

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2015

CORAM

THE HONOURABLE MS. JUSTICE R.MALA

S.A.No.1086 of 1999

1.Radhakrishnan (Deceased) .. 1st Appellant/Plaintiff
2.Jayalakshmi
3.Latha
4.Sudha Rani
5.Geetha
6.Venkatesan .. Appellants/Plaintiff/2 to 6
LRs of the 1st Appellant.

Vs

1. Panchayat Board,
Kuttalam rep. by its
Executive Officer, Kuttalam,
Myladuthurai Taluk. .. Respondent/Defendant.
2. Sangeetha
3. Murugan .. Respondents 2 to 3/LRs of 1st
Appellant(Plaintiff)

(Appellants 2 to 6 and RR2 and 3
brought on record as LRs of
deceased Sole Appellant vide
order of court dated 9.4.15
made in CMP.No.147 to 149/2009.

Prayer: Second appeal filed under Section 100 of CPC against the
Judgment and Decree dated 02.12.1998 in A.S.No.148 of 1997 on the
file of the learned Additional Subordinate Judge, Myladuthurai
confirming the Judgment and Decree dated 04.08.1997 in O.S.No.702 of
1994 on the file of the Principal District Munsif Court, Myladuthurai.

For Appellants : Mr.A.Muthukumar
For Respondents
R1 : Mr.S.Sounthar
R2 & R3 : No appearance

JUDGMENT

This second appeal arises out of the Judgment and Decree dated 02.12.1998 in A.S.No.148 of 1997 on the file of the learned Additional Subordinate Judge, Myladuthurai confirming the Judgment and Decree dated 07.08.1997 in O.S.No.702 of 1994 on the file of the Principal District Munsif Court, Myladuthurai.

2.The averments made in the plaint are as follows:-

The suit property was originally owned by one Panchaliammal, who purchased the same under a registered sale deed dated 03.12.1911. She died leaving behind her two sons, namely, Vaidyalingam Pillai and Meenakshi Sundaram Pillai. Vaidyalingam Pillai died leaving behind his son Pichai. Meenakshi Sundaram Pillai purchased his brother's half share under a registered sale deed dated 02.01.1946 from his brother's son and from that date onwards, he is in possession and enjoyment of the same. Meenakshi Sundaram Pillai died intestate leaving behind his only, namely, Radhakrishnan, the plaintiff. The plaintiff and his father Meenakshi Sundaram Pillai mortgaged the property in favour of one Muthukumarasamy on 14.03.1968. During the lifetime of Meenakshi Sundaram Pillai, they put up two shops facing Melachetty Street. The suit property was shown as A, B, C, D and the adjacent building is Door No.19. Since the building is in dilapidated condition, he is taking steps to put up new construction. The defendant Official wants the building to be rented out to them. Since the plaintiff refused to rent out the property, the defendant attempted to forcibly dispossess the plaintiff. Hence, the plaintiff was constrained to file a suit in O.S.No.702 of 1994 restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property and prayed for a decree.

3.The gist and essence of written statement filed by the defendant are as follows:

The suit property belong to Panchayat and automatic pumpset has been put up and function has been conducted and water has been supplied to the entire Village for the past 34 years. Since the motor has been repaired, the panchayat put up water tank in another place. The building belongs to the defendant and the plaintiff has no right over the property and he is not in possession of the property. The Advocate Commissioner has already inspected the property and filed a report. Since the plaintiff is not in possession, he is not entitled to any relief. Hence, he prayed for dismissal of the suit.

4.The Learned Trial Judge after considering the averments both in the plaint and written statement and arguments on either side counsel has framed necessary issues and on perusing the oral and

documentary evidence viz., P.W.1, P.W.2 and D.W.1 and Exs.A1 to A6, Exs.B1 to B5 and Exs.C1 and C2 dismissed the suit. Aggrieved against the judgment and decree of the trial court, the plaintiff preferred an appeal in A.S.No.148 of 1997 on the file of the Additional Sub Court, Myladuthurai.

5.The learned First Appellate Court has considered the argument advanced on either side and confirmed the Judgment and Decree passed by the Trial Court and dismissed the appeal. Against the Decree and Judgment of the first Appellate Court, the present second appeal has been preferred by the plaintiff.

6.At the time of admission of the above second appeal, the following substantial questions of law were framed for consideration.

"1.Whether the judgments of the Courts below

are vitiated for not framing the point for consideration as per Order XLI Rule 31 of the Code of Civil Procedure?"

7.Challenging the judgment and decree of the First Appellate Court and the Trial Court, the learned counsel for the appellants raised the following points:

(a)The appellant/plaintiff filed a suit for bare injunction on the basis of the title. He is enjoying the property. That factum was not considered by both the Courts below.

