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S.A.No.1073 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.1073 of 2013

M.Kasi Viswanathan

... Appellant/Defendant

-Versus-

R.Mani

... Respondent/Plaintiff

Appeal filed under Section 100 of C.P.C. against the judgement and decree dated 15.02.2013 passed in A.S.No.15 of 2010 on the file of the court of Subordinate Judge, Tiruppur confirming the Judgment and Decree dated 02.02.2010 passed in O.S.No.138 of 2003 on the file of the Court of the District Munsif Court, Avinashi.

For Appellant : *Mr.K.Govi Ganesan*

For Respondent : *Mr.S.Kousik for*
Mr.V.Anandhamoorthy

JUDGEMENT

This second appeal arises out of the judgment and decree of the court of Subordinate Judge at Tiruppur in A.S.No.15 of 2010 dated 15.02.2013 in confirming the judgment and decree of the court of District Munsif at Avinashi in O.S.No.138 of 2003 dated 02.02.2010.



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2. For the sake of convenience, the parties will be referred to as per their ranks in the suit.

3. The case of the plaintiff is that he purchased a large extent of the property, in which the suit wall is a part thereof, by way of a registered sale deed dated 11.04.1988. He would state that the defendant had purchased the adjacent property located on the southern side of his property on 27.08.2003 and 07.09.2003. After the purchase had been made by the defendant in the year 2003, he attempted to demolish the southern wall of the plaintiff's property. The plaintiff pleaded that the wall dividing the plaintiff's and the defendant's property absolutely belonged to him and therefore, he came forward with a suit for injunction to restrain the defendant, his men, agent etc., from interfering with his peaceful possession and enjoyment of the suit properties.

4. On service of summons, the defendant entered appearance and denied the right of the plaintiff to the suit wall and also disputed the validity of the sale deed dated 11.04.1988. According to him, the plaintiff's vendor himself had no



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right, title or interest for the extent of the property mentioned in the sale deed and therefore, even if the sale deed contains right over the suit wall, the plaintiff does not have any right over the suit wall for the vendor did not have right over the same. He would state that his vendor Kasi Iyer had purchased the property on 17.01.1966 who had in turn purchased the property by way of a sale deed dated 27.05.1964 from one K.R.Subramaniam. In both the sale deeds, the southern and northern walls of the defendant are covered. He would state that his predecessor-in-title one Viswanathan filed O.S.No.547 of 1990 on the file of the District Munsif Court at Tiruppur with respect to the Walls and the same was decreed on 01.09.1990. He would therefore claim that the suit wall exclusively belonged to him. Consequently, he prayed for dismissal of the suit.

5. The learned trial judge on the basis of these pleadings, framed the following issues:

- “1. வாதி கோரியுள்ள நிரந்தர உறுத்துக்கட்டளை பரிகாரம் பெற வாதி உரிமையுடையவர் என்பது சரியா?
2. வேறு பரிகாரங்கள் என்ன?”

6. On the side of the plaintiff, he examined two witnesses including himself as PW1 and marked Ex.A1 to Ex.A11. On the side of the defendant, he



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examined himself as DW1 and one Viswanathan as DW2 and marked Ex.B1 to Ex.B6. Pending the suit, one Elavarasu was appointed as an Advocate Commissioner and he submitted a report under Ex.C1 and a plan under Ex.C2 & Ex.C3.

7. The trial judge, on the basis of the evidence oral and documentary filed before him, came to a conclusion that the plaintiff has proved his case and thereby decreed the suit. Aggrieved by the said judgment and decree, the defendant preferred an appeal before the learned Subordinate Judge at Tiruppur in A.S.No.15 of 2010. The said appeal was dismissed by the Court on 15.02.2013. Aggrieved by the same, the present second has come before me.

