

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2015

CORAM

THE HONOURABLE MS. JUSTICE R. MALA

S.A.No.776 of 1999
and C.M.P.No.8096 of 1999

Judgment reserved on 22.04.2015	Judgment pronounced on 24.04.2015
------------------------------------	--------------------------------------

Suseela ...Appellant/2nd Defendant

Vs

1.S.Kalyani ... 1st Respondent/Plaintiff
2.Idumbaiyan ... 2nd Respondent/1st Defendant

Prayer: Second appeal filed under Section 100 of CPC against the judgment and decree dated 29.06.1998 in A.S.No.118 of 1997 on the file of the Principal Sub-Court, Nagapattinam, confirming the judgment and decree dated 14.08.1996 in O.S.No.392 of 1992 on the file of the District Munsif Court, Tirutturaipoondi.

For Appellant : Mr.A.Muthukumar
For R1 : Mr.Krishna Ravindran
Mr.V.Viswanathan
R2 : Notice dispensed with

JUDGMENT

The second appeal arises out of the judgment and decree dated 29.06.1998 in A.S.No.118 of 1997 on the file of the Principal Sub-Court, Nagapattinam, confirming the judgment and decree dated 14.08.1996 in O.S.No.392 of 1992 on the file of the District Munsif Court, Tirutturaipoondi.

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

(i) The suit land belongs to the Thiruvavarur Rajankattalai, which is owned by Dharmapura Adheenam and one Uthirapathy was in possession of the same as lease hold right and constructed a hut, from whom, one Rukmani Ammal purchased the said hut and she is in possession and enjoyment of the same. The first defendant, who is the younger son of the said Rukmani Ammal, is also residing in the said house. The plaintiff is the wife of the grand son of the said Rukmani Ammal and

thereafter, the plaintiff and his husband are also residing in that house and they are in possession and enjoyment of the same. Rukmani Ammal has also executed a sale deed in favour of the plaintiff. Thereafter, the first defendant has also agreed to vacate the house and hand over the same to the plaintiff. Since the first defendant without vacating the house, had taken away the usufructs of the trees situated in the suit land, the plaintiff lodged a complaint and filed a suit in O.S.No.49 of 1979, which was decreed in favour of the plaintiff. Aggrieved over the same, the first defendant preferred an appeal in A.S.No.85 of 1979, which was dismissed. Then the plaintiff filed E.P.No.235 of 1980 to execute the decree and she had taken possession on 24.07.1980. Since then, the plaintiff is in possession and enjoyment of the suit property. After the death of Rukmani Ammal, the first defendant with an intention to encroach upon the suit property threatened the plaintiff's family and thrown stones on them. So the plaintiff lodged a complaint before the Thiruthuraipoondi Police station and then filed the present suit for bare injunction.

3.The gist and essence of the written statement filed by the 2nd defendant, which is adopted by the first defendant are as follows:

(i)One Rukmani Ammal is residing in the suit property. First defendant is the 2nd son of Rukmani Ammal; The second defendant, who is the grand daughter of Rukmani Ammal, is the wife of first defendant. After the death of Rukmani Ammal, 2nd defendant is in possession and enjoyment of the suit property, for which, the plaintiff never made any objection. The suit itself is not maintainable without a prayer for declaration and also not impleading the 2nd defendant as party to the suit in O.S.No.49 of 1979. Therefore, she prayed for dismissal of the suit.

4.The gist and essence of the additional written statement filed by the second defendant which is adopted by the first defendant, are as follows:

(i)It is true, due to the suit property dispute, there was a case between the husband of the plaintiff and husband of the second defendant. The plaintiff taking advantage of the decree in her favour, disturbed the possession of the second defendant. At the intervention of the Mediators, the plaintiff executed a Muchalika disowning her right in the suit property. At the time of filing the suit, the plaintiff and her husband are not residing in the suit property and the second defendant alone is in possession and enjoyment of the suit property. Therefore, he prayed for dismissal of the suit.

5.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, D.W.1 to D.W.4 and Exs.A1 to A17 and Exs.B1 to B11, decreed the suit. Aggrieved against the judgment

and decree passed by the trial court, the second defendant preferred an appeal in A.S.No.118 of 1997 on the file of the Principal Sub-Court, Nagapattinam.

6.The learned First Appellate Court has considered the arguments advanced on either side and framed necessary point for consideration and confirmed the Judgment and Decree passed by the Trial Court and dismissed the appeal. Against the Decree and Judgment passed by the first Appellate Court, the present second appeal has been preferred by the second defendant/appellant.

7.At the time of admission, the following substantial question of law has been framed:

“(i) Whether the suit of the plaintiff for bare injunction is maintainable without the prayer for declaration of title?”

