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S.A.NO.495 OF 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 28 / 08 / 2024

JUDGMENT PRONOUNCED ON : 28 / 11 / 2024

CORAM

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.495 OF 2021

1.Thirunavukkarasu

2.Ravi

... Appellants / Appellants /
Defendants

Versus

1.Gowri (Died)

[Second Appeal is abated against first
respondent vide this Court's order dated
February 08, 2024 made in S.A.No.495 of
2021]

2.Kanniappan

3.Amudha

4.Deivayanai

5.Manivannan

... Respondents / Respondents /
LRs' of deceased sole plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated February 21, 2019 passed by the learned Subordinate Judge, Ponneri in A.S.No.6 of 2012, confirming the Judgment and Decree dated February 17, 2011 passed by the learned District Munsif, Ponneri in O.S.No.340 of 2004, and consequently dismiss the Suit in O.S.No.340 of 2004.

For Appellants

: Mr.R.Munuswamy



For Respondent-1 : Abated vide Order of this
Court dated February 8, 2024

For Respondents 2 to 5 : Mr.S.Vijay Anand

J U D G M E N T

This Second Appeal is preferred by the unsuccessful defendants assailing the Judgment and Decree dated February 21, 2019 passed in A.S.No.06 of 2012 by the 'Subordinate Judge, Ponneri' [henceforth 'First Appellate Court'], whereby the Judgment and Decree dated February 17, 2011 passed in O.S.No.340 of 2004 by the 'District Munsif Court, Ponneri' [henceforth 'Trial Court'] was confirmed.

2. To be noted, during pendency of the Appeal Suit before the First Appellate Court, the sole plaintiff – Elumalai died and hence, the Respondent Nos.2 to 6 in the Appeal Suit [Respondent Nos.1 to 5 herein] were brought on record as his legal representatives. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

Plaintiff's Case:



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3. The Suit Property originally belonged to one Saradambal.

The said Saradambal filed the Original Suit in O.S.No.200 of 1958 on the file of District Munsif Court, Poonamallee for specific performance against Balasundaram Chetty and others and the same was dismissed on August 3, 1961. Assailing the same, Saradambal filed an Appeal in A.S.No.354 of 1961 on the file of Sub Court (***Sic District Court***), Chengalpet and the same was allowed. Feeling aggrieved, Balasundaram Chetty and others filed Second Appeal in S.A.No.219 of 1964 before this Court and the same was dismissed. The said Saradambal and her son - Mohan had taken possession of the Suit Property through Court by filing E.P.No.577 of 1972 and been in its possession and enjoyment. The husband of Saradambal as well as her son predeceased her. The said Saradambal had one sister by name Valliammal, who also passed away. The plaintiff is the son of above said Valliammal and he is in possession and enjoyment of the Suit Property after the death of Saradambal as her only legal heir. As the plaintiff is employed in Porur, he is not able to permanently reside in the Suit Village. Taking advantage of the said fact, the defendants without any right, attempted to interfere with the plaintiff's peaceful possession and enjoyment of the Suit Property on October 3, 2004. Hence, the Suit for



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permanent injunction.

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Defendants' case:

4. The Defendant Nos.1 and 2 filed written statement denying the allegations made by the plaintiff in the plaint. They contend that the plaintiff had never been in possession and enjoyment of the Suit Property. The plaintiff and his parents are not residing in the Suit village and no way connected to the Suit Property. The defendants are absolute owners of the Suit Property and they are in continuous possession and enjoyment of the same for more than five decades *viz.*, more than the statutory period by adverse possession. The plaintiff ought to have sought the relief of declaration. There is no cause of action in this Suit. Accordingly, they prayed to dismiss the Suit with costs.

5. To be noted, the Trial Court has noted that the Defendant No.3 is said to have passed away one year before the date of plaint rendering the Original Suit against him a nullity.