8. Originally this court had ordered notice regarding admission on 21.11.2013. Thereafter, on 11.02.2022, the second appeal was admitted on the following substantial questions of law:

“1. Whether the courts below failed to recognize the fact that there was a serious dispute with regard to the right and title over the disputed wall and under such circumstances, whether a suit for bare injunction can be maintained by the plaintiff?”



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2. *Whether the findings of both the courts below can be held to be perverse due to improper appreciation of the oral and documentary evidence? ”*

9. I heard Mr.K.Govi Ganesan for the appellant and Mr.S.Kousik for Mr.V.Anandhamoorthy for the respondent.

10. Mr.K.Govi Ganesan would submit that as the defendant had denied the title of the plaintiff to the suit wall, a suit for permanent injunction is not maintainable. He would rely upon a classic judgment of the Supreme Court in ***Anathula Sudhakar vs. P.Buchi Reddy (Dead) by Lrs. and others, AIR 2008 SC 2033***. He would state that the trial court and the lower appellate court had misappreciated the evidence and therefore, had rendered the judgment perverse warranting interference by this Court.

11. Mr.S.Kousik would also rely upon the judgment of ***Anathula's case*** and would submit that the suit for declaration of title and injunction is not necessary in all the cases. He would state that such a relief must be claimed only on creation of cloud over the plaintiff's title by the defendant and only in such circumstances, the suit for declaration of title is necessary. He would state



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that the wall, which is the subject matter of the suit, had been dealt with as early as 1951 under Ex.A9 and therefore, the title having been vested in the predecessor of the plaintiff, the question of him seeking declaration of title would not arise. Insofar as the judgment and decree in O.S.No.534 of 1990 on the file of the District Munsif Court at Tiruppur is concerned, Mr.S.Kousik would submit that the plaintiff herein was not a party to the suit and hence, it is not binding on him.

12. I have carefully analysed the arguments on either side and I have gone through the records.

13. Insofar as the suit in O.S.No.534 of 1990 is concerned, it is a suit for permanent injunction. The plaintiff herein had purchased the property in the year 1988, but had not been made as a party to the said proceedings. It is trite that the suit for permanent injunction is not one *in rem* but one *in personam*. It operates only between the parties to the proceedings. The plaintiff herein, though had interest in the property by virtue of purchase in the year 1988, had not been made as a party to the said suit. Therefore, the judgment under Ex.A10 and the decree under Ex.A11 dated 12.09.1990 would not affect the right of the plaintiff.



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14. Now turning to the issue of whether the plaintiff has proved his title to the property, it is pertinent to note that both the sale deeds filed by the plaintiff and the defendant under Ex.A1 and Ex.A2, and Ex.B1 to Ex.B4 respectively, have been dealt with the wall which is the subject matter of the present suit. But a deeper probe into the title would show that under Ex.A9 as early as 09.05.1951, one Annamalai Chettiyar had purchased the suit wall along with the land that is situated therein. The relevant portion of Ex.A9 is extracted hereunder:

“சொத்து விபரம் கோயமுத்துார் அவனாசி சப்டி அவனாசி பஞ்சாயத்துப் போர்டுக்கு உள்பட்ட அவனாசி கிராமம் தாபாவில் அக்கரகார வீதியில் வீதிக்கும் மேற்கு தாமரக்குள வெங்கிட்டராமண அய்யாப்பாரியாள் வெங்கிட்டம்மாள் வீட்டுக்கும் வடக்கு சூலூர் லச்சிமி நரசிம்மய்யர் கத்திரித் தோட்டத்துக்கும் கிழக்கு A.R. சுப்பிரமணிய அய்யர் வகையரா வீட்டுக்கும் இதன் மத்தியில் கிழக்கு வாசல் 3 அங்கணவில்லைக் கட்டிடத்துக்கு அடங்கிய ரூம்களும் மேற்படிப் படிக்கட்டு முன்பின் வாசல் புரவடை கதவு நிலவு கட்டுக்கோப்பு சேத்து கிணர்ச்சகிதம் பூராவும் மேற்படி வீட்டு யூனியன் 5வது வார்டு 16 வது கதவிலக்கமுள்ளது.”