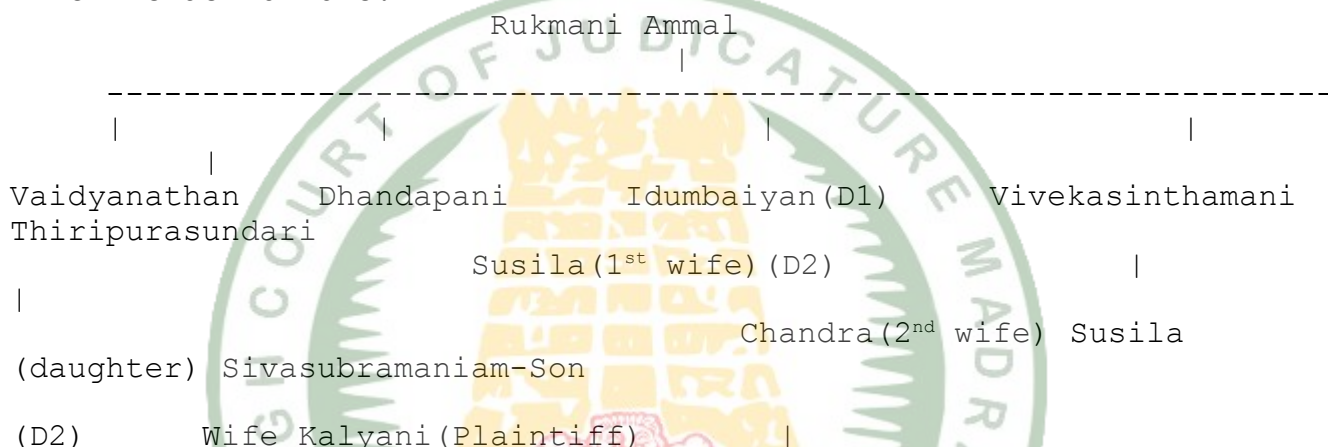
8.Challenging the concurrent findings of both the Courts below, learned counsel for the appellant/second defendant submits that the appellant alone is in possession and enjoyment of the suit property and to prove the same, she has filed Exs.B1 to B11. Ex.A5/delivery receipt filed by the first respondent will not bind upon the appellant or her interest, inasmuch as the appellant is not a party to that proceedings. So the suit itself is not maintainable without the prayer for declaration and also not impleading the Rajanga Kattalai as party to the proceedings. Therefore, he prayed for allowing the second appeal.

9.Resisting the same, learned counsel for the first respondent/plaintiff submits that the suit property was belonging to Dharmapura Adheenam and one Rukmani Ammal was the tenant under the lease hold right and she was in possession and enjoyment of the suit property. She executed a sale deed in favour of the plaintiff as per Ex.A1. Thereafter, the first respondent/plaintiff filed a suit in O.S.No.49 of 1979 for recovery of possession and damages and the suit was decreed on 27.06.1979, which were evidenced by Exs.A2 and A3. Aggrieved over the same, the first defendant/second respondent herein preferred an appeal in A.S.No.85 of 1979 and the same was dismissed by confirming the judgment and decree in Exs.A2 and A3. So the plaintiff/first respondent took possession of the suit property through the Court of law, which was evidenced by Ex.A5 and the suit register was marked as Ex.A6. The plaintiff has also paid lease amount to the Rajanga Kattalai and house receipts, which were evidenced by Exs.A7 to A10. Since the defendants attempted to interfere with the peaceful possession of the plaintiff/first respondent, she lodged a complaint as per Ex.A11 and the acknowledgment card was marked as Ex.A12. It is further submitted that both the Courts below have rightly considered all the above aspects in proper perspective and decreed the suit. Therefore, he prayed for dismissal of the second appeal.

10.Considered the rival submissions made on both sides and perused the materials available on record.

11.It is the case of the appellant that the suit for bare injunction is not maintainable without the prayer for declaration of title. Admittedly, the suit property is belonging to Rajanga Kattalai which is owned by Dharmapura Adheenam. Ex.A1 shows that Rukmani Ammal, who is having possessory right over the suit property sold the same to the first respondent/plaintiff vide registered document dated 22.08.1978.

12.The genealogy is necessary for the disposal of the case, which is as follows:



13.In the written statement, the first defendant pleaded that he obtained lease hold right in the name of his mother Rukmani Ammal as a binami. The first defendant is having two wives; first wife is the second defendant/appellant herein, who is his sister's daughter; The first defendant is residing with his second wife namely, Chandra in the yet another place. On the basis of the documentary evidence, it is clear that till the life time of Rukmani Ammal, she was residing with her grand son namely, Sivasubramaniam, who is born through her daughter namely, Thiripurasundari and his wife is the plaintiff/first respondent herein. So there is no dispute that Rukmani Ammal was having the possessory right. During her life time, she had executed a sale deed in favour of the plaintiff on 22.08.1978 in respect of the possessory right, which was evidenced by Ex.A1. Admittedly, she was in possession of the suit property as a lease hold right and she also built up a house and residing there.

