

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.03.2015

CORAM:

THE HON'BLE MS. JUSTICE K.B.K.VASUKI

Second Appeal No.1494 of 1999

1.G.Munusamy
2.G.Natarajan
3.G.Srinivasan

... Appellants/Respondent

Vs

1.P.Murugesan (deceased)
2.Malarselvi
3.Abhirami
4.Padmavathi @ Rebhaka
5.Revathi
6.Sathyaraj

... Respondents/Appellants

(R2 to R6 are brought on record as LRs of the deceased sole respondent vide order of Court dated 03.02.2015 made in CMP.No.311 of 2011 in SA.No.1494 of 1999.)

Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 15.04.1999 made in A.S.No.31 of 1998 on the file of the Subordinate Judge, Madurantakam reversing the Judgment and Decree dated 12.09.1997 made in O.S.No.137 of 1995 on the file of the District Munsif, Madurantakam.

For Appellant : M/s.B.T.Seshachari
For Respondents: M/s.N.Nagusah

J U D G M E N T

The defendants in OS.No.137 of 1995 who are the respondents in AS.No.31 of 1998 are the appellants in the present second appeal.

2.During the pendency of the second appeal, the appellants 2 and 3 are reported to be dead. As the suit is one for bare injunction and as the first defendant alone opposed the relief, by claiming title over the suit property and as the defendants 2 and 3 supported the first defendant's claim, the legal representatives of the appellants 2 and 3 are not brought on record and the appeal is pursued only by the first appellant. During the pendency of the second appeal, the first respondent/plaintiff died and his legal representatives are brought on record as respondents 2 to 6.

3.The first respondent herein since deceased filed the suit for permanent injunction restraining the defendants, their man, agents or servants from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the property, which according to the plaintiff belong to him on the strength of registered sale deed dated 09.01.1995 and 08.02.1995 and it is the plaintiff who had been since then in possession and enjoyment of the property by obtaining patta and by paying kist etc.,

4.The suit relief was opposed by the defendants by claiming title to the same on the strength of Ex.B1 sale deed dated 15.08.86 which is according to him, in respect of the suit property. It is their further case that first defendant is the bonafide purchaser and the defendants had been in possession and enjoyment of the same openly continuously and uninterruptedly to the knowledge of the villagers. The trial court on the basis of the available evidence arrived at a conclusion that the plaintiff failed to prove his title, possession and enjoyment of the suit property and the property purchased under Ex.B1 though comprised in S.No.193/4 and 193/5 was wrongly described as situated within the four boundaries mentioned therein and accordingly dismissed the suit. Aggrieved against the same, the plaintiff preferred AS.No.96 of 1997 which was subsequently transferred to different Court and renumbered as AS.No.31 of 1998. The lower appellate court by judgment and decree dated 15.04.1999 reversed the findings of the trial court and allowed the appeal by holding that the suit property was duly purchased by the plaintiff under Ex.A1 sale deed from the original owner and after the purchase, transfer was effected in the name of plaintiff in the revenue records and the plaintiff had thereafter been in possession and enjoyment of the property by paying kist and the property in enjoyment of the defendants was in different survey numbers and joint patta was issued in the name of the first defendant and others in respect of the property enjoyed by them and the plaintiff well established his right, title and possession over the suit property. Hence, this second appeal by the defendants 1 to 3 before this Court.

5.The Second Appeal is admitted on the following substantial questions of law :

(i)Whether the lower appellate court is right in decreeing the suit filed by the respondent/plaintiff in regard to grant of injunction when there is no finding that the plaintiff was in possession of the suit property on the date of the suit?

(ii)Whether the lower appellate court is right in going into the validity of title of the appellants/defendants in regard to the suit property and giving a finding in regard thereto?

(iii)Whether the finding of the lower appellate court is justified in decreeing the suit when the evidence of PW3 in cross examination clearly proves that the

appellants/defendants were in possession of the suit property?

6.Heard the rival submissions made on both sides and perused the records.

7.The suit relief sought for is in respect of the land measuring 24 cents in Nanja S.No.191/2C and 1 cent in Nanja S.No.193/4 together with 1/3rd share in the Well and 1 cent in Nanja S.No.193/5 together with 1/8 share in the Well in Mohalvadi village, Madurantakam Taluk, Chengalpattu.

