

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.3.2013

Coram:

THE HONOURABLE MR.JUSTICE G.RAJASURIA

S.A.No.1505 of 1990

and

C.M.P.No.62 of 2013

Murugesan

... Appellant/defendant

vs.

1.J.Kannayiram
2.J.Shanmugam(deceased)
3.Saradammal
4.Soundar Rajan
5.Bhanumathi
6.Umamaheswari
7.Kannagi
8.Prakash
9.Ganapathy
10.Srinivasan

... Respondents/Plaintiffs

R3 to R10 brought on record
as Lrs of the deceased 2nd
respondent vide as per
order of Court dated 18.3.2002
made in C.M.P.Nos.22393 to 22395
of 2001

This second appeal is filed against the judgement and decree dated 23.12.1987 passed by the District Judge, Chengalpattu in A.S.No.123 of 1986 reversing the judgement and decree dated 24.10.1988 passed by the District Munsif, Chengalpattu in O.S.No.317 of 1981.

For Appellant : Mr.T.V.Krishnamachari

For Respondents : No appearance

JUDGMENT

This second appeal is focussed by the defendant, inveighing the judgement and decree dated 23.12.1987 passed by the District Judge, Chengalpattu, in A.S.No.123 of 1986 reversing the judgement and decree dated 24.10.1988 passed by the District Munsif, Chengalpattu, in O.S.No.317 of 1981, which is one for permanent injunction.

2.Despite printing the name of the counsel for the respondents, no one appeared and there is no representation also.

3.Heard the learned counsel for the appellant/defendant.

4. The parties, for the sake of convenience, are referred to here under according to their litigative status and ranking before the trial Court.

5.Compendiously and concisely, the germane facts absolutely necessary for the disposal of this second appeal would run thus:

(i)The original plaintiffs, namely, 1.J.Kannayiram and J.Shanmugam (the second plaintiff-J.Shanmugam died during the pendency of the second appeal, whereupon, his legal representatives were brought on record as respondents 3 to 10), filed the injunction suit seeking the following relief.

"to grant a permanent injunction restraining the defendant, his men and agents from in any manner interfering with the plaintiff's possession and enjoyment of the suit property."

(extracted as such)

specifying the following schedule of property:

SCHEDULE OF PROPERTY

In Chingleput town, Gundur Village, Chingleput Sub-Registration District and in S.No.371/2 of an extent o 21 feet east to west and 40 feet north to south bounded on the north by plaintiff's house on the south by Ellumalai Naicker's bakery, on the east by road and on the west by plaintiff's site occupied by Murugesan with shops.

on the main ground that the Government issued 'B' memo in the name of Jaganatha Naicker-father of the plaintiffs. The plaintiffs also put up shops and paying the tax also. While so, the appellant/defendant, without any manner of right, is trying to disturb the plaintiffs' possession. Hence, the suit.

6.The defendant, namely, Murugesan (the second appellant herein) filed the written statement resisting the suit on various grounds. The gist and kernal of the defence would run thus:

(i)The said Jaganatha Naicker, in whose name 'B' memo was issued, is none but the brother of Vedachala Naicker, who is the father of the defendant. There is 'Kannikoil' adjacent to the suit property and the residential house of the defendant also is near to

the temple and the source of ingress and egress for the said 'Kannikoil' and the residential structure of the defendant, is only the suit property.

(ii) In fact the suit property is sandwiched by G.S.T. Road, and the 'Kannikoil' premises.

(iii) Whereupon issues were framed. Up went the trial, during which, the second plaintiff-Shanmugam examined himself as P.W.1 and Exs.A1 to A22 were marked on the plaintiffs' side. On the defendant's side, the defendant examined himself as D.W.1 along with D.Ws.2 to 4 and Exs.B1 to B17 were marked.

(iv) Ultimately, the trial Court dismissed the suit, as against which, the plaintiffs preferred the appeal, whereupon, the first appellate Court reversed the judgement and decree of the trial Court.

7. Challenging and impugning the judgement and decree of the first appellate Court, this second appeal has been filed by the defendant on various grounds and also suggesting various substantial questions of law.

8. My learned predecessor formulated the following substantial questions of law:

"1. Whether the appellate Judge appreciated the case in a proper perspective as per facts of the case?