14.On perusal of Ex.A1, it reveals that there are 18 cents in S.No.39, Door number is 1/51. Since the first defendant has not vacated the house, the plaintiff/first respondent filed a suit in O.S.No.49 of 1979 for recovery of possession and damages before the District Munsif Court, Thiruthuraipoondi and that suit was decreed as per Exs.A2 and A3. Aggrieved over the same, the first defendant preferred an appeal in A.S.No.85 of 1979 on the file of the Sub-

Court, Nagapattinam and the same was dismissed on 05.02.1980. Thereafter, the plaintiff filed a petition in E.P.No.235 of 1980 and delivery has been ordered on 24.07.1980, which was evidenced by Ex.A5. Ex.A6 is the suit register; Rental receipts and house tax receipts were marked as Exs.A7 to A10. Furthermore, Exs.A13 to A17 were marked to show that the first respondent is in possession and enjoyment of the suit property.

15. Admittedly, the first respondent has filed the suit against the first defendant for recovery of possession and damages and the same was decreed. Since the defendants attempted to interfere with her peaceful possession, the plaintiff after lodging the complaint as per Ex.A11, filed the present suit for bare injunction. As the plaintiff is already having title through the earlier proceedings, the present suit for bare injunction is maintainable. Under such circumstances, the trial Court has rightly held that the suit is maintainable. So the argument advanced by the learned counsel for the appellant that suit for bare injunction without the prayer for declaration of title is not maintainable, does not merit acceptance.

16. According to the evidence of D.W.4/Sivanandam, his aunt is Rukmani Ammal and he deposed that due to the dispute between the plaintiff and first defendant, a Panchayat was held and at the intervention of Panchayatars, the plaintiff/first respondent has received money and executed the sale deed in favour of the second defendant. But except the ipse dixit of D.W.4, no supporting document was filed to show that the plaintiff had executed the sale deed in favour of the second defendant. Moreover, D.W.1/2nd defendant has also not deposed about the same. In such circumstances, I am of the view, since title to the first respondent is not disputed, the suit for declaration of title is not necessary. In the written statement also, the second defendant has not raised a defence that the suit for bare injunction is not maintainable without the prayer for declaration of title. In the grounds of second appeal only, the second defendant has raised such defence. Since the second defendant is not a party to the earlier proceedings in O.S.No.49 of 1979 for recovery of possession and damages, she will not be a party to the execution petition also. Under such circumstances, the second defendant cannot be taken the defence of suit for bare injunction is not maintainable without the prayer for declaration of title. Since the plaintiff has already proved title in the earlier proceedings, the present suit for bare injunction is maintainable and it is the duty of the plaintiff to prove that she has prima facie having legal possession of the suit property. But the plaintiff is already in legal possession of the suit property and balance of convenience is in her favour. If the bare injunction is not granted to the plaintiff, she would be suffered irreparable loss. Furthermore, the plaintiff has filed Exs.A1 to A17 to prove that she is in possession and enjoyment of the suit property.

17.The main grievance of the appellant/second defendant is that even though she has filed rental receipts under Exs.B1 to B5, both the Courts below have not taken into consideration. On perusal of those documents, it would reveal that Exs.B1 to B5 came into existence after the suit has been filed. So it is clear that after filing of the suit only, the appellant had paid rental amounts to Rajanga Kattalai and obtained receipts.

18.As per the evidence of D.W.2/Kandasamy, he is running petty shop opposite to the suit property. But he has not filed licence to show that he is running petty shop opposite to the suit property. Moreover, he has not filed any scrap of papers to prove the same.

19.D.W.3/Murugesan, V.A.O. in his evidence fairly conceded that he had issued Ex.B11 certificate to the appellant without going through the documents. He does not know in which survey number, the appellant is residing and he also does not know her door number and boundary. Both the Courts below have rightly rejected their evidence.

20.Considering the facts and circumstances of the case, the first respondent/plaintiff has purchased the possessory right from Rukmani Ammal and then the plaintiff took possession of the suit property through the Court of law after filing the suit and she is in possession and enjoyment of the suit property by way of paying lease amount to Rajanga Kattalai and also house tax. In such circumstances, the plaintiff/first respondent is in possession and enjoyment of the suit property and she is entitled injunction as prayed for in the plaint. Hence, the suit for bare injunction is maintainable. The substantial question of law is answered accordingly.

21.For the foregoing reasons, the decree and judgment passed by both courts 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.

22.In fine,

- Second Appeal is dismissed.
- The decree and judgment passed by both Courts below are hereby confirmed.
- There is no order as to costs.
- Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kj

To

- 1.The Principal Sub-Court, Nagapattinam.
- 2.The District Munsif Court, Thiruthuraipoondi.
- 3.The Record Keeper, V.R.Section, High Court, Chennai.

+ 1 cc to Mr.A.Muthukumar, Advocate SR.22886
+ 1 cc to Mr.V. Viswanathan, Advocate SR.22763

NM(CO)
EU 03.06.2015

S.A.No.776 of 1999



WEB COPY