8.The facts made available herein would reveal that the suit property and other property originally belonged to Chinna Audhiappa Reddiar under Ex.A2 sale deed dated 24.05.1940 and Chinna Audhiappa Reddiar died leaving behind his only son Lakshmanan whose legal heirs were his two sons by names Iyyappa Reddiar and Narayanasamy Reddiar and Iyyappa Reddiar died leaving behind his only son by name Lakshmipathy. The suit property was purchased by the plaintiff under Ex.A1 and Ex.A4 from Lakshmipathy s/o.Iyyappa Reddiar and Narayanasamy. The sale in the name of deceased plaintiff was also reflected in Ex.A5 Encumbrance Certificate for the period between 01.01.1982 and 11.10.1985. Ex.A3 is the kist receipt for the fasile 1404 corresponding year 1984 in the name of Murugesan. The plaintiff after his purchase applied for transfer of patta in his name and Ex.A7 dated 28.10.1996 is the communication issued by the Tahsildar office to take further action subject to outcome of the suit.

9.As far as Ex.B1 is concerned, the same is the sale deed in favour of the first defendant Munusamy by deceased Iyappa Reddiar and his son Lakshmipathy in respect of 8 cents out of 16 cents in S.No.193/4 and 16 cents out of 32 cents in S.No.193/5 along with share in the well in S.No.193/4. It is not in dispute that the property purchased by the plaintiff is measuring 24 cents in S.No.191/2C and 1 cent each in S.No.194/4 and 194/5 and also 1 cent with share in the Well in S.No.193/4 and 193/5. The main dispute raised herein is that the property purchased by the first defendant under Ex.B1 is not the same property purchased by the plaintiff.

10.As rightly argued by the respondents, the reading of the description of the property in the sale deeds Exs.A1 , A2 and A4 and B1 would very well support the plaintiff claim that both the properties are different properties. The description of the property as mentioned in Exs.A1 and A4 on one hand and Ex.B1 on other hand would reveal that the subject matter of both set of sale deeds are with different measurement and boundaries. It further reveals that while the plaintiff purchased 24 cents in S.No.191/2C and each one cent in S.Nos.193/4 and 193/5, there is remaining extent in the same S.Nos.193/4 and 193/5 and the property i.e, 8 cents in S.No.193/4 as 16 cents in S.No.193/5 purchased by the first defendant must be the

portion forming part of the remaining extent in S.Nos.193/4 measuring totally 16cents and 193/5 measuring totally 32cents. Though an attempt is made on the part of the first defendant to show that the survey number of the land purchased by him was wrongly given as S.No.193/4 and 193/5 in Ex.B1 sale deed, the same is not well substantiated by him. Had such theory been true, the first defendant would have taken appropriate steps to obtain rectification deed for changing the survey numbers in respect of the property purchased by him under Ex.B1. The unexplained failure on his part to do so would improbablise the claim so made by the first defendant. On the other hand, the plaintiff side duly established his right, title and interest in respect of the suit property through Ex.A2 prior title deed and through Ex.A1 and A4 sale deeds in his name.

11. Regarding possession, the plaintiff had purchased the suit property under Exs.A1 and A4 dated 09.01.1995 and 08.02.1995. The suit in OS.No.137 of 1995 came to be filed on 30.03.1995 and the cause of action averred in the plaint was the attempt made on the part of the defendants to interfere with the plaintiff's possession on 22.03.1995 within few months from the date of purchase of the property by the plaintiff under Exs.A1 and A4. The mutation of the property in the revenue records was not effected till the date of filing of the suit and the plaintiff applied for transfer of patta during 1996 and the patta proceedings are kept pending awaiting result of the suit proceedings. If that is so, the plaintiff could not have expected to produce any revenue records to prove his possession. However, the learned counsel for the plaintiff relied on Ex.B1 patta standing in the name of Iyyappa Reddy and Ex.B3 adangal extracts for the fasilies 1390 to 1403 corresponding to calendar years 1980 to 1993. The perusal of the same would reveal that while S.No.191/2C stands in the name of Iyyappa Reddy and Narayanasamy Reddy S.Nos.193/4 and 193/5 stand in the name of Iyyappa Reddy, Narayanasamy and Danakotti for the relevant period. In my considered view, the documents relied on the side of the plaintiff to the effect that the entries standing in the name of original owner/vendors in respect of S.No.191/2C would probablise the plaintiff's case regarding the possession and enjoyment of the suit property by his predecessor in title and thereafter by him.