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Trial Court:

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6. At trial, plaintiff - Elumalai was examined as P.W.1 and Ex-A.1 to Ex-A.3 were marked on the side of the plaintiff. On the side of the defendants, the 2nd defendant - Ravi was examined as D.W.1, one Senthil was examined as D.W.2 and Ex-B.1 to Ex-B.4 were marked.

7. After full-fledged trial, the Trial Court held that the Defendant Nos.1 and 2 failed to prove the execution and attestations of Ex-B.1 and Ex-B.2 – Sale Deeds (both) dated November 5, 1976 allegedly executed by one Mohan son of Saradambal in favour of Shanmuga Mudaliyar (said to be the father of first defendant) and Shankaran (3rd defendant) respectively. Further held that, since the said Mohan passed away in the year 1973, it is not possible for him to have executed Ex-B.1 and Ex-B.2 in the year 1976 as alleged and hence they are unbelievable. Further that Ex-B.3 – Kist Receipts and Ex-B.4 – Patta are obtained after filing of the Suit and therefore, not believable. Further held that, Ex-A.3 – Legal Heir Certificate proves that the plaintiff is the sole legal heir of Saradambal and that Ex-A.1- Decree in O.S.No.200 of 1958 and Ex-A.2 - Decree in A.S.No.354 of 1961 prove that the plaintiff is in possession and



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enjoyment of the Suit Property. Accordingly, the Trial Court decreed the

Suit as prayed for.

First Appellate Court:

8. Feeling aggrieved by the Trial Court's Judgment and Decree, the Defendant Nos.1 and 2 preferred an appeal in A.S.No.06 of 2012 before the First Appellate Court. After hearing both sides and perusing the documents available on record, it concluded that the Defendant Nos.1 and 2 have not proved their title and possession and that in the absence of foundational plea about the originals of Ex-B.1 and Ex-B.2, their certified copies are not acceptable. Accordingly, it concurred with the findings of the Trial Court and dismissed the Appeal Suit.

Second Appeal:

9. Feeling aggrieved by the Judgment and Decree passed by the First Appellate Court, the defendants have preferred this Second Appeal, and the same was admitted on July 2, 2021 on the following substantial question of law:

' In a suit for bare injunction qua agricultural land can a trial Court and first Appellate Court decree the suit after returning a finding that the title of the plaintiffs has not been



established / proved in a manner known to law by shifting the onus to the defendants and if yes, whether this would tantamount to disregarding the well settled principle that possession follows title in a Suit Property of this nature? '

Arguments:

10. Mr.R.Munuswamy, learned Counsel for the appellants / Defendant Nos.1 and 2 would argue that the Trial Court as well as the First Appellate Court wrongly placed the burden of proof on Defendant Nos.1 and 2.

10.1. Further that, Ex-B.1 and Ex-B.2 – Sale Deeds are not compulsorily attestable documents. D.W.1 in his evidence has explained the non-production of the originals of Ex-B.1 by stating that it was washed away in a flood and hence, registration copy has been filed. Ex-B.3 is the Kist receipt and Ex-B.4 is certified copy of revenue record (Computerized Patta) that have been long standing in the name of the Shanmugamudaliar who is none other than the father of first defendant. Mere fact that Ex-B.4 Patta is a certified copy of Patta obtained pending Suit viz., in the year 2010, does not undermine their credibility and validity. Ex-B.1 and Ex-B.2 – Sale Deeds prove the title of the defendants while Ex-B.3 to Ex-B.4 prove the defendants possession and enjoyment. Further, there is no reason



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to disbelieve the oral evidence of D.W.2.

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10.2. Further that, the Defendant Nos.1 and 2 denied the title of the plaintiff by marking Ex-B.1 to Ex-B.4 and examining themselves. Hence, the plaintiff ought to have amended the Suit incorporating the relief of declaration of title. But he miserably failed to do so. Learned Counsel would rely on the decision of Hon'ble Supreme Court in *Anathula Sudhakar vs. P. Buchi Reddy*, reported in (2008) 4 SCC 594 in this regard.

