

IN THE COURT OF THE DISTRICT MUNSIF, KOTAGIRI, THE NILGIRIS.

PRESENT: TR.C.Sridhar, B.Sc, B.L.,

District Munsif, Kotagiri.

Dated on this the 19th September of 2018

O.S.No.37/2013

Lakshmi alias Lakshmiammal

..... Plaintiff

/Vs/

J.Lingan

.....Defendant

This suit is coming on this 19th day of September 2018 for final hearing before me in the presence of Thiru. B.Radha Krishnan, Advocate for Plaintiff, S.Ganesh, Advocate for defendant having stood over for consideration till this date and this court delivers the following:

JUDGEMENT

This is suit for a restraining the defendants and his men, agents, relatives and all those who are claiming through or under him in any manner interfering with and interdicting the peaceful possession and enjoyment of the plaintiff over the plaint mentioned property by way of perpetual injunction with cost of the suit.

1.Brief averments of the plaint filed by the Plaintiff is as follows:

The plaintiff husband namely Guruvan. The defenant J.Jevanan, J.Lingan are own brothers. The three brothers jointly purchased land 4.09 acres in old S.No.528/2 N.S.No.666/3 of Naduhatty sale dated 6.2.1968 as document No.84/1968 at Kotagiri.The original sale deed is made the custody of the defendant. The plaintiff could not obtain the regratration copy of the sale deed three brothers orally equally divided were allotted an extent of 1.36 acres. The plaintiff's husband passed away (J.Guruvan) and he had gifted the 'A' Schedule property of an extent 0.02 acres to the plaintiff out of 1.36 acre. Under the settlement deed dated 12.12.1990 Document no.1483/1990. In the said property the plaintiff has constructed two houses bearing D.No.2/289/1 and 2/290/2 of Naduhatty. In Schedule 'B' extent of 1.34 acres the plaintiff's name has been mutated in the revenue records. The original release deed, the chitta extract and the land revenue receipt are submitted herewith. The defendant interdict the peaceful possession on 30.7.2013 again 30.8.2013. The

defendant has made another attempt to meddle with the possession. Hence the plaintiff has been constructed to invoke the assistance of this Hon'ble Court. Hence the suit.

2. Brief averments of the written statement by the 1st defendant is as follows:

The defendant admits that the plaintiff's husband, defendant and Jevanan own brothers. They have purchased jointly purchased 4.09 acres of land in old S.No.528/2 and new S.No.666/3 of Naduhatty Village. The defendant denies that he invading the possession on the suit schedule mentioned property. The defendant admits that an oral partition was effectuated among them, but the property was not equally divided, the plaintiff's husband and defendant took 1.36 acres each and the Jevanan took 1.37 acres of land. The defendant not aware that whether the Guruvan gifted property of 0.02 acre to the plaintiff. The defendant admits that 2 houses are constructed. The defendant not aware that whether legal heirs of the Guruvan released 1.34 acres of land infavour of the plaintiff. The defendant admits that the property was sub-divided and his property as assigned as S.No.528/2B but the Guruvan and the said Jevanan property is under joint patta only. The defendant admits he executed a settlement deed in favour of his wife not 0.01/2 acre but 0.02-1/2 acre. The defendant submits that the cause of action is only imaginary and at no point of time the defendant enter the suit schedule property. the defendant submits that after oral partition the defendant sub divided the property by the Kotagiri Thasildar order dated 24.4.1984. The defendant further submits that the defendat property was assigned as 528/2B and the Guruvan and the Jevanan property was assigned as 528/2A. Which was confirmed by Guruvan and Jevanan letter dated 9.5.1984. The defendant constructed so many houses in that land. After the death of the plaintiff's husband the plaintiff got jealous against the defendant and he plucking tea in the balance land. So many false complaint before police. After the enquiry the police rejected the complainits since they were false. Hence the plaintiff approached the court with ulterior motive to grab a portion of land of the defendan.t The plaintiff not made the Jevanan as the party to the suit. It is bad for non-jointer of the party. The plaintiff not approached this Hon'ble court with clean hands.

Based upon the pleadings of the parties, the following issues were framed.

3.Issues:

- 1. Whether plaintiffs is entitled to get permanent injunction against these defendant's for not to interfering the plaintiff's peaceful possession and enjoyment of this plaintiff?**
- 2. To what other reliefs are entitled to plaintiff?**

3. On the side of the plaintiff, the plaintiff have been examined as PW1 and documents in Ex.A1 to Ex.A7 have been marked. On the side of the defendants has been examined as DW1 and defendants side no documents were marked.

4.Issue No.1

Whether plaintiff's is entitled to get permanent injunction against these defendant's for not to interfering the plaintiff's peaceful possession and enjoyment of this plaintiff?