12. Though the learned counsel for the first appellant/first defendant would by relying on Exs.B3 and B4 make an attempt to argue that adangal stands in his name in respect of suit property, the same on the basis of the entries made in the document is totally negatived for the following reasons. As far as Ex.B3 is concerned the same does not refer to the name of the first defendant/Munusamy but only refer to the name of one Danakotti w/o.Munian that too in respect of S.Nos.193/4 and 193/5. As far as Ex.B4 chitta is concerned, the same is issued in the name of Narayanasamy Reddiar and Munusamy for the lands in S.No.191/2 and 193/5 covered under patta No.144. As rightly pointed out by the learned counsel for the respondents, as patta No.144 covers both the lands in S.Nos.191/2C and 193/5 and as

Munusamy is the purchaser of portion of the land in S.No.193/5 the same will in no manner improve the claim of the first defendant suit property. Further as the purchase of the first defendant under Ex.B1 is of the year 1986 and as the particulars mentioned in Ex.B4 relates to the period prior to 1983 (ie) for the faslies 1393 to 1404 no greater reliance can be placed on this document which was obtained much after the institution of the suit.

13.Thus, the combined appreciation of oral and documentary evidence adduced on both sides would only go to show that the plaintiff having purchased the suit property from the original owner has been in possession and enjoyment of the suit property and having regard to the different extent of the property purchased by the defendants and absence of any other document to prove their possession, the admission if any made in the oral evidence of PW3 about his possession will in no manner support the case of the defendant.

14.The learned counsel for the appellant has also argued against the maintainability of the suit for bare injunction without seeking any declaration of title to the suit property. The learned counsel for the appellants in support of his contention relied on the authority of the Apex Court reported in (2009) 1 MLJ 1001 Anathula Sudhakar V. P.Buchi Reddy (dead) by Lrs and others wherein the Apex Court has in paras 11 and 17 laid down the general principles as to when the mere suit for permanent injunction will lie and when it is necessary to file suit for declaration and or possession with injunction, as consequential relief which which are extracted hereunder :

11.The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

11.1) Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

11.2) Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

11.3) Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

17. 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 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 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 (supra)]. 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

straight-forward, 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 plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.

15. However, the Apex Court has in para 12 is pleased to clarify that the prayer for declaration is necessary only if the denial of title by the defendants or challenge to plaintiff's title raises a cloud on the title of the plaintiff to the property and a cloud is said to raise over title when some apparent defect in his title to a property or when some prima facie right of third party over it, is made out or shown. It is further clarified therein that the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff title, it does not amount to raising cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient.

16. The Apex Court has also in para 17(d) further clarified that 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 straight forward, the Court may decide upon the issue regarding title, even in a suit for injunction and such cases are exception to the normal rule that question of title will not be decided in suits for injunction and the Hon'ble Supreme Court left it to the discretion of the courts below to identify the cases where it will enquire into title and cases where it will refer the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.

17. In my considered view, no such case is made out herein, as such the view of the Apex Court is not applicable to the facts of the present case. The present case is straight forward case where the title can be gone into the suit for mere injunction and no ground is made out herein to canvas the correctness of the findings of the lower appellate court in this regard and the substantial questions of law are answered against the appellants.

18. This court, for the discussions held above and on the basis of the available materials, is of the view that the lower appellate

court has rightly approached and decided the issues and the decisions of the lower appellate Court warrants no interference by this Court.

19.In the result, the second appeal is dismissed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

- 1.The Subordinate Judge, Madurantakam.
 - 2.The District Munsif, Madurantakam.
 - 3.The Section Officer,V.R.Section, high Court, Madras.
- +1 cc to M/s.M.V.Seshachari, Advocate,SR.14801.

Rv (co)
krd 16/7

S.A.No.1494 of 1999



WEB COPY