10.3. Further, drawing attention to the last four lines of Paragraph No.6 in Page No.8 of the First Appellate Court's Judgment, he would argue that the First Appellate Court has not at all applied its mind. The findings of the Trial Court as well as the First Appellate Court are perverse and demonstrate non-application of mind. Accordingly, he would pray to allow the Second Appeal and set aside the Judgment and Decree of Trial Court as well as First Appellate Court and the Suit shall be dismissed.

11. Mr.S.Vijay Anand, learned Counsel for the respondents /



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legal representative of the deceased sole plaintiff would submit that the original owner – Saradambal obtained possession through Ex-A.1 and Ex-A.2 – Court Decrees. She passed away on February 1, 1972. Her son - Mohan and husband – Pachaiyappan predeceased her. Ex-A.3 – Legal Heir Certificate issued in 1994 proves that the plaintiff is the sole legal heir. Hence, the plaintiff is entitled to the Suit Property and thus, the relief sought for. The defendants, who tried to interfere with the plaintiff's possession and enjoyment of the Suit Property. Hence, plaintiff filed the Suit for bare injunction.

11.1. Further would submit that the Defendant Nos. 1 and 2 without any pleadings in their written statement have surprisingly introduced Ex-B.1 and Ex-B.2 during examination of D.W.1. The plaintiff raised objection to mark Ex-B.1 and Ex-B.2 in the absence of originals and hence, they have been marked tentatively with the objection of the plaintiff. There was no opportunity for the plaintiff to file a reply statement about the execution, truth and validity of Ex-B.1 and Ex-B.2. Since said Mohan died before the date of Ex-B.1 and Ex-B.2, the plaintiff has denied Ex-B.1 and Ex-B.2 as suspicious documents probably created subsequent to the filing of the Suit. The Trial Court as well as the First Appellate Court



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rightly appreciated the evidence available on record and allowed the Suit.

There is no warrant to interfere with the same. Accordingly, he would pray that the Second Appeal is liable to be dismissed, the Judgment and Decree of Trial Court as well as First Appellate Court shall be confirmed.

Discussion:

12. This Court has heard on either side and perused the materials available on record in light of the Substantial Questions of Law.

13. Case of the plaintiff is that Saradambal filed the Suit in O.S.No.200 of 1958 on the file of the District Munsif Court, Poonamalle for specific performance of Agreement dated May 2, 1953 executed by Balasundaram Chetty, Pappathi Ammal and Shanmuga Mudaliar [defendants 1 to 3 therein] agreeing to sell the Suit Property to Saradambal and her husband / 4th defendant therein. The said Suit was dismissed after contest vide Ex-A.1 - Decree. Aggrieved Saradambal preferred an Appeal in A.S.No.354 of 1961 on the file of Sub Court (***Sic District Court***) Chengalpet and the same was allowed directing the 1st defendant along with 2nd and 3rd defendants therein to execute a Sale Deed in favour of plaintiff and her husband / 4th defendant within one month, in default



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thereof, the plaintiff shall be entitled to execute the Sale Deed through Court proceedings. Decree passed therein is marked as Ex-A.2. Aggrieved defendants 1 to 3 therein preferred S.A.No.219 of 1964 before this Court and the same was dismissed. Based on the Decree passed, Saradambal and her son – Mohan obtained possession through Court proceedings in E.P.No.577 of 1972 and had been in possession and enjoyment of the Suit Property since then.

14. However, on perusal of records, it is unclear whether a Sale Deed was executed in furtherance of Ex-A.2 – Decree or not. It also not known whether Saradambal took possession through the said Execution Proceedings or not. This is because the plaintiff miserably failed to produce the alleged Sale Deed or its copy or any other evidence in this regard.

15. Further case of the plaintiff is that while Saradambal passed away in 1972, her son - Mohan and husband predeceased her and that the plaintiff, Saradambal's sister's son, is her sole legal heir. This Court has perused Ex-A.3 which is the Legal Heir Certificate dated October 29, 1994 issued vide the proceedings in Pa.Mo.A5 – 10976 / 94.