15. This would show that the wall had been alienated in favour of the predecessor in title to the plaintiff as early as 1951. Therefore, the defendant's



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vendor could not have alienated the property subsequently in favour of the defendant.

16. The position of law that had been argued by Mr.K.Govi Ganesan is that the vendors cannot convey more title than what they are entitled to do so and in this case, this applies to the sale made to the defendant from his predecessors. The document under Ex.A9 of the plaintiff which is prior in point of time, is at least four decades before, the purchase that had been made by the defendant. As the plaintiff's vendor has alienated the property continuously under Ex.A1, Ex.A2 and Ex.A9, the question of the defendant acquiring the land under Ex.B1 and Ex.B2 does not arise at all. It is pertinent to note that Ex.A9 is of the year 1951, whereas the Ex.A3 and Ex.A4 are 1966 and 1964 respectively. To put it in other words, the right over the wall had been asserted by Annamalai Chettiar, the predecessor-in-title to the plaintiff, at least 13 years before it was dealt with by the defendant's vendor.

17. This takes me to the next question, whether the suit for declaration of title is essential in all cases. I do not have to reinvent the wheel, but merely refer to the position of law laid down in **Anathula's case**. In the said judgment,



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Justice R.V.Raveendran was pleased to hold as follows:

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“To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a



suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in Annaimuthu Thevar [Annaimuthu Thevar v. Alagammal, (2005) 6 SCC 202]). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire



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into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

18. This judgment has been applied and the position of law has been clarified by the judgment of my brother Justice N.Seshasayee in ***Arulmigu Velakkai Sri Azhagiya Singaperumal Devasthanam vs. G.K.Kannan and Others, (2020) 3 CTC 69 Arulmigu***. The relevant portion of the judgment are as follows:

“34. If a mere denial in the pleading of the defendant is considered adequate, it instantly dispenses him of his burden to prove his plea of denial of plaintiffs title, which then will automatically elevate the defendant's pleading on a disputed fact (and not law) to the status of its proof. This would give an unfair procedural advantage to the defendant. Viewing it from another angle, if only a denial of plaintiff's title in the written statement without anything more, can be a ground to non-suit the plaintiff for not seeking a declaratory relief, then that could have been made the ground to dismiss the suit on a preliminary issue, but Order [XIV Rule 2 CPC](#), does not provide for this course. It cannot be ignored that, notwithstanding the nature of action, and irrespective of whether the relief sought is



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one under the common law, or a discretionary relief in equity, the procedure which the Courts adopt for trial of the case and the law on burden of proof that govern the trial remain the same for both.”

This shows that unless and until the defendant lets in evidence to show that the plaintiff's title is under a cloud, there is no necessity for the plaintiff to amend his plaint or to file the suit for declaration of title.

19. From the above discussion, I have come to the conclusion that the plaintiff has been able to trace his title from 1951 onwards, whereas the defendant's first document with respect to the suit wall arises only in the year 1964. The title having been transferred in favour of the plaintiff's vendor as early as 1951, I conclude the 1964 document does not shake the title so vested. Hence, I come to the conclusion that the relief of declaration of title is not necessary.

20. In the light of the above discussion, the substantial questions of law that has been framed is answered against the appellant and in favour of the respondent.

21. In fine, the judgment and decree of the court of Subordinate Judge at Tiruppur in A.S.No.15 of 2010 dated 15.02.2013 in confirming the judgment



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and decree of the court of District Munsif, Avinashi in O.S.No.138 of 2003

dated 02.02.2010 stands confirmed. The second appeal is dismissed. As the parties are neighbours, I am not inclined to impose cost in the matter.

21.03.2024

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order

To

- 1.The I Additional District Judge at Coimbatore,
- 2.The District Munsif Court, Avinashi.



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V.LAKSHMINARAYANAN, J.

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