2. Whether the finding arrived at by the appellate Judge is based upon mis-reading of the recitals of Exts.A1 and Ex.A2 and photographs Exts.B1 and B2 and the misreading of the evidence of P.W.1 and D.Ws.1 to 4?

3. Whether the appellate Judge has properly framed all the issues?

4. Whether the appellate Court has properly looked into the documents filed while framing and deciding the issues?

5. Whether the appellate Court has properly followed the procedures laid down in law of injunction under Order 39 Rule 1 and 2 in granting the decree?

6. Whether the appellate Court failed to see the reasonings given by the trial Judge in paragraph 6 of the judgement in O.S.No.317 of 1981?

7. Whether the appellate Court has failed to see that the respondents have no cause of action to file the suit?

8. Whether the learned Judge failed to see that the respondents herein are under the permissive occupation of the suit property (Kannikoil lands) under the appellant?

9. Whether the decree and judgement of the court below is based on merely surmises and conjunctures?"

(extracted as such)

9.The learned counsel for the appellant/defendant would pyramid his arguments, which could succinctly and precisely be set out thus:

(i)The evidence on record would exemplify and demonstrate that the common propositus for the plaintiffs as well as the defendant in respect of the suit property, is only the deceased Jaganatha Naicker. The Government did choose to issue-Ex.A1-the 'B' memo in the name of Jaganatha Naicker. Both the plaintiffs and the defendant relied upon the same document.

(iii) While so, it is inconceivable as to how the first appellate Court could grant injunction as against another co-owner.

(iv)Over and above that the defendant also highlighted before the Court that Kannikoil is situated adjacent to the suit property, which is covered under the said 'B' memo.

(v)The house of the defendant-Murugesan also is situated in the same area, over which 'B' memo covers, and in such a case, the plaintiffs were not justified in getting such injunction.

(vi)During the second appellate stage C.M.P.No.62 of 2010 was filed for entertaining the judgement copy emerged in one other suit, namely, O.S.No.93 of 91.

10.The learned counsel for the defendant also, by referring to the said document, would try to put forth certain arguments to the effect that de hors the present suit, the defendant herein filed one other suit O.S.No.93 of 1991 seeking declaration and mandatory injunction and in that the shops put up by the plaintiffs herein in the suit property herein was ordered to be removed and as such, the defendant wanted to mark the copy of the judgement emerged in O.S.93 of 1991 also.

11.All the substantial questions of law are taken together for discussion, as they are interwoven and interlinked, interconnected and entwined with one another.

12.A mere running of the eye over the evidence available on record would connote and denote that indubitably and indisputably the 'B' memo-Ex.A1 issued by the Government stands in the name of Jaganatha Naicker. P.W.1-the second plaintiff, pulling no punches, candidly and categorically, stated that the said Jaganathan Naicker happened to be the father of the plaintiffs and the defendant happened to be Jaganatha Naicker's brother Vedachala Naicker's son. When such is the position, it is crystal clear that Jaganatha Naicker happened to be the propositus for both. In such a case, it is axiomatic that the plaintiffs were not justified in simply seeking injunction as against Murugesan Naicker-the defendant.The records also would evince that there exists Kannikoil and also the hut of the defendant near the koil.

13.The learned counsel for the second appellant/defendant would further put forth his arguments and a thumbnail sketch of the same would be to the effect that for having ingress and egress to the Kannikoil and the hut of the defendant, the suit property is required and apart from that there is no way for passing and re-passing and there is no denial of the said fact.

14.Ex.A1-the 'B' memo and Ex.A2-the resolution issued by the Chengalpattu Municipality were wrongly understood by the first appellate Court, even though it happened to be the last Court of facts. In order to have ingress and egress to the Kannikoil as well as to the hut of the defendant, the suit property to a sizable and considerable extent should be available, as a passage. But the plaintiffs are claiming as though they are entitled to have the shops exclusively to the exclusion of the defendant, who is also entitled to lay the same kind of right over the said suit property.

