

(2009) 08 MAD CK 0155

In the Madras High Court

Case No : C.R.P. (PD) No"s. 1862 and 1863 of 2009 and M.P. No"s. 1 of 2009

S. Muthuraman, S. Dandapani, S. Sambasivam and N. Subramanya

APPELLANT

Vs

C. Baburaj

RESPONDENT

Date of Decision : 11-08-2009

Acts Referred:

Citation : (2009) 08 MAD CK 0155

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : T.R. Rajaraman, for the Appellant; M. Sivavarthanan, for V. Ramajagadeesan, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Sasidharan, J.—Challenge in these two civil revision petitions are the judgment and decree dated 16.6.2009 in C.M.A. No. 11 & 12

of 2008 on the file of the learned Subordinate Judge, Madurantagam reversing the order dated 8.9.2008 in I.A. Nos. 1054 & 1052 of 2008

respectively whereby and whereunder the order of injunction granted by the learned District Munsif was set aside.

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2. The suit in O.S. No. 236 of 2008 was preferred by the revision petitioners against the respondent praying for a judgment and decree of

permanent injunction restraining the respondent, his agents and men from interfering with their peaceful possession and enjoyment of the suit

property.

3. In the plaint in O.S. No. 236 of 2008 it was the contention of the revision petitioners that the suit property which is part of a larger extent

originally belonged to the maternal grand-father Muthulinga Reddiar. He was survived by his daughters Amirthavalli, Kasthuri, Savithiriammal and

Rukmani Ammal. Subsequent to the death of Muthulinga Reddiar in the year 1998, the property devolved on his legal heirs. The petitioners are the

children of Rukmani Ammal. The total extent of the property which was comprised in Survey No. 258/1 was 0.37.5 hectares. There was an oral

family arrangement which took place between sisters during the year 1989. The mother of the petitioners by name Rukmani Ammal was allotted

1/4th share equivalent to 0.23 cents out of the total extent. The property allotted to Rukmani Ammal was in the immediate north of the property

allotted to Kasturi. There is a joint patta in respect of the entire property which stands in the name of four sisters.

4. While Rukmani Ammal was in possession and enjoyment of her share, she executed a settlement deed in favour of the petitioners as per

document dated 27.2.2008. Ever since the said settlement, suit property has been in the possession and enjoyment of the petitioners.

5. The respondent is the son of Amirthavalli. The property of Amirthavalli is on the immediate north of Savithiriammal's share. Amirthavalli

purchased the share of Savithiriammal, which is stated to be on the southern side of the property allotted to Amirthavalli as evident by a receipt

dated 29.8.1990. Accordingly, the respondent is entitled to the southern side of the suit property. He is no way connected with the suit property.

The respondent made an attempt to cancel the joint patta which stood in the name of the four sisters. The District Revenue Officer, Kancheepuram

passed a final order on 7.1.2004 dismissing the appeal filed by the respondent for transfer of patta in his name.

6. While so, on 3.7.2008 the respondent made unsuccessful attempt to interfere with their peaceful possession and enjoyment of the property

resulting in filing the civil suit.

7. The revision petitioners have also filed an application in I.A. No. 1054 of 2008 for temporary injunction. The learned trial Judge as per order

dated 8.9.2008 granted an order of temporary injunction. However the injunction was set aside in C.M.A. No. 11 of 2008 by the learned

Subordinate Judge, Madurantakam. Aggrieved by the said judgment and decree, the petitioners have filed this revision.

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8. The revision petitioner is the husband of Kasturi, to whom 1/4th share was allotted in the year 1989 by way of oral partition, which is also the

subject matter in O.S. No. 236 of 2008. The 1/4th share of Kasturi, which she received by way of oral partition between Amirthavalli, Savithiri

Ammal, Rukmani Ammal and herself was settled in favour of the revision petitioner as per registered document dated 29.2.2008. According to the

revision petitioner, the respondent, who is the son of Amirthavalli, attempted to interfere with his peaceful possession and enjoyment of the suit

property on 3.12.2008 which made him to file the suit for injunction.

