

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.02.2015

CORAM:

THE HON'BLE MS. JUSTICE K.B.K.VASUKI

Second Appeal No.1141 of 2001

1.Karupanna Gounder
2.Arthanari
3.Parameswari
4.K.R.Karuppannan

... Appellants/Appellants/
Defendants 2 to 5

Vs.

Vijayalakshmi

... Respondent/Respondent/
Plaintiff

Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 18.04.2001 made in A.S.No.46 of 1996 on the file of the Sub Court, Sankari confirming the Judgment and Decree dated 27.06.1996 made in O.S.No.121 of 1998 on the file of the District Munsif Court, Sankari.

For Appellants : M/s.N.Manokaran.

For Respondent : M/s.D.Shivakumaran.

J U D G M E N T

The defendants are the appellants herein.

2.The suit is filed by the plaintiff for the relief of permanent injunction restraining the defendants from interfering with her possession of the property morefully described in the suit schedule.

3.The plaintiff has claimed such relief stating that she purchased the suit property by way of oral sale for consideration of Rs.90/- on 01.2.1977 from the first defendant/Ramasamy Gounder since deceased, his son/second defendant/Karuppanna Gounder and his grand son by name Kuppusamy and possession was handed over to her in pursuance of the oral sale on the same day. It is her further case that she has been in possession and enjoyment of the property

by obtaining change of house tax assessment and by paying house tax in her capacity as owner of the property and that the defendants are trying to trespass into and disturb her peaceful possession.

4.The suit was seriously resisted by the defendants by stoutly denying any sale much less oral sale. It is also their case that the change of house tax assessment in the name of the plaintiff was without their knowledge and also denied the plaintiff's claim for possession and enjoyment of the suit house and the identity of the suit property having Door.Nos.1/18 and 1/19. It is their further case that the defendants continue to be the owner of the property and continue to be in possession and enjoyment of the same and leased out the portion to the second defendant. The defendants also denied the value of the property given as Rs.90/- as the property with construction over the same is more valuable and could not be sold for Rs.90/-.

5.The trial Court based on their respective pleadings, framed the following issues for determination of the suit:

- 1) வாதி தாவாவில் கோரியுள்ளபடி நிரந்திர உறுத்துக்கட்டளைப் பரிகாரம் பெற அருகதையுடையவரா?
- 2) தாவாச் சொத்துக்களில் வாதிக்கு எந்தவித சுவாதீனமோ அனுபவமோ இல்லையா?
- 3) தாவாவக்குரிய வழக்கு மூலம் இல்லையா?
- 4) வாதிக்குக் கிடைக்கக்கூடிய இதர பரிகாரம் என்ன?

6.The trial Court on 25.06.1996 framed the following additional issue :

- 1) அவசியத் தரப்பினரை சேர்க்காததால் வாதியினால் வழக்கு பாதிக்கப்பட்டுள்ளதா?

7.The trial Court upheld the claim of the plaintiff for title and possession on three grounds : (i)the original sale deed in the name of the first defendant along with parent title deeds is in the custody of the plaintiff; (ii)the house tax assessment is transferred in the name of the plaintiff and the plaintiff has been paying the tax receipts; and (iii)the defendants failed to prove their possession of the suit property. Aggrieved against the same, the defendants preferred AS.No.46 of 1996. The lower appellate Court also accepted the findings of the trial Court and dismissed the appeal, hence, this second appeal by the defendants before this Court.

8.This Court admitted the Second Appeal on the following substantial questions of law :

- (i)Whether the Courts below have appreciated and applied correct principles to find out whether the plea of oral sale is genuine one in the facts of the present case?

(ii) Whether the Courts below is not taking into consideration or giving a specific finding on the question whether the suit property is different from the property purchased by the defendant under Ex.B17?

(iii) Whether the Courts below erred in law in declining to go into the question of title even though the suit is one for bare injunction?

(iii) Whether there has been a misconstruction or omission to construe the material evidence on record on the part of the Courts below?

9. Heard the rival submissions made on both sides and perused the records.

10. As already stated, the plaintiff has come forward with the present suit for the relief of bare injunction based on her title and possession on the strength of oral sale of the suit property in her favour by the first defendant on 01.02.1977. Whereas the defendants have in their written statement stoutly denied the plea of oral sale and the plea regarding the plaintiff's possession and enjoyment of the suit property. It is the definite case of the defendants that there is no such oral sale in favour of the plaintiff and the properties are more valuable as on 1977 and the defendants continue to be the owner of the property and continue to be in possession and enjoyment of the property. Even thereafter, the plaintiff did not take any steps to amend the plaint for declaration of her title and possession. In view of the pleadings so raised and in view of the complicated issue involved in the suit, the trial Court ought to have directed the plaintiff to convert the suit into comprehensive suit for declaration of her title and possession. The trial court instead of relegating the party to comprehensive suit and without framing any issue regarding the title, upheld the plaintiff's claim for title on the basis of the oral sale in respect of the suit property which is in my considered view, contrary to the legal principles laid down by the Hon'ble Supreme Court in its judgment reported in (2008) 4 SCC 594 Ananthula Sudhakar V. P. Buchi Reddy (dead) by LRs and others, wherein the Supreme Court has in para 21 of the judgment summarised the position with regard to suits for prohibitory injunction relating to immovable property which reads as under :

21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over the 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 the 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). 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 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.

