

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.07.2015

CORAM

THE HONOURABLE MS. JUSTICE R. MALA

S.A.No.1174 of 2000
and C.M.P.No.249 of 2014

Judgment reserved on 25.06.2015	Judgment pronounced on 02.07.2015
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Selvarathinathammal ... Appellant/Defendant

Vs

R.Rajeswari ... Respondent/Plaintiff

Prayer: Second appeal filed under Section 100 read with Order 41 rule 1 of CPC against the judgment and decree dated 24.02.2000 in A.S.No.125 of 1997 on the file of IV Additional Court, City Civil Court, Chennai, confirming the judgment and decree dated 12.09.1996 made in O.S.No.31 of 1995 on the file of the I Assistant Court, City Civil Court, Chennai.

For Appellant : Mr.T.R.Rajagopalan, senior counsel
for Ms.P.Veena

For Respondent : Mr.S.V.Jayaraman, senior counsel
Mr.K.V.Sundar Rajan

सत्यमेव जयते
JUDGMENT

The second appeal arises out of the judgment and decree dated 24.02.2000 in A.S.No.125 of 1997 on the file of IV Additional Court, City Civil Court, Chennai, confirming the judgment and decree dated 12.09.1996 made in O.S.No.31 of 1995 on the file of I Assistant Court, City Civil Court, Chennai.

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

(i)The plaintiff is the absolute owner of the vacant land measuring 4082 sq.ft. Comprised in T.S.No.55/1 part, Block No.13, V.O.C.Nagar, Anna Nagar and then she put up a thatched shed. She purchased the said property from S.Kuppusamy Naicker and S.Kanniappan by a sale deed dated 22.07.1981.

(ii)On 01.12.1994, some unknown people attempted to remove the bush and other shrubs in the suit property and on being questioned, they claimed that the suit property belongs to the defendant. The plaintiff immediately filed a complaint before the Anna Nagar police through her husband.

(iii)On summons by the police, the said persons informed that the defendant obtained a decree against some third parties and the plaintiff, who unaware of the proceedings, has nothing to do with the same, as she is not a party to that proceedings.

(iv)The plaintiff has also purchased another property by a sale deed dated 22.07.1981 from one Kalamagan measuring 4082 sq.ft. at T.S.No.137 part, V.O.C.Nagar. The plaintiff's brother has also purchased a property measuring 1113 sq.ft. from the said Kalamagan.

(v)The plaintiff is the absolute owner of the suit property by adverse possession and she has got perfect title by virtue of the sale deed. Therefore, the plaintiff has filed the suit for permanent injunction restraining the defendant, her husband, her men, from interfering with the plaintiff's peaceful possession and enjoyment of the suit property by trespass or by any other mode. Thus, the plaintiff has prayed for decree.

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

(i)The suit is not maintainable and is liable to be dismissed in limini. The suit for permanent injunction without seeking a relief for declaration is unsustainable. When the title in respect of the property is specifically denied, the plaintiff cannot maintain the suit by under valuing the property. The trial Court has no pecuniary jurisdiction to entertain the suit.

(ii)The property is comprised in pymash Nos.1231 to 1234 and other properties originally belonged to one Krishtappa Naicker and the said Krishtappa Naicker had three sons. The defendant has purchased the suit property from one Balasundari for a valuable consideration of Rs.12,000/- through a registered sale deed dated 29.10.1982, but she did not put the defendant into possession of the said property, which resulted the defendant in filing the suit for recovery of possession against the said Balasundari and some other persons in O.S.No.5545 of 1983. That suit was decreed exparte and subsequently, exparte decree was set aside and the same was remitted

for re-trial on merits. But that suit was dismissed by the trial Court, against which, the defendant preferred an appeal. During pendency of the appeal, defendant filed an application to appoint Advocate Commissioner to locate the suit property with the help of a surveyor and that application was allowed and the first appellate Court after going through the Commissioner's report, allowed the appeal. Subsequently, the defendant filed E.P.No.4012 of 1993 for taking delivery of the property and the same was allowed.