9. The petitioner also filed an application for interlocutory injunction in I.A. No. 1052 of 2008. The said application was allowed and the learned

Munsif was pleased to grant an order of temporary injunction till the disposal of the suit. However the said order was set aside in the appeal filed

by the respondent in CMA. No. 12 of 2008. It is the said judgment and decree which is challenged in this civil revision petition.

10. The contention of the respective petitioners/plaintiffs in O.S. Nos. 236 and 237 of 2008 are identical.

11. The learned trial Judge believed the oral partition claimed by the petitioners, which was stated to have been effected in the year 1989. Though

patta bearing No. 459 of the property shows joint possession by all the four sisters, the learned trial Judge believed the version given by the

revision petitioners and granted an order of injunction.

12. The learned trial Judge observed that as per documents exhibited on the side of the revision petitioners it was evident that their predecessor-in-

interest got 23 cents, each during the partition effected in the year 1989. Accordingly the learned trial Judge granted an order of injunction in

respect of 23 cents, which was stated to be in the possession of the petitioners in the respective civil revision petitions.

13. The matter was considered by the learned Appellate Judge in extenso. The learned Judge was of the view that no documents were exhibited

on the side of the petitioners to show that a partition was effected between the family members in the year 1989 by metes and bounds. Similarly

there was nothing on record to show that each of the sharers are in separate possession and enjoyment of their 23 cents of land. The Appellate

Judge observed that the oral partition set up by the revision petitioners claiming separate possession of property, is a matter to be decided during trial and as such it cannot be decided in the interlocutory application. The Appellate Judge also relied on the subsequent partition effected between the respondent and his sister as per judgment and decree dated 7.6.2007 in C.S. No. 621 of 1995 on the file of this Court. Therefore on a consideration of the entire factual matrix, the Appellate Judge arrived at a finding that there was nothing to show the separate possession and enjoyment of the property by the respective petitioners. Accordingly the appeals were allowed.

14. The petitioners in both the civil revision petitions were claiming property on the basis of an oral partition of the year 1989 between the children of Muthulinga Reddiar by name Amirthavalli, Kasthuri, Savithir and Rukmaniammal. According to the petitioners each of the four sisters were allotted 0.23 cents of land in Survey No. 258/1 of Acharapakkam Village. The 0.23 cents of land allotted to Rukmaniammal was settled in favour of the petitioners in CRP No. 1862 of 2009 as per document dated 27.2.2008. similarly the share of Kasthuri was settled in favour of her husband viz., the petitioner in C.R.P. No. 1863 of 2009 as per document dated 29.2.2008.

15. The patta of the said property still stands in the name of four sisters. The petitioners have maintained the suit on the ground that there was a partition in the year 1989 and each of the sharers were allotted 0.23 cents of land with separate possession and enjoyment. However the patta continued to be in the name of all the four sharers. There was not even a single document produced to show that there was an oral partition in the year 1989 and the property was divided by metes and bounds. Similarly there was nothing to show that the predecessor-in-interest of the petitioners were in possession of a specified extent of property. It was only by way of the settlement executed by the so called sharers, stated to be the parties to the oral partition, the petitioners obtained the property.

16. There was nothing on record to show that Rukmani Ammal and Kasthuri were in possession of 0.23 cents of land with specified boundaries.

The two settlement deeds were executed on 27.2.2008 and 29.2.2008 to project a case as if the settlors were in separate possession and enjoyment of the property settled by them.

17. Since the suits have to be decided on merits by the learned trial Judge, I am not inclined to deal with the issue regarding the bonafides in executing the settlement in favour of the petitioners.

