

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2015

CORAM

THE HONOURABLE MS. JUSTICE R.MALA

S.A.No.520 of 2008

Judgment reserved on 02.07.2015	Judgment pronounced on 08.07.2015
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T.S.Vijaya Rao .. Appellant/Plaintiff/Respondent

Vs

1.Susila
2.Vidjeacoumar
3.Vengadessan
4.Segar
5.Sakthimourougane
6.Sittivinayagar @ Raja .. Respondents/Defendants/Appellants

Prayer: Second appeal filed under Section 100 of CPC against the Judgment and Decree dated 30.01.2008 in A.S.No.35 of 2006 on the file of the Principal Subordinate Court, Pondicherry reversing the Judgment and Decree dated 27.03.2006 in O.S.No.440 of 2003 on the file of the II Additional District Munsif Court, Pondicherry.

For Appellant : Mr.Bharatha Chakkaravarthy
for M/s.Sai Bharath and Ilan

For Respondents : Prof.Udaya Banu

JUDGMENT

This second appeal arises out of the Judgment and Decree dated 30.01.2008 in A.S.No.35 of 2006 on the file of the Principal Subordinate Court, Pondicherry reversing the Judgment and Decree dated 27.03.2006 in O.S.No.440 of 2003 on the file of the II Additional District Munsif Court, Pondicherry.

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

The suit properties originally belonged to one Visvanadin @ Vissouvanadin and he had sold the same along with another item under a Notarial Sale Deed dated 14.02.1962 and duly registered on 27.02.1962 in favour of one T.K.Sambanda Rao, the father of the

plaintiff. The said T.K.Sambanda Rao died intestate leaving behind the plaintiff along with brothers, sisters and mother are legal heirs to inherit and succeed to his estate including the suit properties. Subsequent to his death, the plaintiffs along with his brothers, sisters and mother partitioned the entire estate of T.K.Sambanda Rao. In the said partition, the suit properties fell to the share of the plaintiff. The plaintiff constructed a compound wall around the suit properties. Patta and Chitta also stands in the name of the plaintiff. The plaintiff having decided to construct a single storeyed residential building in the suit properties applied for necessary approval on 02.07.2002 and by order dated 02.09.2002, the Pondicherry Planning Authority had also granted permission. While so, on 18.06.2003, the plaintiff hired men to clean the suit properties for the purpose of starting construction. At that time, the defendants along with some henchmen threatened the men working with dire consequences. Immediately the plaintiff lodged a police complaint on 19.06.2003 before the Station House Office, D-Nagr Police Station. But the Police Authorities refused to act or lodge a complaint. The defendants have owed to dispossess the plaintiff illegally by force. Hence, the plaintiff filed a suit for permanent injunction restraining the defendants, their agents, henchmen or any one claiming through them from disturbing or interfering into the plaintiff's peaceful possession and enjoyment of the suit properties.

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

It is submitted that the first defendant is the owner of a piece of property in R.S.No.321/4A with an extent of 41 Ares 35 Centiares and she is in peaceful possession and enjoyment of the property by erecting a compound wall. It is further submitted that the property in Cadastre No.7 with a total extent of 01 Kani 41 Kuzhies or 75 Ares 80 Centiares originally belonged to one Namasivaya Mudaliar and he sold, transferred and conveyed the property in favour of Salambal in the year 1948. Subsequently, the said Salambal settled the property in favour of her sons and they in turn sold, transferred and conveyed the property under a Notarial Sale Deed in the year 1966. The first defendant's husband and father of defendants 2 to 6, namely, Subramania Pillai was a Real Estate Businessman and the property in Cadastre No.7 was handed over to the first defendant and her husband in the year 1966. The first defendant's husband developed the property, prepared layouts and sold plots in the year property in Cadastre No.7. The defendants were in peaceful possession and enjoyment of the remaining portion of the property with an extent of 64 Kuzhies. It is submitted that the defendants are entitled for restoration of possession of the property which was forcibly and illegally divested from them. Hence the defendants made counter claim and prayed to restore possession of property and to restrain the plaintiff, his men, agents and servants from interfering with the peaceful possession and enjoyments of the defendants in the suit properties.

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.4 and Exs.A1 to A22, Exs.B1 to B39 and Exs.X1 and X5, decreed the suit. Aggrieved against the judgment and decree of the trial court, the defendants preferred an appeal in A.S.No.35 of 2006 on the file of the Principal Subordinate Court, Pondicherry.

5.The learned First Appellate Court has considered the argument advanced on either side and framed necessary point for consideration and reversed the Judgment and Decree passed by the Trial Court and allowed 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 or not the finding of the Lower Appellate Court regarding case and pleading of the defendants is perverse?

2.Whether or not the Lower Appellate Court erred in not considering the plea of falsehood and forgery of the documents filed by the defendants?

3.Whether or not the Lower Appellate Court erred in not even advertng to the judgment of the Trial Court and substitution its own findings in respect of the issues framed in the suit without considering the correctness or otherwise of the findings of the Trial Court?

4.Whether or not the Lower Appellate Court erred in misapplying the law relating to notaire sale deeds, when the sale deed itself is forged?"

