

2025 LiveLaw (SC) 1059

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

AHSANUDDIN AMANULLAH; J., K. VINOD CHANDRAN; J.
Special Leave Petition (Civil) No.18943 of 2024; October 07, 2025
S. Santhana Lakshmi & Ors. versus D. Rajammal

Specific Relief Act, 1963 - Section 38 (Perpetual Injunction) - Suit for Injunction Simpliciter - Declaration of Title - Recovery of Possession – Held, a suit filed for an injunction restraining alienation/encumbrance and interference with peaceful possession is an injunction simpliciter - When the plaintiff admits in the pleadings and oral evidence (witness box) that possession is with the defendant, an injunction against the interference of peaceful enjoyment of the property ought not to have been granted - Possession was admitted to be with the defendant in the original plaint on the basis of a tenancy arrangement and later in evidence as well. [Para 11]

Requirement of Declaration of Title and Recovery of Possession – Held where the plaintiff asserts title based on a Will but does not have possession (which is admitted to be with the defendant), a suit for injunction simpliciter cannot be maintained - The plaintiff should have sought a declaration of title and consequential recovery of possession - This is especially true when the defendant claims possession as a co-owner with absolute rights, having made valuable improvements - Appeal is disposed of with reservation of liberty to both parties to file a fresh suit for declaration of title and recovery of possession. [Paras 10-13]

For Petitioner(s) Mr. S. Nandakumar, Sr. Adv. Ms. Deepika Nandakumar, Adv. Mr. Amit Yadav, Adv. Mr. Naresh Kumar, AOR.

For Respondent(s) Mr. Senthil Jagadeesan, Sr. Adv. Mr. Punit Agarwal, Adv. Mr. Sajal Jain, AOR.

J U D G M E N T

K. VINOD CHANDRAN, J.

Leave granted.

2. The present appeal arises from a suit filed by Rajammal against Munuswamy, her brother, for injunction simpliciter, one, to restrain alienation or encumbrance of the suit property and the other to restrain interference with the peaceful possession & enjoyment of the plaint schedule property. The plaintiff claimed absolute right over the property being half share of 1.74½ acres coming to 0.87¼ acres of dry landed property with all appurtenances attached thereto. The claim was made specifically on the ground that by a Will dated 30.09.1985, Rangaswamy Naidu, their father had bequeathed the said property equally in favour of the plaintiff and another brother, Govindarajan. The plaintiff's contention itself was that the defendant was continuing in the property as a tenant while the defendant claimed that he came into possession as a co-owner and later there was an arrangement, by which in the lifetime of his father, the property was equally divided between the brothers i.e. the defendant and Govindarajan.

3. The trial court found the Will to have been proved and decreed the suit injunctioning the defendant from alienating the property and from interfering with the plaintiff's peaceful possession. On appeal, the appellate court found that the bequest was made of an ancestral land, on which the testator had no right to execute the Will. The trial court judgment was upset and the suit was dismissed. In the second appeal, the High Court formulated two questions of law as to whether the appellate court was correct in finding

the suit property to be a joint family property and whether Ex.B5 document produced by the defendant was properly construed.

4. The property was found to be the absolute property of the plaintiff's father though it was purchased by the grandmother of the plaintiff. The title of the plaintiff's father was neither questioned by the grandmother in her lifetime nor did she claim a right over the said property. Ex. A6 Will was found to have been proved since the signature of the testator was affirmed by PW1, the plaintiff and the signature of one of the testators, who was deceased, was affirmed by his own son, PW2. In the context of both the testators having passed away, the evidence was found to be sufficient to prove the Will. Based on the above findings, the right of the plaintiff over the property was established and the possession was found to follow title thus enabling both the injunctions sought for. The first appellate court's order was set aside, and the suit was allowed restoring the trial court's judgment & decree.

5. Before us, the legal heirs of the defendant, the appellants, contended that they have been always in possession of the land, as admitted by the plaintiff. The suit was filed without any prayer for declaration and the injunction simpliciter ought not to have been granted. It was contended that by Ex. B1 agreement entered into by Rangaswamy Naidu, Govindarajan and the original defendant, there was a division of the properties in the year 1983 itself. The plaintiff was unable to produce any ocular or documentary evidence to establish possession. The plaintiff's own admission was that the defendant was in possession of the property.