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To be noted, Ex-A.3 – Legal Heir Certificate was obtained 22 years after the demise of Saradambal. The death certificates of her son - Mohan and her husband are not produced. The averment that the husband and son of Saradambal pre-deceased her is crucial in this case, because if it is not true, then Saradambal would not be entitled to entirety of the Suit Property. But the plaintiff has not let in any evidence to suggest the same. There is no clinching evidence on record to show that the plaintiff was the sole legal heir of Saradambal.

15.1. On perusal of records, it is discernible that Saradambal is a Hindu. Hence, the Hindu Succession Act, 1956 is the applicable law, as per which, if a female Hindu dies intestate, her property shall devolve first upon her sons and daughters (including the children of any predeceased son or daughter) as well as her husband; secondly upon the heirs of her husband; thirdly upon her mother and father; fourthly upon the heirs of her father; and lastly, upon the heirs of her mother. It is apposite to extract Section 15 of the Hindu Succession Act, 1956:

“15.General rules of succession in the case of female Hindus.-(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,- (a)



firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),-

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.”

15.2. The plaintiff claims to be Saradambal's sister – Valliammal's son. There is no evidence as to when Valliammal passed away. In the absence of evidence that there is no other legal heir to Saradambal, Ex-A.3 can only be treated as a relationship certificate showing the relationship between Saradambal and the plaintiff and not as



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a legal heir certificate. To be noted, Ex-A.3 lacks any statutory backing.

There is no evidence available on record to satisfactorily show that plaintiff is in possession and enjoyment of the Suit Property.

16. Further, during cross-examination of P.W.1 on October 19, 2010, the defendants' side put suggestions to the effect that the Suit Property was sold to Shanmuga Mudaliyar (father of first defendant) and Shankaran (3rd defendant) vide Ex-B.1 and Ex-B.2 – Sale Deeds. The plaintiff did not deny it, but merely stated that he is not aware of the same. Relevant extract is hereunder:

! . . வழக்கு போடுவதற்கு முன்பு தாவா சொத்து குறித்து வில்லங்கம் போட்டு பார்த்தேனா என்றால் வில்லங்கம் போட்டு பார்க்கவில்லை. என்னுடைய சித்தப்பா மகன் மோகன் என்பவர் 5.11.1976-ஆம் வருடம் 1 மற்றும் 2 பிரதிவாதியின் தகப்பனார் சண்முகம் முதலியாருக்கு தாவா சொத்து ச.நெ.121/1-ல் 80 செண்டு நிலத்தை பதிவு செய்யப்பட்ட பத்திரம் எண்.1571/1976 என்ற கிரையம் பதிவு செய்யப்பட்ட ஆவணமாக கிரையம் செய்து 1 மற்றும் 2 பிரதிவாதிகளின் தகப்பனாருக்கு சுவாதினம் ஒப்படைத்துவிட்டார் என்று சொன்னால் அது பற்றி எனக்கு தெரியாது. 5.11.1976-ஆம் ஆண்டு என்னுடைய சித்தப்பா மகன் மோகன் தாவா சொத்தின் ஏற்கனவே விற்ற 80 செண்டு போக மீதி உள்ள 63 செண்டு



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சொத்தை இந்த வழக்கின் 3-ஆம் பிரதிவாதியான சங்கரன் என்பவருக்கு பதிவு செய்யப்பட்ட கிரைய பத்திரம் எண்.1572/1976 மூலம் முன்றாம் பிரதிவாதிக்கு சுவாதீனம் ஒப்படைத்துவிட்டார் என்று சொன்னால் அது பற்றி எனக்கு தெரியாது. . . . '

16.1. D.W.1 was examined on November 23, 2010 and Ex-B.1 and Ex-B.2 were marked on November 30, 2010. There was sufficient time in between for the plaintiff to deny the title, execution and validity of Ex-B.1 and Ex-B.2. The plaintiff could have very well enquired about the same and filed reply Statement / rejoinder but he failed to do so.