7.Challenging the judgment and decree of the First Appellate Court, the learned counsel for the appellant/plaintiff would submit that he filed a suit stating that originally the properties owned by one Sambanda Rao by way of purchase on 14.02.1962. After his death, there was partition between the family on 29.12.1980 and in that partition, suit properties was allotted to the appellant/plaintiff as Schedule I. From that onwards he is in possession and enjoyment and he also obtained plan permission to put up construction on 18.06.2003. While so, the respondent attempted to interfere with the possession. Hence, he was constrained to file a suit for injunction. The respondent filed a detailed written statement stating that the suit properties originally belonged to one Namasivaya Mudaliar from

whom one Salambal purchased in the year 1948 and she settled the property in favour of her children in the year 1965 and they sold the property in the year 1966. From that date onwards she was in possession and enjoyment of the property. The respondent in paragraph No.12 in the written statement has pleaded how she got the property and during the trial, she has abandoned the defence as pleaded in paragraph No.12 of the written statement. But she has put forth a new case as if she purchased the property under Exs.B3 and B4 on 06.02.1960 and from that date onwards, she was in possession. But the documents, Exs.B3 and B4 are not true and genuine documents. To prove the same, the appellant has filed Ex.A11, translation copy Ex.A12 and also Ex.A13. The Trial Court has considered all these aspects in proper perspective. But the First Appellate Court has not considered the same. He further submitted that the first respondent herein has doing Real Estate Business and through her husband, she sold the property under Exs.A14 to A22, which shows that the appellant is the owner of the property in Survey No.7/1/2. The Trial Court has considered the same in proper perspective. But whereas the First Appellate Court has set aside the finding of the Trial Court and dismissed the suit, which is perverse. Hence, he prayed for allowing the appeal.

8.Resisting the same, the learned counsel appearing for the respondents would submit that the suit itself is not maintainable because once the title to the suit properties is denied, he ought to file a suit for declaration and injunction and without prayer for declaration, suit for injunction is not maintainable. He further submitted that the First Appellate Court in paragraph Nos.9, 14 and 16 has clearly held that Ex.A13 is not related to Exs.B3 and B4 and that factum was not considered by the Trial Court. He further submitted that the appellant has not filed any single document to show that the property mentioned in Exs.A1 and A2 is related to the present survey number and he has also not filed the revenue records to correlate that the property mentioned in Exs.A1 and A2 is the present suit properties. Hence, he prayed for dismissal of the appeal.

9.Considered the rival submissions made on both sides and also perused the material records and both oral and documentary evidence.

10.It is true that the suit has been filed only for bare injunction on the basis of Ex.A1. Originally the properties were owned by Visvanadin @ Vissouvanadin and Namachivaya Mudaliar. There was a partition in their family under Ex.B1, translation copy is marked as Ex.B2 (since documents are in French, translation copy has been marked). Some of the properties including the suit properties have been allotted to Visvanadin @ Vissouvanadin and from whom, the father of the appellant/plaintiff, namely, Sambanda Rao has purchased the properties under Ex.A1. It is also true that as per the partition, some of the properties have been allotted to Namachivaya Mudaliar and from whom, Salambal purchased the properties on

20.10.1948 under Ex.B5, translation copy Ex.B6. She settled the properties in favour of her sons, namely, Perumal Gounder, Natesa Gounder, and Gopalsamy Gounder under Ex.B7, translation copy Ex.B8. On perusal of Exs.B5 to B8, it is seen that the suit properties has not been mentioned in the documents. Further, the first defendant/first respondent has abandoned the case as pleaded in paragraph No.12 of the written statement. But she filed the documents, Ex.B3, translation copy Ex.B4 and stated that on 14.02.1960 she purchased the property from Visvanadin @ Vissouvanadin and admittedly, the document number was shown as RV 602. But to prove that the documents, Ex.B3, translation copy Ex.B4 are fabricated documents, the appellant/plaintiff filed Ex.A11, translation copy Ex.A12, wherein on Sowbakkiyam has purchased the property from Rajagopalasamy and the document number was given as RV 602. So, the Trial Court has rightly held that Exs.B3 and B4 are not true documents. It is true that Ex.A13 has filed, wherein it was stated that date of the sale deed has been wrongly mentioned but document number has been rightly mentioned and it is also stated that there is no such sale in favour of the first respondent herein. In such circumstances, Exs.B3 and B4 are not true and genuine documents.