15.The plaintiff relied upon Ex.A2-the Resolution issued by the Chengalpattu Municipality, dated 26.7.1968, which would only denote and exemplify that the plaintiffs, namely, 1.Kannayiram and 2.J.Shanmugam were permitted to mortgage the property measuring 3591 sq.feet in T.S.No.371/2 in Ward No.3 and that document would not in any way be taken as something running contrary to Ex.A1-the 'B' memo.

16.The plaintiffs themselves exhibited Ex.A1 and they cannot give a go-by to it. In secula seculorum, so far Ex.B1 exists, no one can claim absolute title over the suit property. Only right to occupy could be recognised on the part of the persons claiming under Jaganatha Naicker in whose name Ex.A1 stands. This important legal point involved in this factual matrix was not understood by the first appellate Court, but it simply went to the extent of discussing as though Kannikoil had no proprietary right over the suit property, etc., which finding is liable to be quashed.

17.The first appellate Court formulated the following points for consideration:

- "1.Whether the defendant has shown better title than the plaintiffs (paramount title) to claim eviction of the plaintiffs?
- 2.Whether the defendant has permitted the plaintiffs to remain in possession?
- 3.Whether the plaintiffs have perfected title to the suit property by adverse possession?
- 4.Whether the lands belongs to Kannikoil temple as claimed by the defendant?"

18.There is no knowing of the fact as to how all those points would arise in a bare suit for injunction and that too in view of my discussion supra. It is not as though the plaintiffs being the sons

of Jaganathan Naicker are in exclusive possession of the entire area covered under Ex.A1.

19.Indubitably and indisputably, the Kannikoil and the hut of the defendant are situated within the area covered by Ex.A1-the 'B' memo issued in favour of Jaganatha Naicker. It is therefore explicitly clear that 'B' memo was obtained by Jaganatha Naicker not in his individual capacity and started enjoying the entire extent as his exclusive property.

20.The very facts that Jaganatha Naicker's brother's son's hut and the temple are situated in one and the same area, bespeak and betoken that it was not the exclusive property of Jaganatha Naicker alone, but it was under the enjoyment of Jaganathan Naicker and his brothers.

21.The first appellate Court, ignoring all those aspects, simply in paragraph No.13 of its judgement discussed about the alleged ownership of the temple and held as though the plaintiffs were having better title than the defendant and decreed the suit. A fortiori The approach of the first appellate Court was tangent and not proper in this factual matrix.

22.No doubt, the defendant also in the written statement went to the extent of asserting as though he was having the right to remove the shops put up by the plaintiffs herein, as a paramount title holder etc. But no counter claim has been filed by the defendant.

23.The trial Court in paragraph No.5 of its judgement clearly with reference to the evidence adduced before it, pointed out that the defendant, during trial narrated facts to the effect that the plaintiffs are the sons of Jaganathan Naicker, who is the uncle of the defendant, so to say, the defendant's father's brother and that, all are entitled to the said property and that there was no partition effected.

24.D.W.1(the defendant) also would state that the shops put up by the plaintiffs are causing obstruction to the ingress and egress to the temple and his hut and the said contention of the defendant was correctly understood by the trial Court and accordingly, the trial Court dismissed the prayer of the plaintiffs for such blanket injunction.

25.The trial Court also clearly pointed out that the plaintiffs could not establish their absolute right to put up shops in front of the temple by adverting to Ex.A2, as there is nothing in it to indicate that the Municipality had any proprietary right over the suit property and there is also nothing to convey that the plaintiffs obtained patta in their name relating to the suit property. The trial Courts findings are all convincing and quite acceptable.

However, the first appellate Court went tangent in dilating on some facts relating to the ownership of Kannikoil to own the property.

26. Not to put too fine a point on it, what Ex.A1 refers to is that in the big area there is also Kannikoil as well as hut. It is therefore obvious that the first appellate Court misunderstood the entire gamut and scope of the suit and simply reversed the findings of the trial Court, warranting interference in second appeal. On balance, the suit filed by the plaintiffs herein turned out to be an ill wind that blew no one any good.

27. Accordingly, the substantial questions of law are answered as under:

Substantial question of law (1) is decided to the effect that the appellate Judge failed to appreciate the case in a proper perspective as per the facts of the case.

