



S.A(MD)No.113 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.07.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

**S.A(MD)No.113 of 2015
and
M.P(MD)Nos.1 & 2 of 2015**

S.R.Kalaiselvi

... Appellant

Vs.

1.Packiaselvam
2.Rajeswari

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 08.07.2008/26.02.2001 made in A.S.No.60 of 2006, on the file of the I Additional Sub-Court, Nagercoil reversing the judgment and decree, dated 27.02.2006 made in O.S.No.431 of 2002, on the file of the II Additional District Munsif, Nagercoil.

For Appellant : Mr.S.Ramesh

For Respondents : Mr.S.Rajasekar



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J U D G M E N T

The appellant, who is the plaintiff, filed a suit in O.S.No.431 of 2002, on the file of the II Additional District Munsif, Nagercoil for declaration and injunction.

2. After completing the pleadings and framing of issues, on the side of the appellant/plaintiff, the appellant/plaintiff was examined as P.W.1 and 13 documents were marked as Exs.A1 to A13. On the side of the respondents/defendants, four witnesses were examined as D.W.1 to D.W.4 and 10 documents were marked as Ex B1 to Ex.B10.

3. After trial, the trial Court partly decreed the suit in respect of declaration alone, whereas, in respect of injunction, the suit was dismissed. Challenging the said findings of the trial Court regarding the dismissal of the relief in respect of injunction, the appellant/plaintiff filed an appeal in A.S.No.60 of 2006. Challenging the decree of declaration, the



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respondents/defendants filed an appeal in A.S.No.75 of 2006 on the file of the I Additional Sub-Court, Nagercoil. Since both the appeals were arising out of a common judgment, both the appeals were taken up together and a common judgment was passed and both the appeals were dismissed.

4. Challenging the said dismissal of the appeal in A.S.No.60 of 2006, the appellant/plaintiff filed the present second appeal, whereas, the respondents/defendants have not filed any appeal as against the findings in A.S.No.75 of 2006.

5. While admitting the second appeal, this Court has formulated the following substantial questions of law:-

“(1) Whether the First Appellate Court is right in dismissing the suit in part having found the plaintiff alone is having valid title?

(2) Whether the First Appellate Court is right in dismissing the suit having found that Ex.A5 deed of settlement cannot be revoked as contemplated under Section 126 of T.P Act?



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(3) Whether both the Courts below are not wrong in rejecting plea of possession of rights having found that the plaintiff is having valid title and defendants do not hold valid title?

4) Whether both the Courts below is right in holding that the revenue records alone assert possession and title when registered deeds are available to prove title on the plaintiff?"

6. The learned counsel appearing for the appellant/plaintiff would submit that the appellant/plaintiff had purchased the suit property under Ex.A8 and from the said date onwards, she was in possession of the property. Though the respondents/defendants claim title under Ex.B2, Ex.B3 and Ex.B4, the trial Court has not accepted the case of the respondents and declared that their sale deeds are not valid and would bind on the appellant. The appellate Court has also finds that Ex.A8 is valid and the appellant/plaintiff is entitled to declaratory relief. However, the appellant/plaintiff has not proved the possession of the suit property, therefore, the relief of permanent injunction was dismissed. Both the Courts below have failed to appreciate the evidence and it is the settled proposition



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of law that the principle of possession follows title since the suit properties are vacant site. Since the appellant/plaintiff's title has been declared, and both the Courts below ought to have granted a decree for injunction also on the basis of possession follows title. Once the title of the appellant/plaintiff is upheld, they ought to have granted a decree for injunction also. Further, all the issues framed by the Courts below were answered in favour of the appellant/plaintiff, except the injunction. Further, the trial Court has found that all the sale deeds in favour of the respondents/defendants were declared as invalid. The respondents/defendants have not filed any second appeal, cross-appeal or cross-objection against the said findings. Therefore, the decree of declaration has been granted regarding the suit property. Now, the appellant/plaintiff has filed the present appeal against the dismissal of the relief of injunction. Now, the Court has to see whether once the declaratory relief is granted in favour of the appellant/plaintiff, since the suit properties are vacant site, the principle of possession follows title is applicable to the present case. Both the Courts have failed to appreciate the same and given findings, therefore, the judgments warrants interference.



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7. The learned counsel appearing for the respondents/defendants would submit that the sale deeds Ex.B2, Ex.B3 and Ex.B4 are prior to Ex.A8. Immediately, soon after purchasing the property, the respondents/defendants have transferred the patta in their name and also paid the tax for the vacant site and also put up a compound wall and they were in possession of the property. Even the appellant/plaintiff has admitted that the respondents/defendants were in possession of the property. The appellant/plaintiff, while she was examining as P.W.1, has clearly admits that the respondents/defendants put up a compound Wall and they were in possession. When they sent the application to the Tahsildar for transfer of patta, they have clearly admitted that somebody was in possession, that means, on the date of filing the suit, the appellant/plaintiff has clearly admitted that she was in possession of the suit property, therefore, both the Courts finds that the respondents/defendants were in possession of the property, therefore, the relief of injunction was declined. Therefore, there is no merit in the appeal. The findings given by the Courts below are only



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based on the pleadings, oral and documentary evidence, which is factual finding and there is no substantial questions of law involved in this appeal and therefore, the second appeal has to be dismissed.

