

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2015

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THE HONOURABLE MS. JUSTICE R. MALA

S.A.No.389 of 2007

Judgment reserved on 01.06.2015	Judgment pronounced on 04.06.2015
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Ramasami Reddy (deceased)
2.Nagalakshmi
3.R.Balakrishnan
4.R.Gopi
5.R.Ramamoorthi ..Appellants/LRS of deceased Plaintiff

(Appellants 2 to 5 brought on record as legal heirs of the deceased sole appellant vide order of this Court dated 09.03.2012 made in M.P.No.1 to 3 of 2012 in S.A.No.389 of 2007)

Vs

Govinda Reddy (deceased) ...2nd Respondent/2nd Defendant
2.Anandaraman
3.G.Subramani
4.G.Velu
5.G.Venugopal ... Respondents 3to 5/LRS of deceased first Defendant

(R3 to R5 brought on record as legal heirs of the deceased R1 vide order of this Court dated 27.02.2013 made in M.P.Nos.4 to 6 of 2012 in S.A.No.389 of 2007)

Prayer: Second Appeal filed under Section 100 of CPC against the judgment and decree dated 26.12.2005 in A.S.No.20 of 2005 on the file of the Sub-Court, Ranipet, confirming the judgment and decree dated 14.12.2004 in O.S.No.425 of 1992 on the file of the District Munsif Court, Sholinghur.

For Appellant : Mr.K.V.Subramaniam, senior counsel for
Mr.M.A.Abdul Wahab
For Respondents : Mr.A.Gowthaman

JUDGMENT

The second appeal arises out of the judgment and decree dated 26.12.2005 in A.S.No.20 of 2005 on the file of the Sub-Court, Ranipet, confirming the judgment and decree dated 14.12.2004 in O.S.No.425 of 1992 on the file of the District Munsif Court, Sholinghur.

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

(i)One Bangarammal purchased the suit properties from one Desugan for valuable consideration as per the registered sale deed dated 27.10.1969 and that she was in possession and enjoyment of the same. The land in the third item of the suit property is a poramboke land which belongs to the Government and the same was vested with Paranji Panchayat Board. The said Bangarammal and her husband Senebukan were in enjoyment of the third item of the property. Under these circumstances, the Panchayat Board at Paranji in its Resolution dated 30.06.1970 had given their "No objection" for assignment of the said land to the said Senebukan, husband of Bangarammal and she used the said land to have access to her lands described as items 1 and 2. The said Bangarammal was in possession and enjoyment of the suit properties to the knowledge of the defendants who are the adjacent land owners.

(ii)Bangarammal and her daughter jointly sold the suit properties to the plaintiff viz., Ramaswami Reddy for valuable consideration as per the registered sale deed dated 02.09.1992 and delivered possession of the same to the plaintiff. Since then the plaintiff is in possession and enjoyment of the suit properties and the defendants are also aware of the same. The defendants have no manner of any right, interest or title over the suit properties. From 30.10.1992, the defendants colluded together and high handedly attempting to interfere with the plaintiff's peaceful possession and enjoyment of the suit properties. Therefore, the plaintiff filed the suit for permanent injunction restraining the defendants and their men from interfering with the plaintiff's peaceful possession and enjoyment of the suit properties in any manner and directing the defendants to pay the costs to the plaintiff. Therefore, the plaintiff has prayed for decree.

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

(i)The first defendant and his brother Venkatasami purchased the land in Dry S.No.252/1B at Paranji Village for valuable consideration from one Desugan under a registered sale deed dated 17.08.1967. Thus the first defendant and second defendant's father Venkatasami were entitled to the suit properties and they were in possession and enjoyment of the same. After the death of Venkatasami, his son/2nd

defendant and first defendant are in possession and enjoyment of the suit properties. Thus except these defendants none is entitled to any manner of right, title or any interest over the suit properties including the plaintiff. Therefore, the defendants 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 to P.W.4, D.W.1 to D.W.3 and Exs.A1 to A3 and Exs.B1 to B8, dismissed the suit. Aggrieved against the judgment and decree passed by the trial court, the plaintiff preferred an appeal in A.S.No.20 of 2005 on the file of the Sub-Court, Ranipet.

5.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 plaintiff. During pendency of the second appeal, the plaintiff/first appellant/Ramasami Reddy died and hence, his legal heirs are impleaded as appellants 2 to 5. Since first defendant/first respondent/Govinda Reddy died, his legal heirs are impleaded as respondents 3 to 5.

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

"(i) Whether the Courts below are right in dismissing the suit for injunction without considering the documents of the plaintiff regarding possession?"