(iii)At this point of time, the legal heirs of the second defendant in the earlier suit namely, O.S.No.5545 of 1983 instigated the plaintiff to file the suit setting up title in her favour. The document filed by the plaintiff to support her case reveals that the property purchased by her in pymash Nos.1227 and 1228. The alleged purchase of the plaintiff does not relate to the property under execution. This defendant had no occasion to implead the plaintiff as a party since the property for which the defendant is taking steps to take possession is not the one and the same to the property shown in the schedule of the plaint. Therefore, 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, D.W.1 to D.W.3 and Exs.A1 to A9 and Exs.B1 to B12, decreed the suit. Aggrieved against the judgment and decree passed by the trial court, the defendant preferred an appeal in A.S.No.125 of 1997 on the file of the IV Additional Court, City Civil Court, Chennai.

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

6.At the time of admission, the following substantial questions of law have been framed:

"1.Whether the Courts below are right in decreeing the suit in the light of the findings that the property sought to be executed and the plaintiff's properties are different and not one and the same?

2.Whether the lower Appellate Court is right in confirming the decree passed by the trial Court in the light of subsequent events that has taken place that the plaintiff has filed another suit for declaration and injunction?"

7.Challenging the concurrent findings of both the Courts below, learned senior counsel for the defendant/appellant submits that the respondent herein as a plaintiff filed a suit for permanent injunction stating that she purchased the property from Kuppusamy Naicker and Kanniappan, sons of Sarangapani Naicker. The suit property is originally belonging to one Krishtappa Naicker, who is having three sons namely, Chinnasamy, Raghavel Naicker and Sarangapani. On 09.08.2000, there was a partition between them and the said Raghavel Naicker was allotted to pymash Nos.1231 to 1234. His son is Elumalai Naicker, who sold the property to Balasundari, from whom the defendant purchased the same. But the respondent/plaintiff is claiming title under the sale deed Ex.A1 executed by the sons of Sarangapani. He further submits that since the said Balasundari did not hand over the possession to the defendant/appellant, the defendant has filed a suit in O.S.No.5545 of 1983 for recovery of possession. The suit has been dismissed against which, she preferred A.S.No.221 of 1991, which was allowed and then the appellant/defendant has filed execution petition for delivery of possession and the same were evidenced by Exs.B2 and B3. Now Balasundari has instigated the respondent/plaintiff to file a suit, which is a collusive suit, so the respondent/plaintiff is not entitled to any relief. It is further submitted that revenue records would not confer title, merely because the respondent/plaintiff has filed urban land tax receipt, it would not confer any title. The respondent/plaintiff has not correlated the town survey number and in the partition deed under Ex.A8, only pymash number has been given. So the respondent/plaintiff has not proved her case. That factum was not considered by both the Courts below. Therefore, he prayed for allowing the second appeal. To substantiate his arguments, he relied upon the following judgments:

- (i)AIR 2008 SC 2033 (Anathula Sudhakar v. P.Buchi Reddy (dead) by legal heirs and others);
- (ii)(1989) 3 SCC 612 (Corporation of the City of Bangalore v. M.Papaiah and another);
- (iii)2007 (4) CTC 70 (Chinna Nachiappan and another v. PL.Lakshmanan);
- (iv)2014 (3) CTC 820 (Subramanian v. Kosalai Ammal (deceased) and others);
- (v)2014(3)CTC 785 (Amsaveni v. The District Revenue Officer, Madurai and others);
- (vi)2014 (2) SCC 269 (Union of India and others v. Vasavi Cooperative Housing Society Limited and others);
- (vii)(2013) 4 MLJ 414 (N.Raman v. P.Sivalingam and others);

8. Resisting the same, learned senior counsel for the respondent/plaintiff would submit that admittedly original owner is one Krishtappa Naicker and he is having three sons namely, Chinnaamy, Raghavel Naicker and Sarangapani Naicker. The suit property was allotted to one Sarangapani, from whom, the respondent/plaintiff has purchased schedule No.3 under Ex.A1. When the Government has intended to acquire the property, it has issued Ex.A5 notification under Section 4(1) of the Land Acquisition Act, for which, the respondent/plaintiff has sent a reply to the land acquisition officer under Ex.A6, wherein it was specifically mentioned that the respondent/plaintiff is having right over the suit property and she is in possession and enjoyment of the same. In the suit for bare injunction, the respondent/plaintiff has to prove her legal possession, for which, the plaintiff/respondent herein filed the documents under Exs.A1 to A9 and she has proved her possession. Both the Courts below have considered all the aspects in proper perspective and rightly decreed the suit. Therefore, he prayed for dismissal of the second appeal. To substantiate his arguments, he relied upon the following decisions:

