. Govindaraj Vs. A.B. Kandaswami Goundar and Another, has any application.

5. The learned Counsel then submitted that a party cannot change his case in appeal. This has reference to the reliance on the licence, pleaded by

the defendant, in support of the plaintiff's right of injunction. For this purpose counsel relied on a decision of the Supreme Court in Chavalier I.I.

Iyyappan and Another Vs. The Dharmodayam Company, . The relevant passage occurs at page 94. Kapur, J., pointed out that it was not open to

a party to change his case at the appellate stage. Here also, I am not satisfied that the plaintiff is trying to change his case at this stage. No doubt,

he relies on the permission that was granted by the father of the defendant. This is only as a kind of shield to support his case of possession. In a

case like this where the suit is for an injunction based on possession, it has been held by the Supreme Court in Nair Service Society Ltd. Vs. Rev.

Father K.C. Alexander and Others, and also in Lallu Yeshwant Singh Vs. Rao Jagdish Singh and Others, that the plaintiff need not prove title.

Therefore the question of title is not relevant for the purpose of considering the eligibility for the injunction prayed for by the plaintiff. In view of the

fact that the question of title is in issue in a different suit, which has been subsequently filed, I do not think it proper to go into it because the matter

may be gone into fully in that suit. I, therefore, hold that the plaintiff is entitled to the injunction on the basis of his possession, and nothing said in the

present proceeding would prejudice the rights of either parties with reference to the question of title in issue in the pending suit.

6. Learned Counsel for the respondent relied on the provisions of Section 60 of the Easements Act and also on the decision in Raghubir Saran and

Others Vs. Param Kirti Saran, to show that in the present case the plaintiff had put up construction on the property and that the licence cannot be

revoked unilaterally by the defendant. But, as pointed out by the learned Counsel for the appellant, the question as to whether the plaintiff has put

up any structure over the property is not clear, In these circumstances, I do not think it necessary to go into the question of applicability of Section

60 of the Easements Act or the decision in Raghubir Saran and Others Vs. Param Kirti Saran, . As the plaintiff is entitled to the injunction and has

been properly granted by both the Courts below, I do not think it proper to interfere with the said decision. Subject to the above, the appeal is

dismissed. I may reiterate that nothing said here will prejudice the rights of parties in the title-suit. There will be no order as to costs. No leave.