(b)At the time of disposal of the First Appeal, the First Appellate Court has not framed points for determination. So, the judgment of the Lower Court is non-est in the eye of law.

(c)Both the Courts below have failed to consider that as per Ex.A1 to Ex.A4, the appellant/plaintiff and his predecessor have right over the property.

(d)The Trial Court has erroneously relying upon the report of the Advocate Commissioner has dismissed the suit.

(e)Hence, he prayed for setting aside the judgment of both the Court below.

8.Refuting the same, the learned counsel appearing for the respondents would submit that the suit is for bare injunction and on the date of filing of the suit, the defendant has proved that he is in legal possession and he has put up automatic pumpset in the suit property. Since the motor has been repaired, new water tank has been put up in another place and the plaintiff taking advantage of that, has come forward with the suit. He would further submit that there is no evidence to show that the first appellant/plaintiff was in

possession. So, both the Court below has rightly held that the appellant has not proved the title to the property and hence, the first appellant/plaintiff is not entitled for the decree of injunction. Hence, he prayed for dismissal of the appeal.

9. Considered the rival submissions made on both sides and perused the typed set of papers.

10. It is pertinent to note that in the substantial question of law, it was stated that the First Appellate Court without framing any point for consideration has passed an order. On perusal of the judgment and decree of the First Appellate Court, which is the last Court for deciding the facts has considered all the aspects in proper perspective and came to the correct conclusion after perusing and evaluating the oral and documentary evidence. In such circumstances, even though a separate point for consideration has not been framed, it will not vitiate the judgment. Hence, the Substantial Question of law is answered against the appellant.

11. Now, this Court has to decide whether the first appellant/plaintiff is entitled for injunction? In injunction suit, the Court has to decide prima facie title to the property, legal possession, balance of convenience and irreparable loss to the plaintiff/appellant. Here, the first appellant/plaintiff has stated that the property has been purchased by Panchaliammal on 03.12.1911 under Ex.A3. She had two sons, namely, Vaidyalingam Pillai and Meenakshi Sundaram Pillai. Vaidyalingam Pillai died leaving behind two son Pichai. After the death of Panchaliammal, Meenakshi Sundaram Pillai purchased the half share from his brother's son Pichai. But admittedly the document was not filed. The first appellant/plaintiff filed Ex.A1 dated 11.04.1960, the mortgage deed executed in favour of one Nagappa Konar and Ex.A4 dated 14.03.1968, the plaintiff and his father executed the mortgage deed in favour of one Muthukumarasamy and only photocopies has been marked. Even though in the plaint, it was stated that the plaintiff purchased the property from his brother's son Pichai on 02.01.1946, the sale deed has not been filed before this Court. To prove the possession, he has not filed any document. But in the plaint, the plaintiff has stated that he and his father Meenakshi Sundaram Pillai has put up six shops, which is in dilapidated condition and to put up new construction he approached the defendant and at that time, possession was disturbed. But admittedly no document has been filed to show that there was a building constructed, which was assessed for tax. He has neither filed approved plan nor filed property tax register to show that he made a construction which was assessed to tax and and he paid the property tax.

12. Per contra, the respondent herein filed a petition for appointment of Commissioner. In pursuant to that, Commissioner was appointed, he inspected the property and filed a report and plan.

Since the respondent Panchayat Union has filed a memo calling for some clarification, the Commissioner has given the clarification and filed an additional report. On perusal of photographs/Exs.A5, A6, B1 and B2 along with Exs.C1 to C3 shows that the respondent has put up automatic pump set and it was used by the public and since it was repaired, the Panchayat put up the same in a different place which shows that the appellants are not in possession and enjoyment of the suit property. Furthermore, in Ex.A3, it was stated as East-West 102° x 50 feet and the plaintiff's house is on the eastern side. So, there is no evidence to show that the first appellant/plaintiff is in possession and enjoyment of the suit property, that too, legal possession. Those aspect has been rightly considered by both the Court below and came to the correct conclusion that the first appellant/plaintiff has not proved that he is in possession, that too, legal possession. So, he is not entitled to injunction and that factum was rightly considered by both the Courts below.

13. For the foregoing reasons, the decree and judgment passed by both the Court below does not warrant any interference and the same are hereby confirmed. The second appeal is liable to be dismissed and it is hereby dismissed.

14. In fine,

- Second appeal is dismissed with costs.
- The decree and judgment passed by both the Court below are hereby confirmed.
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cse

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Additional Subordinate Judge,
Myladuthurai.
2. The Principal District Munsif,
Myladuthurai.
3. The Record Keeper,
V.R.Section, High Court, Chennai.

+ 1 cc to Mr.A.Muthukumar, Advocate SR 23373

sv(co)
prk4/6

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