- (i) (2002) 9 SCC 565 (Chandra Bhan v. Pamma Bai and another);
- (ii) 1972 SC 2299 (M.Kallappa Setty v. M.V.Lakshminarayana Rao);
- (iii) AIR 1989 SC 1809 (Corporation of the City of Bangalore, v. M.Papaiah and another);
- (iv) AIR 2008 SC 2033 (Anathula Sudhakar v. P.Buchi Reddy (dead) by legal heirs and others);
- (v) AIR 1966 SC 1332 (Sheodan singh v. Daryao Kunwar);
- (vi) AIR 1961 Bombay 169 (Ramaji Batanji v. Manohar Chintaman and others);
- (vii) 2006 (4) CTC 25 (Rajeswari v. Nagarajan and others);
- (viii) AIR 1996 Orissa 141 (Smt.Laltoomani Mohanty v. First Additional District Judge, Cuttack and others);
- (ix) (2000) 3 M.L.J. 785 (Sadasiva Gounder and another v. Purushothaman);

9. During pendency of the second appeal, C.M.P.No.249 of 2014 has been filed by the appellant for reception of additional document viz., certified copy of the judgment and decree in O.S.No.4532 of 2011 which was filed by this respondent as plaintiff for declaration and consequential permanent injunction and the same was dismissed for default. The respondent has also filed a counter stating that the said document is not necessary for the disposal of this suit.

10. Considering the rival submissions made by both sides, as the suit in O.S.No.4532 of 2011 has been filed after filing of the present second appeal and it was dismissed for default, I am of the

view that the document is not necessary for the disposal of the second appeal. Hence, the application in C.M.P.No.249 of 2014 is dismissed.

Substantial questions of law 1 and 2:

11. On perusing the records, it reveals that originally, the suit property is belonging to Krishtappa Naicker and he is having three sons namely, Chinnasamy, Raghavel Naicker and Sarangapani. Chinnasamy was allotted to 'A' schedule property, Raghavel was allotted to 'B' schedule property, Sarangapani was allotted to 'C' schedule property. The respondent/plaintiff purchased the property from the sons of Sarangapani namely, Kuppusamy Naicker and Kanniappan vide sale deed dated 22.07.1981. In Ex.A1, it was specifically mentioned that T.S.No.55/1 part, Block No.13, Plot No.M part 2 and 3, extent is 4082 sq.ft. Ex.A2 is the Encumbrance certificate; Ex.A3 is the receipt for urban land tax paid by the respondent/plaintiff on 16.07.1981.

12. While the Government was taking steps for acquiring the property, they issued notification under Section 4(1) of the Land Acquisition Act and the same was marked as Ex.A5. In Ex.A5, the respondent/plaintiff name has been mentioned in T.S.No.55/18 part as registered holder and her vendors names have also been mentioned as "Kuppusamy Naicker, S/o Sarangapani Naicker, Kanniappa Naicker, S/o Sarangapani Naicker" in T.S.No.55/1. It shows that the plaintiff/respondent herein has purchased the property from Kuppusamy Naicker and Kanniappa Naicker and the same has been proved by the proceedings of the Government.

13. Furthermore, the respondent/plaintiff has sent Ex.A6 reply to the Special Deputy Collector, Land Acquisition Madras City, in which, it was stated that she is not willing to spare 2030 sq.ft. as required by the Government. Ex.A7 is the town survey register which shows that the respondent/plaintiff is in possession of 3 grounds 39 sq.ft. vacant land. She also filed Ex.A8 partition deed.