18. The learned Counsel for the revision petitioners mainly relied on the order passed by the learned Appellate Judge to the effect that there was a partition between the respondent and his sister as evident by the judgment and decree dated 7.6.2007 in C.S. No. 621 of 1995. The reference made about the said judgment and decree was only in addition to the other facts which actually weighed with the learned Appellate Judge to negative the plea of separate possession claimed by the revision petitioners. The learned Appellate Judge has considered the other aspects which clearly shows that there was no partition by metes and bounds so as to grant an order of injunction in respect of a specified extent. In case there was no partition effected in the year 1989, the respondent would be a co-owner, against whom in normal circumstances no injunction could be granted. As rightly observed by the learned Appellate Judge, the alleged oral partition is a matter to be decided during trial on the basis of evidence. The Appellate Court was concerned only about the preservation of the rights of parties during the pendency of the suit.

19. While considering the plea for grant of injunction the court has to look into the prima facie materials, balance of convenience as well as irreparable injury which would cause in the event of rejecting the prayer. When there was nothing to show that there was a partition in the year 1989 and in the said partition an extent of 0.23 cents with specified boundaries were allotted to the predecessor-in-interest of the petitioners, it cannot be said that they are entitled to an order of injunction to restrain the respondent, who is none other than co-owner of the property. The patta of the property also stands in the name of all the four joint owners. Therefore I am of the view that the learned Appellate Judge was perfectly correct in his finding that the revision petitioners have failed to prove the separate possession and enjoyment of their 0.23 cents of land each so as to enable them to get an order of injunction.

20. The remedy of injunction is a discretionary remedy which is also an equitable remedy. The learned Counsel for the respondent has produced a copy of the agreement executed by the petitioner in C.R.P. No. 1863 of 2009

whereby he has entered into an agreement on 12.9.2008 to sell the suit property in O.S. No. 237 of 2008. It is relevant to mention that the revision petitioners have obtained an order of injunction from the trial court only on 8.9.2008. Immediately on 12.9.2008 the revision petitioner in C.R.P. No. 1863 of 2009 agreed to sell the property in favour of third parties. This shows the lack of bonafides in the case projected by the revision petitioner in C.R.P. No. 1863 of 2009.

21. The learned Counsel for the petitioners placed reliance on the judgment of the Supreme court in Tanusree Basu and Others Vs. Ishani Prasad

Basu and Others,

in support of his contention that even against a co-owner an application for injunction is maintainable.

22. In Tanusree Basu's case cited supra, the co-owner was in specific possession of the joint family property. However he was dispossessed from

the said property without the intervention of the court. The observation of the Honourable Supreme Court in para 18 of the said judgment clearly

shows that the party in favour of whom injunction was granted was in exclusive possession of the property allotted to him. In fact the subject

matter of the suit in respect of which the civil appeal was preferred before the Supreme Court was three independent flats. Those three

independent flats were jointly allotted to the parties. It was the contention of the plaintiff in the said suit that though three flats were allotted jointly

to the parties he was in exclusive occupation of one flat and in the said factual context the Supreme Court also observed that there cannot be any

doubt or dispute as a general proposition of law that possession of one co-owner would be treated to be possession of all. However the case of

this nature would not mean that where three flats have been allotted jointly to the parties, each one of them cannot be in occupation of one co-

owner separately.

23. Therefore the facts of the said case are entirely different. In the present case, admittedly the property originally belonged to Muthulinga

Reddiar, who died in the year 1988 and as such it devolved on his four children. The patta also clearly shows the possession and enjoyment of the

property by the legal heirs of Muthulinga Reddiar. There was nothing on record to show that there was a partition effected in the year 1989

whereby each of the sharers were allotted 0.23 cents of land with specified boundaries. Even if exclusive possession claimed by the respondent is disbelieved, it cannot be said that the petitioners are entitled for an injunction against the respondent, who is admittedly a co-owner. In any case, there is nothing to show that the petitioners were in enjoyment of a specified extent of land with specified boundaries so as to enable them to obtain an order of temporary injunction.

24. The learned Appellate Judge has considered the entire factual matrix and arrived at a conclusion that the petitioners have not made out a case for temporary injunction during the pendency of the suit. The learned Appellate Judge has also reserved the issues to be decided in the suit.

Therefore I do not find any error or illegality in the judgment and decree which is impugned in both the civil revision petitions.

25. In the result, both the civil revision petitions are dismissed. Consequently the connected Mps are also closed. No costs.