11.Furthermore,, it is pertinent to note that when the first respondent herein has sold the property after making layouts under Exs.A16 to A22, wherein one of the boundary in Ex.A17 was shown as ".....நெ.7/1/3 கொண்டடி, கே.சம்பந்தராவ் நிலத்திற்கு கிழக்கு". This will show that originally the properties were owned by T.K.Sambanda Rao, the father of the appellant/plaintiff which has been accepted by the first respondent in her sale deed i.e. Exs.A16 to A22. If really, the properties have been purchased by her under Exs.B3 and B4 from Visvanadin @ Vissouvanadin on 06.02.1990, naturally it has been mentioned in the sale deed. So the argument advanced by the learned counsel appearing for the respondents that the first respondent has purchased the property on 06.02.1990 but later point of time the father of the appellant/plaintiff has purchased the same does not merit acceptance. Since this Court has held that Exs.B3 and B4 are fabricated documents, as per Ex.A1, the father of the appellant/plaintiff purchased the property on 14.02.1962 in Document Number RV 642 and that has been proved by Exs.A14 and A15, Encumbrance Certificate wherein it was stated that except this sale on 15.02.1962, no other sale has been mentioned. So, after the death of T.K.Sambanda Rao, who died intestate, his wife, daughters and sons have divided the estate of the deceased Sambanda Rao and in that partition, the suit properties have been allotted to the appellant herein.

12.The learned counsel appearing for the respondents would vehemently argued that to prove that the property in Exs.A1 and A2 is the suit properties , the appellant has not filed any revenue records to correlate the same. At this juncture, it is appropriate to consider the description of the property in the plaint, wherein it

was specifically mentioned as Cadastre No.7-1/3 and R.S.No.321/4A/2 and that has been admitted by the respondents in the document, Ex.A4, partition deed, wherein the re-survey number has been mentioned as 321/4. Furthermore, there is no dispute in respect of the identity of the property since Chitta, Ex.A6 and Settlement Register Extract, Ex.A7 has been marked. So, I am of the view that the argument advanced by the learned counsel appearing for the respondents that no document has been filed to correlate the suit properties with the property mentioned in Ex.A1, translation copy Ex.A2, does not merit acceptance.

13.The learned counsel appearing for the respondents would also submit that if there is any cloud in the title of the property, he ought to have filed a suit for declaration and injunction and without declaration of title to the suit properties, the suit for mere injunction is not maintainable. At this juncture, it is appropriate to consider the decision by the learned counsel appearing for the respondents reported in 20058 (4) SCC 594 (Anathula Sudhakar vs. P.Buchi Reddy (Dead) by LRs. and others), it is appropriate to incorporate paragraph No.21 (d), which reads as follows:

"21(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 straightforward, 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 the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

But in the present case in hand, the respondents have not filed any document to prove her case. In such circumstances, since the appellant/plaintiff derives title from the year 1962 and to prove the same, documents were filed, applying paragraph No.21(d) of the decision, the suit for bare injunction is maintainable without prayer for declaration of title. So, the argument advanced by the learned counsel appearing for the respondents that the suit is not maintainable without prayer for declaration of title does not merit acceptance.

14.There is no quarrel over the settled proposition that the plaintiff must prove his case to succeed on the strength of his case

and not on the weakness of the defendants. But the appellant herein has filed the title documents and also revenue records to prove that he has title over the property and he is in legal possession of the property. But the First Appellate Court without considering the documents, Exs.A11 and A12, which is for RV 602 has held that Exs.B3 and B4 is true and genuine document. It is appropriate to consider that the Trial Court in paragraph No.27 of its judgment has considered as to how the document has been notarised by the Notary in Pondicherry. But that has not been considered by the First Appellate Court. Further, document has been obtained and filed as per Ex.A11, translation copy Ex.A12 and Encumbrance certificate has been filed as Ex.A14, translation copy Ex.A15 wherein it was stated the document number of the property purchased by the appellant's father as RV 642. That factum was not considered by the First Appellate Court and so, the judgment of the First Appellate Court is perverse. Furthermore, the First Appellate Court has failed to consider that in paragraph No.12 of the written statement the defendants have stated something, but whereas in the evidence, they have given different case. It is well settled law that without pleading, no evidence can be looked into. But here, without pleading the evidence has been considered. It is true that the defendant can take any defence, but that must be pleaded in the written statement. But here existence of Exs.B3 and B4 has been neither pleaded in the written statement only at the time of letting evidence alone, he has filed the documents. In such circumstances, I am of the view that the appellant has proved that he is the owner of the property and he has proved his possession by way of marking the documents. Since his possession has been disturbed immediately he filed a suit and he is entitled to injunction. Accordingly, Substantial Question of Law Nos.1 to 4 were answered in favour of the appellant. Hence, the judgment and decree of the First Appellate Court is unsustainable and it is hereby set aside and the judgment and decree of the Trial Court is a well reasoned one and the same is hereby restored. Consequently, the second appeal is hereby allowed.

15.In fine,

- The Second Appeal is allowed.
- The decree and judgment passed by the First Appellate Court/the learned Principal Subordinate Judge, Pondicherry in A.S.No.35 of 2006 dated 30.01.2008 is hereby set aside.
- The decree and judgment passed by the Trial Court/the learned II Additional District Munsif, Pondicherry in O.S.No.440 of 2003 dated 27.03.2006 is hereby restored.
- There is no order as to costs.
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cse

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1.The Principal Subordinate Court,
Pondicherry.

2.The II Additional District Munsif Court,
Pondicherry.

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

+ 1 cc to M/s.Sai, Bharath and Ilan, Advocates SR 34222

+ 1 cc to Prof. Udaya Banu, Advocate SR 34494

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