7.Challenging the concurrent findings of both the Courts below, learned senior counsel appearing for the appellants submits that the first appellant herein as a plaintiff filed a suit for permanent injunction stating that he purchased the first and second item of the suit properties on 02.09.1992 from one Bangarammal, who purchased the same from the true owner namely, Desugan on 27.10.1969. The third item of the suit property has been assigned by the Panchayat Board to Bangarammal, which was used for reaching Item Nos.1 and 2. Since the defendants/respondents attempted to interfere with the possession of the first appellant/plaintiff on 30.10.1992, the first appellant/plaintiff has constrained to file the present suit. It is further submitted that as per Ex.B4/mortgage deed, Desugan has executed a mortgage deed in favour of Govinda Reddy/first defendant, in which, total extent has been mentioned as 62 ½ cents. The first defendant has purchased only the extent of 56 ½ cents. So the balance extent has been purchased by the first appellant/plaintiff. As the first appellate Court has held that total extent is 62 cents, it

ought to have decreed the suit in favour of the first appellant/plaintiff. But that factum was not considered by both the Courts below. Hence, he prayed for setting aside the decree and judgment passed by both the Courts below and allowing this second appeal.

8. Resisting the same, learned counsel for the respondents submitted that as per Section 48 of the Transfer of Property Act, the first defendant and his brother namely, Venkatasami Reddy who is the father of the second defendant purchased the suit property from one Desugan on 17.08.1967 vide Ex.B1/sale deed, which came into existence much before the vendor of the plaintiff namely, Bangarammal purchased the property. In the oral partition, the southern portion has been allotted to the first defendant and northern portion has been allotted to the brother of first defendant and that they are in possession of the suit property, so the plaintiff is not entitled to any relief. It is further submitted that Desugan is having only 56 ½ cents and he sold the same to the defendants. Even though the first appellate Court has come to the conclusion that the extent is 62 cents, boundaries will prevail over the extent. Further, identity of the suit property is not disputed. To substantiate his arguments, he relied upon the decision of this Court reported in 2000 (3) MLJ 327 (Ramaiya Asari v. Ramakrishna Naicker alias Kollimalai Naicker and another) and submits that boundaries given in the deed will prevail over the extent.

9. Learned counsel for the respondents further submitted that the suit is for bare injunction. Once the defendants filed the written statement disputing the title, the plaintiff ought to have filed the suit for declaration of title and injunction. So the suit itself is not maintainable without prayer for declaration of title. To substantiate his arguments, he relied upon the decision of the Apex Court reported in AIR 2008 SC 2033 (Anathula Sudhakar v. P.Buchi Reddy (dead) by legal heirs and others), 2007 (4) CTC 70 (Chinna Nachiappan and another v. PL.Lakshmanan) and (2011) 5 MLJ 413 (T.R.Thangappan v. Chitra) and prayed for dismissal of the second appeal.

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

11. Originally, the suit property is owned by one Desugan. As per Ex.B1 sale deed, the first defendant has purchased the suit property from the said Desugan on 17.08.1967 and the survey number is 252/1B. After that only, as per Ex.A1/sale deed dated 27.10.1969, one Bangarammal purchased the suit property with an extent of 5 cents with the stated boundaries from Desugan and she along with her daughter viz., Sakunthala sold the same to the first appellant/plaintiff on 02.09.1992 under Ex.A2/sale deed. The first appellant/plaintiff has also filed Ex.A3 resolution passed by Paranj

Panchayat Board to show that third item of the suit property has also been assigned to Bangarammal. But a perusal of Ex.A3 reveals that no name has been mentioned and hence, no reliance can be placed on Ex.A3. Further, there is no document to show that the predecessor of the title enjoyed the suit property.

12.Per contra, the respondents have marked Ex.B4/mortgage deed dated 05.06.1967, in which, Desugan has mortgaged the property in favour of the first defendant and then the said Desugan has sold the same to the first defendant vide Ex.B1/sale deed dated 17.08.1967; Ex.B5 is the adangal; Ex.B6 is the chitta.

13.It is well settled dictum of the Apex Court that a person who files a suit for injunction, must prove his prima facie title, legal possession and balance of convenience and if injunction is not granted, irreparable loss will be caused to him. In the case on hand, except the sale deed under Ex.A1, the first appellant/plaintiff has not filed any document to show that he is in possession and enjoyment of the suit property.