17. As per Section 101 of Indian Evidence Act, 1872, a person who seeks the Court to render judgment on a legal right based on the existence of certain facts which he asserts, must prove the existence of those facts. Hence, in this case, the initial burden is upon the plaintiff to *prima facie* prove his title and possession. It is true that in a Suit for bare injunction, title cannot be decided. However, the plaintiff has to *prima facie* establish his title or possession over the Suit Property in order to obtain the relief of injunction. But the plaintiff has miserably failed to do so.



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18. On the other hand, the defendants have denied the plaintiff's title vide Ex-B.1 and Ex-B.2 and proved their possession and enjoyment of the Suit Property vide Ex-B.3 and Ex-B.4 – Revenue records. It is true that the defendants have marked Ex-B.1 and Ex-B.2, which are certified copies of Sale Deeds, in the absence of foundational plea about their originals. But however, before marking Ex-B.1 and Ex-B.2, the same was specifically put to the notice of the plaintiff by way of the aforesaid suggestions. Further, Ex-B.1 and Ex-B.2 are not compulsorily attestable documents. Furthermore, D.W.1 has deposed that the originals of Ex-B.1 and Ex-B.2 were washed away in flood. It is true that the Defendant Nos.1 and 2 have not explained the said fact satisfactorily. But they have produced Ex-B.3 Kist receipt and Ex-B.4 Computerized Patta, which as rightly pointed out by their learned Counsel, though Ex-B.4 Computerized Patta obtained after the Suit, the said document is long standing and hence it is credible and it proves the defendants' possession and enjoyment of the Suit Property.

19. The Trial Court as well as First Appellate Court wrongly casted the burden of proof upon the defendants to prove their title and possession of the Suit Property. The Trial Court and First Appellate Court



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erred in holding that the plaintiff proved his title. Plaintiffs cannot pick the

loopholes in the defendants case and lend support to their case. Ex-A.2 -

Decree is executory in nature. Whether pursuant to it, Sale Deed was executed or not, whether pursuantly possession was handed over or not has not been proved by plaintiff. There is not even a single paper to show that Saradambal, or her son, or the plaintiff was in possession and enjoyment of the Suit Property. There is no clinching evidence to conclude that the plaintiff is the sole legal heir of Saradambal. Further, as rightly pointed out by the learned Counsel for the appellants / defendants 1 and 2, the First Appellate Court has not applied its mind which is evident from the fact that it has considered the Suit as one for declaration and injunction in the last four lines of Paragraph No.6 in Page No.8 of its Judgment. In these, circumstances, this Suit must fail.

20. It is fruitful to cite the decision of Hon'ble Supreme Court in *Anathula Sudhakar v. P. Buchi Reddy*, reported in (2008) 4 SCC 594 wherein the Hon'ble Supreme Court has summarized the law in this regard as hereunder:



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“21.To summarize, 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



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

21. In view of *Anathula Sudhakar’s Case* (aforesaid



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decision), since in this case the Defendant Nos.1 and 2 have denied the title of the plaintiff vide Ex-B.1 and Ex-B.2, the plaintiff ought to have amended the plaint so as to include the prayer for declaration of his title as well. The plaintiff failed to do so. In these circumstances, Suit for bare injunction would not survive. On this score also, the Suit must fail. The substantial question of law is answered accordingly.

22. It is hereby clarified that this Court has not decided the legal validity of Ex-B.1 and Ex-B.2 in respect of the Suit Property.

Conclusion:

23. Resultantly, the Second Appeal stands allowed. The Judgment and Decree of the Trial Court as well as the First Appellate Court are hereby set aside. The Original Suit is dismissed. Keeping in mind the facts and circumstances of the case, there shall be no order as to costs.

28 / 11 / 2024

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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To

- 1.The Subordinate Court
Ponneri.
- 2.The District Munsif Court
Ponneri.



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R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.495 OF 2021

28 / 11 / 2024