According to this plaintiff, suit property was jointly purchased by this plaintiff husband named J.Guruvan and his brother named J.Lingan and J.Jevanan for the extent of 4.09 acres. After that above said property was orally partitioned among the three brothers and each of the 3 brothers were allotted to extent of 1.36 acres. The suit property was allotted to this plaintiff's husband named J.Guruvan during his life time plaintiff's husband was executed a settlement deed in favour of this plaintiff an extent of 0.02 acres out off 1.36 acres. After the death of plaintiff's husband, plaintiff's 3 sons were executed a release deed in favour of this plaintiff for remaining 1.34 acres. So that plaintiff is the absolute owner of the suit properties. After that revenue records of suit property was mutated in favour of the plaintiff's name and assigned separate survey number as 528/2A1 and defendant's property is subdivided in survey no.528/2B. Defendant has no way connected in the suit property.

5. Whereas defendant side admitted in the return statement that 3 brothers were jointly purchased the suit property and oral partitioned taken place among the 3 brothers. Further he admitted that after oral partitioned this defendant properties was subdivided and assigned new no as 528/2B and further stated that plaintiff's husband and his brother

sevanan property was subdivided and jointly assigned survey number as 528/2A. Further more he stated that the defendant never entered in to the suit property.

So that defendant's side has clearly admitted that defendant have no right over the suit property that is 528/2A. Whereas during the argument defendant side counsel submitted that this plaintiff was deposed in her cross examination that she approach the court only for the demarcation of the boundary between the plaintiff and the defendant's property. So that suit for permanent injunction is not maintainable and plaintiff has to be filed a suit for demarcation of boundary. On perusal of deposition of PW1 this court found that plaintiff has clearly deposed as argued by the defendant side counsel. But on perusal of pleading and chief examination of PW1 she has clearly averred that she seeking relief of permanent injunction. Further this plaintiff is the 65 age old lady and considering the age and being a lady this kind of small variation is not affected the plaintiff's case. Further this case can be decided based on pleadings and available records.

6. Further after oral partition, the defendant and plaintiff's properties were subdivided and separate survey numbers were assigned as 528/2B and 528/2A respectably. This fact was categorically admitted by this defendant also. If after oral partitioned the properties are not subdivided, plaintiff has to be filed a suit for demarcation of boundary as per partition. Whereas in this case already both properties were subdivided and assigned new survey number, in this circumstances plaintiff no need to file a suit for demarcation of boundaries.

7. Further more plaintiff seeking equitable relief of permanent injunction. This defendant also admitted that his property's survey number is 528/2B and also admitted that plaintiff's husband properties survey number was 528/2A. So that defendant has no right over the 528/2A. Further plaintiff's husband also executed a settlement deed in favour of the plaintiff on 12.12.1919 same was marked as exhibit A1 and plaintiff's 3 sons were executed a release deed in favour of the plaintiff same was marked as exhibit A2. Further more plaintiff's and her son and Sevana gowder also jointly mentioned as the Pattadhar of 666/3 which was marked as exhibit A4. Further more separate sub division order between the

property of Sevanan and Guruvan have been marked as exhibit A7. So that plaintiff has clearly proved his title and possession over the suit property. Same time defendant neither denied the plaintiff's title of suit property nor any claim over the suit property.

8. In the circumstances defendant have no right to disturb the plaintiff's possession over the suit property. Accordingly this issue is decided to favour of this plaintiff.

9.Issue No.2

To What other Relief's are entitled to Plaintiff?

Already this court has decided to favour of this plaintiff through issue No.1. Hence no other further relief's are necessary to this plaintiff.

10. Finally this court come to conclusion that plaintiff is entitled to get permanent injunction against this defendant as pray for and accordingly this suit is ordered to be allowed with cost.

This order is dictated to Typist, typed by her, corrected by me and pronounced by me in the open court on this day 19th September 2018.

Sd/- Tr.C.Sridhar,
DISTRICT MUNISIF,
KOTAGIRI.

LIST OF WITNESSES EXAMINED

The Plaintiffs Side:

PW1 – Lakshmi Ammal examined on 17.10.2016

The Defendants side:

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LIST OF DOCUMENTS MARKED

The Plaintiffs Side:

- Ex.A1 - Original Settlement Deed, dated 12.12.1990
- Ex.A2 - Copy of the Release Deed, dated 19.12.2012
- Ex.A3 - Copy of the Settlement Deed, dated 28.01.1998
- Ex.A4 - Copy of the Chitta, dated 20.05.2011
- Ex.A5 - Copy of the Land revenue receipt, dated 13.04.2013
- Ex.A6 - Copy of the House tax receipt (2 Numbers), year 2012-2013
- Ex.A7 - Copy of the Proceedings, dated 20.11.1990

The Defendants Side:

-- No--

Sd/- Tr.C.Sridhar,
DISTRICT MUNISIF,
KOTAGIRI.