8. Admittedly, the appellant/plaintiff filed the suit for declaration and permanent injunction based on the sale deed Ex.A8 executed in favour of the appellant/plaintiff. The sale deed in favour of the appellant/plaintiff was exhibited as Ex.A8 and also their prior original title deeds were marked through the appellant/plaintiff. Based on the pleadings, oral and documentary evidence, the trial Court found that the appellant/plaintiff was entitled to get a declaratory relief and also the trial Court found that the sale deeds produced by the defendants/respondents were not valid and the vendor of the respondents/defendants had no right and title to convey the property and therefore, declaratory relief was granted in favour of the appellant/plaintiff. Though the respondents/defendants challenged that finding before the first appellate Court in A.S.No.75 of 2006 and the same was dealt with along with appeal in A.S.No.60 of 2006, the appellate Court



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re-appreciated the evidence and reiterated the findings regarding the declaration that the appellant/plaintiff is entitled to get a declaratory relief. Against the said findings, the respondents/defendants neither filed any separate appeal nor filed any cross-appeal. Even after the appellant/plaintiff filed the present second appeal against the dismissal of relief of permanent injunction, the defendants/respondents have not filed any cross-objection. Now, the core question is left before this Court that the findings regarding the possession of the property and that finding is only based on the pleadings, oral and documentary evidence. Though the appellant/plaintiff has pleaded that she has purchased the property and she was in possession of the property and therefore, she has filed the suit for declaration and injunction, the respondents/defendants are paying the vacant site tax and also put up the compound wall. Mutation was also transferred in their name and the patta was also stands in the name of the respondents/defendants. So, based on the pleadings and also the admission made by the appellant/plaintiff that the respondents/defendants put up a compound wall and also while making the application before the Tahsildar for transfer of



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patta, they have stated in that application that somebody was in possession and they were not in possession. Therefore, based on the evidence, the appellate Court also reiterated the findings of the trial Court regarding the possession and also the injunction. Therefore, subsequently, the appellant/plaintiff has filed an application in C.M.P.No.6750 of 2019 to amend the plaint for the relief of recovery of possession.

9. Though the learned counsel appearing for the respondents/defendants would submit that the respondents/defendants were in possession and they have send the material to prove the possession, but however, with abundant caution, the appellant/plaintiff filed the application for amending plaint for recovery of possession. Since the application filed by the appellant/plaintiff seeking to amend the plaint for recovery of possession was barred by limitation, this Court also dismissed that application on the ground that the relief cannot be granted after the limitation period. The respondents/defendants have firstly denied the possession and further pleaded the possession in his written statement and



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the appellant/plaintiff has not taken any steps to amend the plaint, even either before the trial Court or before the appellate Court or before this Court on earlier point of time, when they filed the second appeal.

10. A perusal of the entire materials shows that the appellant/plaintiff and the respondents/defendants have pleaded in respect of their title and possession, however, both the Courts granted the declaratory relief in favour of the appellant/plaintiff and declined to grant the relief of injunction and further, both the Courts have found that the respondents/defendants were in possession of the property and therefore, the said finding is based on the evidence of P.W.1. This Court finds that the appellant/plaintiff has admitted that she was not in possession.

11. Even though the respondents/defendants have proved their possession or not, it is well settled position that the appellant/plaintiff has to prove her possession on her own strength. The learned counsel for the appellant/plaintiff would submit that since it is a vacant house site, the



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principle of possession follows title to be applied to the present case. In this case, admittedly, the respondents/defendants have shown certain documents Ex.B2, Ex.B3 and Ex.B4 sale deeds and from that onwards, they were in possession. Though the sale deeds were declined as not followed by the trial Court, the appellant/plaintiff has admitted that the patta was transferred in the name of the respondents/defendants and no patta was transferred in the name of the appellant/plaintiff and when they filed an application to the competent authority for mutation, they have clearly stated that already patta transferred to somebody else. The appellant/plaintiff has also admitted that the respondents/defendants have put up a compound wall and also paid the tax for vacant land, but none of the mutation has been taken in the name of the appellant/plaintiff and though the principle of possession follows title would be applicable to the vacant site, if no other evidence to show that they were in possession of the suit property. The mutation taken place in the name of the respondents/defendants, even otherwise, the appellant/plaintiff has stated that the mutation taken place by somebody also and she has stated that she was not in possession and somebody was in possession. Once there



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is some cloud regarding the possession, the appellant/plaintiff ought to have sought the relief of recovery of possession, however, she filed amendment application only after expiry of the limitation period and she made an attempt to have the possession of the property in question, since they were barred by limitation. Therefore, it is well settled proposition of law that the appellant/plaintiff filed the suit for declaration and permanent injunction. It is for the appellant/plaintiff not to stig on to the title and also to prove the possession. Though in this case, the land in question is a vacant site, the principle of possession follow the title is applicable, whereas, on the ground that the respondents/defendants have substantiated that the suit property was covered by a compound wall, patta was also transferred in their name and they paid vacant site tax and the same was also admitted by the appellant/plaintiff. Therefore, in these circumstances, the appellant/plaintiff admitted that on the date of filing of the suit, the respondents/defendants are in possession and they have not sought for any relief of recovery of possession. This finding is only regarding the factual aspects and in the second appeal, this Court cannot extend its arms and the appellate Court



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cannot re-appreciate the evidence on the factual findings unless there is any perversity, and as such no substantial questions of law arise for consideration in this second appeal and therefore, there is no merit in the second appeal.

12. In the result, the second appeal is **dismissed**. No costs.
Consequently, connected miscellaneous petitions are closed.

NCC : Yes/No

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Index: Yes/No

Internet: Yes/No

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To

- 1.The First Additional Sub-Court,
Nagercoil.
- 2.The II Additional District Munsif,
Nagercoil.
- 3.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

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