14. The case of the appellant/defendant is that son of Raghavel Naicker namely, Elumalai naicker has sold the suit property to one Balasundari, from whom, the appellant/defendant has purchased the suit property. The same was also mentioned in Ex.A5/notification under Section 4(1) of the Land Acquisition Act, which was issued by the Special Deputy Collector, Land acquisition, Madras City, as "S.No.55/1, 0.12.1096 sq.ft., Elumalai, son of Ragavan". The said Elumalai sold the property to one Balasundari under Ex.B4 on 05.05.1976. The said Balasundari had executed a sale deed dated 29.10.1982 in favour of the appellant/defendant.

15.As per the contention of the appellant/defendant, she has not taken possession of the property. Hence, she forced to file the suit in O.S.No.5545 of 1983 for recovery of possession against Balasundari, Kanthappan, Kulothungan and Saradamani. The plaint in O.S.No.5545 of 1983 was marked as Ex.A9. That suit was dismissed and the judgment was marked as Ex.B2, against which, appeal has been preferred. The judgment in the appeal was marked as Ex.B3.

16.Admittedly, the appellant/defendant is not in possession of the property under Ex.B1, even though she has purchased the same under Ex.B1. But the plaintiff/respondent herein has proved that she purchased the property and she is in possession and the same has been recognised. Since the appellant/defendant is taking steps to execute the decree passed in O.S.No.5545 of 1983, she has attempted to interfere the possession of the respondent/plaintiff, so the respondent/plaintiff has immediately filed the present suit. So delivery of possession has not been effected.

17.It is pertinent to note that the appellant/defendant has filed photographs of the suit property under Exs.B7 to B9 and the bill produced by the studio under Ex.B10. It is true, it is a vacant site. Admittedly, possession follows title, but it is not the case that the plaintiff/respondent is not in possession. In the case on hand, Advocate Commissioner was appointed and in the Commissioner's report and plan under Exs.C1 and C2, it was specifically mentioned that the property of the appellant/defendant was form part of the property under Ex.A1. But both the Courts have considered the boundary and came to the conclusion that the suit property is entirely different from the subject matter of suit property in O.S.No.5545 of 1983. As per Ex.A1, the plaintiff/respondent herein purchased the suit property and she is in possession and that has been evidenced by the documents filed by her.

18.It is well settled law that while filing the suit for bare injunction, the plaintiff/respondent has to prove legal possession, then only she is entitled to the injunction. But here, the respondent/plaintiff has filed Exs.A1 to A9 to prove that she is in legal possession.

19.Learned senior counsel for the appellant/defendant submits that once title has been denied, the respondent/plaintiff has to file the suit for declaration of title. For the reason, he relied upon the following decisions:

(i) In AIR 2008 SC 2033 (Anathula Sudhakar v. P.Buchi Reddy (dead) by legal heirs and others), in para-17, it is held as follows:

"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."

In the above decision, it was held that there is no title dispute between both the parties. Both the parties are claiming title from different parties. Hence, the suit for injunction is maintainable.

(ii) For the aforesaid proposition, he relied upon the another decision reported in (1989) 3 SCC 612 (Corporation of the City of Bangalore v. M.Papaiah and another). Para-4 and 5 are extracted hereunder:

"4. So far the scope of the suit is concerned, a perusal of the plaint clearly indicates that the foundation of the claim of the plaintiffs is the title which they have pleaded in express terms in paragraph 2 of the plaint. It has been stated that after cancelling the acquisition of the suit property for a burial ground the land was transferred to Guttahalli Hanumaiah under G.O. No. 3540 dated 10.6.1929 on payment of upset price. In paragraphs 3 and 5 the plaintiffs have reiterated that the first plaintiff was the owner-in-possession. It is well established that for deciding the nature of a suit the entire plaint has to be read and not merely the relief portion, and the plaint in the present case does not leave any manner of doubt that the suit has been filed for establishing the title of the plaintiffs and on that basis getting an injunction against the appellant-Corporation. The court fee payable on the plaint has also to be assessed accordingly. It follows that the appellant's objection that the suit is not maintainable has to be rejected. The Additional Civil Judge, who heard the appeal from the judgment of the trial court, examined the question of plaintiffs' title and rejected their case. The question of possession was also separately taken up, and it was found that the plaintiffs had failed to prove their possession until 24.8.1973 when they allege that the appellant-Corporation trespassed. Accordingly,

the appeal was allowed and the suit was dismissed.