6. The learned Senior Counsel appearing for the respondent-plaintiff, however, would point out that there are two different properties, as has been noticed by the High Court, one purchased in the year 1934 and another in the year 1984. The house property is said to have been purchased in the year 1984 with which the plaintiff was not concerned in the suit. In fact, a specific pleading was made reserving her right to take action against the house property separately. The appellants as of now is concerned only with the property more fully described in the plaint which does not contain a house, is the contention.

7. We have gone through the suit in which clear statements are made as to the defendant having been inducted into the property as a tenant by the father. The father is said to have filed OS No. 895 of 1984 to obtain possession of the suit property and arrears of rent, which, after the death of the father, stood dismissed allegedly for reason of the defendant having agreed to pay the rent. Immediately, we have to notice that Annexure P7 dismissed OS No.895 of 1984 filed by Rangaswamy Naidu, after his death, substituting Govindarajan and the plaintiff as the legal heirs. The suit was dismissed for default without any observation of an agreement regarding payment of rent. It is also pertinent to observe that even at that stage a written statement was filed by the original defendant, Munuswamy contending that in the suit property, the defendant had put up a structure in which he was residing with his family. He claimed possession of the property as a co-owner and not as a tenant; which relationship was asserted to be not existing since there was no such tenancy created orally or on the strength of documents. The original plaintiff having died, the siblings who got impleaded as his legal heirs, filed an amended plaint again alleging tenancy and claiming the property as per the registered Will dated 30.09.1985. The substituted plaintiffs despite taking up a plea of the Will executed by the deceased father in the amended plaint, the proceedings were not continued and the suit stood dismissed for default.

8. It was after a few years that the present suit was instituted in the year 2003 wherein also the possession of the defendant was admitted, again on the contention of a tenancy

arrangement. In the present suit also, the defendant took up a contention that it was a joint family property later set apart to his share.

9. More pertinent is the fact that the plaintiff in her evidence clearly stated that property covered by the Will is in the possession of Munuswamy and Govindrajan, her brothers. The total extent of the property even according to the plaintiff is 1.74½ acres and her share is 87.25 cents. The property on the four sides of her share is stated to be in the hands of third parties; which cannot be correct since when half of the property is claimed, at least on one side the property bequeathed to Govindrajan should have been mentioned. In fact, even in evidence, it is repeated that in the suit property the father and Munuswamy, the defendant were staying in half portions of the house and Govindrajan was staying in the ancestral house. As of now, with respect to the suit property, it is contended that Munuswamy is enjoying the western portion and Govindrajan is enjoying the eastern portion of the house.

10. It is also significant that though the plaintiff did not have possession, she had not claimed recovery of possession. While asserting a Will and title on its strength, there should have been a declaration of title sought, especially when the contention of the defendant was that he came into the property as a co-owner and then occupies it with absolute rights, making valuable improvements. The defendant also did not seek to get a declaration on the basis of an arrangement entered into with the father and the other brother or seek a partition on the strength of a counter claim.

11. In the above circumstances, we cannot but find the 'Will' is proved but the right of the testator to bequeath the property is still under a cloud. Even if the title is established, there should have been a recovery of possession sought by the plaintiff. The ill-drafted plaint and the clear admissions made in the witness box ought to have restricted the trial court and the High Court from granting an injunction against the interference of peaceful enjoyment of the property, especially when the possession was admitted to be with the defendant, in the pleadings as also the oral evidence. The injunction against alienation is perfectly in order since the defendant too has not sought for a declaration of title.

12. The learned Senior Counsel for the plaintiff sought for agitating the cause afresh. We are of the opinion that since a stalemate is created; with the ownership not having been declared in favour of either of the parties, also considering the relationship, we reserve liberty to either of the parties to seek declaration of title and consequential possession or recovery of possession, if they desire, which proceedings will be instituted within a period of three months from today. If a fresh proceeding is initiated then the same would be considered afresh untrammelled by the findings in the present proceedings, which shall not govern the rights of the parties. However, we make it clear that no alienation shall be made by both parties or the subject property encumbered.

13. The appeal is disposed of with the above reservation of liberty.

14. Pending applications, if any, shall stand disposed of.