14.At this juncture, it is appropriate to consider the decision relied upon by the learned counsel for the respondents reported in AIR 2008 SC 2033 (Anathula Sudhakar v. P.Buchi Reddy (dead) by legal heirs and others), wherein it was specifically held that 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. Para-17 is extracted hereunder:

"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 case on hand, as soon as the first appellant/plaintiff filed a suit for bare injunction, the defendants disputed the title to the first appellant/plaintiff in para-3 of the written statement that they purchased the suit property much prior to the purchase of the predecessor in title of the first appellant/plaintiff. So there is cloud over the appellants in title. As per the dictum laid down by the Apex Court in AIR 2008 SC 2033 (*Anathula Sudhakar v. P.Buchi Reddy* (dead) by legal heirs and others), the plaintiff ought to have amended the prayer for declaration of title and injunction. But he fails to do so.

15.This Court has also held in para-15 and 16 of the judgment reported in 2007 (4) CTC 70 (Chinna Nachiappan and another v. PL.Lakshmanan) and (2011) 5 MLJ 413 (T.R.Thangappan v. Chitra) that when there is dispute between the parties relating to title over a specific extent of property, the prayer for declaration of title is a must. In such circumstances, I am of the view, by applying the dictum laid down in 2008 SC 2033 (Anathula Sudhakar v. P.Buchi Reddy (dead) by legal heirs and others), the suit filed by the first appellant/plaintiff itself is not maintainable.

16.Learned counsel for the appellants submits that as per Ex.B4/mortgage deed, Desugan is the owner of 62 cents. But the first appellate Court has failed to consider that the defendants 1 and 2 have purchased only 56 ½ cents and remaining 5 ½ cents was purchased by the first appellant/plaintiff. But the above argument does not hold good. In Ex.B4/mortgage deed, it was not stated that Desugan is the owner of 62 cents. But whereas the first appellate Court alone has held that Desugan is the owner of 62 cents. As per the recital in Ex.B4, 2/3rd share in 1.85 acres, which comes to nearly 1.23 acres not as mentioned by the appellate Court that Desugan is the owner of 62 cents. So the above argument does not hold good.

17.According to the learned counsel for the respondents, boundaries will prevail over the extent. He has also relied upon the decision of this Court reported in 2000 (3) MLJ 327 (Ramaiya Asari v. Ramakrishna Naicker alias Kollimalai Naicker and another), wherein it was held that the boundaries will prevail over the extent. So it is appropriate to extract para-15, which reads as follows:

"15.The same principle has been enunciated in The Church of South India Trust Association through its power of Attorney Agents Rev. C.E. Soundiraraj v. Raja Ambrose, (1978) 2 M.L.J. 620. In the second of the decisions it is stated that the subject-matter of the grant would depend on the intention of the parties as expressed in the relevant conveyance deed. Where the deed sets out the extent and measurements correctly, there can be no difficulty in determining the subject-matter of the grant. But where no measurements are given or the extent mentioned in the deed is either vague or is only a rough and ready approximation, one has to look to other indications in the deed in order to fix the identity of the property which is the subject of the grant. If the deed in question sets out the boundaries of the property conveyed, then these boundaries will have to be accepted as a clear reflection of the intention of the grantor and they will conclude not only the exact positioning of the property conveyed, but also its true extent. The

boundaries given in the deed will also, in such cases, prevail over the measurement given in the deed, if these are given as approximations. "

18.Considering the facts and circumstances of the case, I am of the considered opinion, the suit filed by the first appellant/plaintiff itself is not maintainable without prayer for declaration of title as per the dictum laid down in 2008 SC 2033 (Anathula Sudhakar v. P.Buchi Reddy (dead) by legal heirs and others). It is the duty of the appellants to prove that the plaintiff is having prima facie title and legal possession. But the appellants have not filed any single document to prove that the first appellant/plaintiff is in possession of the suit property. So I am of the view, the Courts below are right in dismissing the suit for injunction after considering that the plaintiff has not proved his possession and title to the suit property. Therefore, the appellants herein are not entitled to any relief. The substantial question of law is answered accordingly.

19.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.

20.In fine,

- Second Appeal is dismissed with costs.
- The decree and judgment passed by both the Courts below are hereby confirmed.
- Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

- 1.The District Munsif Court, Sholinghur.
- 2.The Sub-Court, Ranipet.
- 3.The Record Keeper, V.R.Section, High Court, Chennai.

1 cc to Mr.M.A.Abdul Wahab , Advocate Sr.No.26634

1 cc to Mr.T.R.Rajaraman , Advocate Sr.No.26494

S.A.No.389 of 2007

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pmk.26.6.2015