

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.08.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.486 of 2009

V.B.Narendran

...Appellant/Respondent/
Defendant

Vs.

1. R.Sundari

2. S.V.Geetha

3. R.Ramalakshmi

...Respondents/Appellants/
Plaintiffs

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 18.12.2007 made in A.S.No.352 of 2007 on the file of the VI Additional City Civil Judge, Chennai, reversing the judgment and decree dated 29.03.2007 made in O.S.No.4389 of 2004 on the file of the XIII Assistant City Civil Court, Chennai.

For Appellant : Mr.P.B.Balaji

For Respondents : Mr.S.Parthasarathy, Senior Counsel
for Mr.R.Kannan

J U D G M E N T

The appellant is the defendant in a suit for permanent injunction restraining him from interfering with the peaceful possession and enjoyment of the suit property.

2. The plaintiffs belong to one family, the father being first plaintiff and plaintiffs 2 to 4 being his daughters. The claim is over the suit schedule property, which was inherited by them from their mother Mrs.T. Gomathi Thiruvengadam. The suit schedule property was purchased by the mother of the plaintiffs 2 to 4 from one Mr.C.V.Nadana Sabapathy on 03.06.1967 under Ex-A2. Since the date of purchase, she had been in possession and enjoyment of the

suit property and also obtained patta in her name under Patta No.2046 dated 22.11.1984. After her death on 20.03.1993, the property devolved on her husband and children who are the plaintiffs. While so, the defendant tried to interfere with their possession claiming to be the owner of the same property having purchased from the same vendor on 04.08.1992. The defendant does not have any right over the suit property as the sale deeds executed in his favour are invalid.

3. The suit was resisted by the defendant, contending that he had purchased the said suit property from the same vendor Mr.C.V.Nadana Sabapathy on 04.08.1992 under Exs-B3 and B4 and he has been in possession of the same. Hence, the defendant prayed for dismissal of the suit.

4. Before the Trial Court, on the side of the plaintiffs, the fourth plaintiff examined herself as PW-1 and marked Exs-A1 to A11. The defendant examined himself as DW-1 and marked Exs-B1 to B14 on the side of the Defendant.

5. The trial Court after appreciating both the oral and documentary evidence, has dismissed the suit. On appeal, it was allowed. Being aggrieved by the same, the above Second Appeal has been filed by the defendant.

6. At the time of admission, the following question of law was suggested as hereunder:

(i) Whether the first appellate Court was correct in holding that a suit for bare injunction would lie without a prayer for declaration of title when admittedly both the plaintiffs and the defendant were holding title deeds for the suit property?.

7. It is admitted by both the parties that the suit schedule property was purchased by them from the same vendor, though on different sale deeds. The learned counsel for the appellant contended that the suit is not maintainable in the absence of the prayer for declaration of title. The suit being filed one for injunction, the factum of possession of the suit property as on date of filing of the suit alone has to be seen. The plaintiff had filed Ex.A-4, which is the patta obtained by T.Gomathi Thiruvengadam, after her purchase of the property and it was also not disputed by the defendant. The appellant/defendant had produced Exs-B11 to B14, which are the letters addressed to the revenue authorities for change of patta. The learned counsel for the appellant further contended that the plaintiffs are not entitled to decree of injunction when the possession has not been proved by them. However, it is held by the lower appellate Court

that the production of Exhibit A-4 pattta would clearly show that the plaintiffs are in possession of the property. On the other hand, the defendant has not produced any document to show his possession though he claimed to be in possession of the property subsequent to the purchase of the same. Even presuming for a moment that the plaintiffs are the persons in possession as trespassers, they cannot be evicted unless by due process of law. Since the plaintiffs having proved their possession which cannot be rebutted by the defendant, they are entitled to the decree for injunction. The learned counsel for the appellant also urged that Ex-A9/Will was not proved by the plaintiffs as the same is not probated and cannot be relied upon for any purpose. But the suit being one for injunction and the plaintiffs are not claiming title through the Will, the same need not be probated. On the other hand, it can be used for the collateral purpose of showing the possession of the property.

8. The lower appellate Court also had categorically held that after the sale in favour of the plaintiff's mother in the year 1967 from C.V.Nadana Sabapathy, they have been in possession of the property and the sale in favour of the defendant 25 years thereafter from the same vendor will not confer any title as the vendor ceased to have any right after 1967. Therefore, the question of law is answered in favour of the plaintiffs.

9. In view of the above findings, the Second Appeal is dismissed and the judgment of the lower appellate Court is confirmed and the suit is decreed in favour of the plaintiffs. No costs.

Sd/-
Assistant Registrar(CO)

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सत्यमेव जयते
Sub Assistant Registrar

srn

To

1. The VI Additional City Civil Judge,
Chennai.

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2. The XIII Assistant City Civil Court,
Chennai.

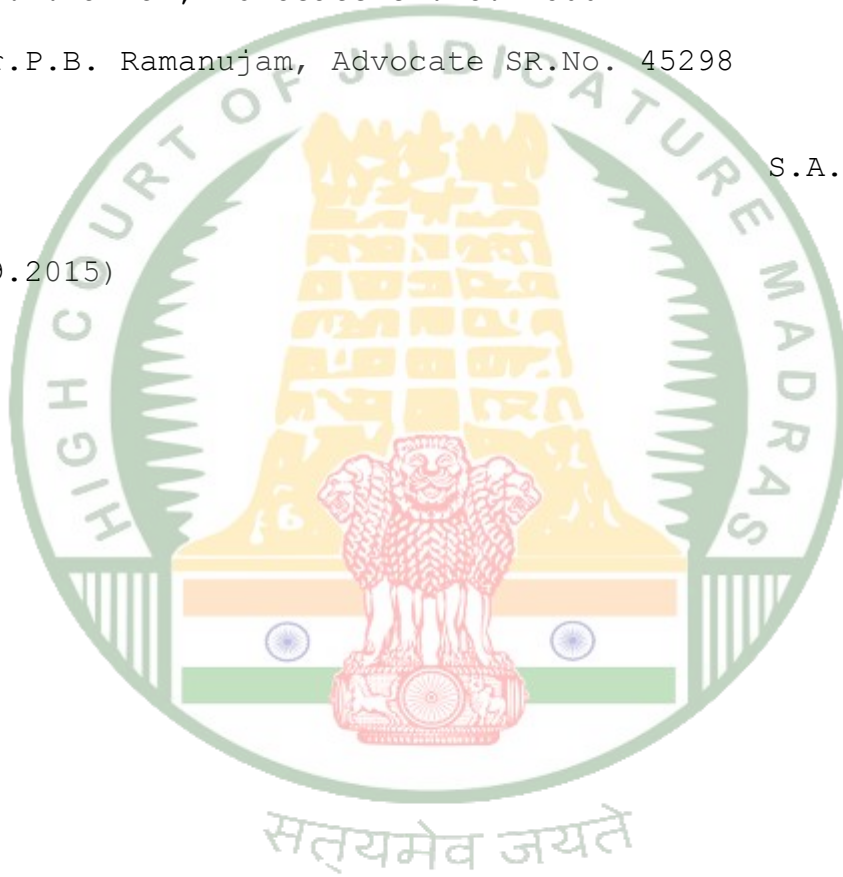
3. The Section Officer,
V.R.Section,
High Court,
Madras.

1 CC to Mr.R.Kannan, Advocate SR.No. 45007

1 CC to Mr.P.B. Ramanujam, Advocate SR.No. 45298

S.A.No.486 of 2009

TEJ (CO)
PSI (28.09.2015)



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