5. In reversing the decision of the first appellate court the High Court committed several serious errors of law. The High Court appears to have been confused on the question whether the issue of title to the disputed property was involved in the suit or not. The judgment shows that the High Court has made several inconsistent observations. By way of illustration, the following passage at page 13 of the paper book (of this Court) may be seen:

This Court must accept this argument in view of the circumstances that there was no issue involving the title. The title has been satisfactorily established by the appellants and the respondent has failed to establish its title. Therefore, the first appellate court is wholly wrong in raising issues which did not arise in the case and reaching the conclusion that the suit was bad since the appellants did not seek the relief of declaration of title and possession.

We do agree that the suit cannot be dismissed on the ground that the relief of declaration of title and possession has not been specifically mentioned in the plaint. "

(iii) He also relied upon the decisions reported in 2007 (4) CTC 70 (Chinna Nachiappan and another v. PL. Lakshmanan), 2014 (3) CTC 820 (Subramanian v. Kosalai Ammal (deceased) and others), 2014 (3) CTC 785 (Amsaveni v. The District Revenue Officer, Madurai and others).

On going through the above decisions, I am of the view, the above decisions are not applicable to the facts of the present case.

20. Learned senior counsel for the respondent/plaintiff has relied upon the following decisions:

(i) In (2002) 9 SCC 565 (Chandra Bhan v. Pamma Bai and another), wherein it was held that High Courts interference with concurrent findings of fact when not warranted. In para-6, it is held as follows:

"6. We have heard learned counsel for the parties and we have also gone through the judgments passed by the lower courts as also by the High Court. Since the trial court and the lower appellate court had recorded concurrent findings of fact that Ram Nihore was not in possession at any time over the land in

question and that the defendant had acquired the bhumiswami rights under the M.P. Land Revenue Code on account of his long uninterrupted possession, it was not open to the High Court to reverse those findings, particularly when the findings were supported by the own admission of Ram Nihore that at the age of 13 he had left the village and returned after 16-17 years which indicated that he was not in possession over the land in question. The appeal is, accordingly, allowed. The judgment passed by the High Court is set aside and those of the lower courts are restored. There shall be no order as to costs."

The above decision is squarely applicable to the facts of the present case.

(ii) In 1972 SC 2299 (M.Kallappa Setty v. M.V.Lakshminarayana Rao), wherein it was held that the respondent has filed a suit on the basis of the sale deed. So the suit is maintainable. There is no quarrel over the same.

(iii) In AIR 1989 SC 1809 (Corporation of the City of Bangalore, v. M.Papaiah and another), it was held that revenue record is not a document of title.

21. Considering the above decisions along with the facts of the present case, I am of the view, the plaintiff/respondent herein has filed the suit only on the basis of Ex.A1 sale deed and to prove her legal possession, she need not file a suit for declaration of title and injunction. Both the Courts below rightly held that the respondent/plaintiff prima facie filed the documents and proved her title and legal possession. Since the appellant/defendant who is not in possession of the suit property, has interfered the plaintiff's possession, the respondent/plaintiff has filed the suit for permanent injunction and she is entitled to the relief as prayed for in the plaint. So the decree and judgment passed by both the Courts below are unassailable. Thus, substantial questions of law 1 and 2 are answered against the appellant/defendant.

22. For the foregoing reasons, the decree and judgment passed by both the courts below does not suffer any irregularity or illegality and it does not warrant any interference and the same are hereby confirmed. The second appeal is liable to be dismissed and it is hereby dismissed.

23.In fine,

- Second Appeal is dismissed with costs.
- The decree and judgment passed by both the Courts below are hereby confirmed.
- Consequently, C.M.P.No.249 of 2014 is dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kj

To

1.The IV Additional Court,
City Civil Court, Chennai.

2.The I Assistant Court,
City Civil Court, Chennai.

3.The Record Keeper,
V.R.Section,
High Court, Chennai.

+1cc to Mr.K.V.Sundararajan, Advocate, S.R.No.32774

+1cc to Ms.P.Veena, Advocate, S.R.No.33019

S.A.No.1174 of 2000
and
C.M.P.No.249 of 2014

TEJ(CO)
CA(27/07/2015)

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