Substantial question of law (2) is answered to the effect that the appellate Judge mis-read the recitals of Exts.A1 and Ex.A2 and photographs Exts.B1 and B2 and also misread the evidence of P.W.1 and D.Ws.1 to 4.

Substantial question of law (3) is answered to the effect that the appellate Judge framed the points for consideration wrongly.

Substantial question of law (4) is answered to the effect that the appellate Court failed to properly look into the documents filed while framing and deciding the issues.

Substantial question of law (5) is answered to the effect that the appellate Court failed to adhere to the procedures laid down in law of injunction under Order 39 Rule 1 and 2 in granting the decree.

Substantial question of law (6) is decided to the effect that the appellate Court failed to see the reasonings given by the trial Judge in paragraph 6 of the judgement in O.S.No.317 of 1981.

Substantial question of law (7) is decided to the effect that the appellate Court has failed to see that the respondents have no cause of action to file the suit.

Substantial question of law (8) is decided to the effect that neither the plaintiffs nor the defendant are permissive occupiers under one another.

Substantial question of law (9) is answered to the effect that the decree and judgement of the first appellate court has to be set aside and accordingly the same are set aside and the judgement and decree of the trial Court is restored.

28.In the result, the judgement and decree of the first appellate Court is set aside and the judgement of the trial Court is restored.

29.For the aforesaid reasons, I am of the considered view that C.M.P.No.62 of 2013 for entertaining the judgement copy emerged in one other suit is not necessary for the disposal of this second appeal.

30.In the result, the second appeal is allowed. No costs.

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

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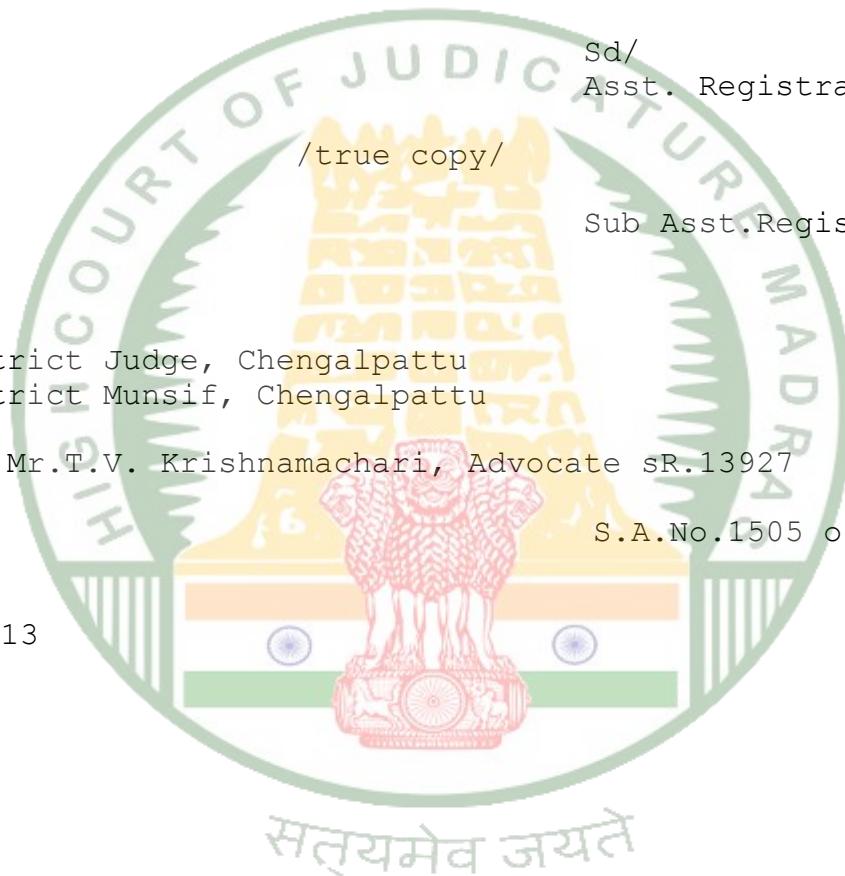
To

- 1.The District Judge, Chengalpattu
- 2.The District Munsif, Chengalpattu

+ 1 cc to Mr.T.V. Krishnamachari, Advocate SR.13927

S.A.No.1505 of 1990

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