11. Even otherwise, the trial court declared the title of the suit property in favour of the plaintiff mainly by relying on the custody of the title deeds with that of the plaintiff and the change of house tax assessment in the name of the plaintiff. The lower appellate court also failed to consider the legal objection raised on the defendants' side against the maintainability of the suit and simply confirmed the findings of the trial court. In my considered view, such course adopted by the courts below is legally not permissible.

12. On merits, the trial court declared the title of the suit property in favour of the plaintiff mainly by relying on the custody of the original title deeds with the plaintiff. It may be true that the plaintiff in support of her claim, produced Exs.A1, A7 and A8 documents. The plaintiff in her chief examination deposed that the property purchased by her bearing door No.16 and property assessment Nos.18 and 19, was transferred in her name under Ex.A2 and she has been in possession and enjoyment of the same by paying property tax vide A3 series of tax receipts. She reiterated her case regarding the door number of the suit property, which is according to her, bearing No.16 and she has definitely stated that she has not claimed the property bearing Door Nos.18 and 19. That by itself is sufficient enough to negative the plaintiff's claim regarding the suit property having door nos.1/18 and 1/19. Even according to PW2, who is none else than the husband of PW1, the property which is the subject matter of the suit, is bearing door nos.16 and 16A and the door numbers mentioned as 1/18 and 1/19 in Ex.A2 are only relating to the property tax assessment numbers. Thus, PW1 and PW2, who are the material witnesses, are not definite about the property in respect of which suit relief is claimed.

13. Regarding the oral sale, it may be true that the sale of the property, value of which is less than Rs.100/-, can be effected orally and non-registration of the same would not validate such oral sale coupled with delivery of possession. In the case in hand, the value of the property in order to support the plea of oral sale is given as Rs.90/- on the side of the plaintiff but the same is seriously objected to by the defendants, as such the trial Court before deciding the genuineness and validity of the claim of oral sale and before declaring the title of the plaintiff on the strength of the same, ought to have ascertained the value of the property as on the date of purchase. The finding of the courts below regarding the value of the property without going into the value aspect is based on no evidence and is perverse and the same goes to the root of the main issue and the same renders the judgment and decree of the courts below to be legally unsustainable.

14.Regarding the tax receipts, the same do relate to D.No.16. When there is no evidence to show that the property purchased by the plaintiff was having old door no.16 and corresponding new door nos.1/18 and 1/19, and when the plaintiff has not come forward with any definite case regarding the door number of the property for which the suit relief is sought for, the defendants' case that the identity of the property is doubtful, has much force and ought to have been duly considered by the courts below. Though the door number of the plaintiff's property is admitted to be 16, the suit relief sought for in respect of the property at door nos.1/18 and 1/19 ought to have been dismissed on the ground of confusion regarding the property for which the suit relief is sought for.

15.As far as the custody of the documents is concerned, Ex.A1 is the sale deed dated 2.4.1956 executed in favour of the first defendant; Ex.A8 is the sale deed dated 5.7.1925 executed for sale consideration of Rs.100/- by one Kullammal in favour of Deivanaiyammal and her minor children and Ex.A7 is the sale deed dated 28.09.1925 executed for sale consideration of Rs.100/- by Deivanaiyammal and others in favour of one Nallayammal. All the three documents, according to the plaintiff, relate to the property in question. The property, which is the subject matter of Exs.A7 and A8 sale deeds, is முன்று அங்கண கூரை வீடு ஒன்று, அதைச் சேர்ந்த கதவ, நிலவ, ஜோடி படி ஒன்று, முன்வாசல், measuring தென் வடல் முழும் ஏழு, கீழ் மேல முழும் பதினேழு இ துவம், கீழ் பரம் சந்து, தென் வடல் முழும் பத்து, கீழ் மேல முழும் அஞ்சு, within the four boundaries mentioned therein. Whereas, Ex.A1 sale deed executed in the name of the first defendant is a vacant site measuring கீழ் மேல் 7 கஜம், தென் வடல் 8 1/2 கஜம் within the four boundaries mentioned therein. It is not explained before this court about the relationship between the vendors in Ex.A1 and the parties to Exs.A7 and A8. The four boundaries mentioned in Exs.A7 and A8 on one hand and Ex.A1 on other hand, do not tally with each other and the same is also not explained, as such, the plea of the plaintiff that she purchased the entire property under oral sale, which is the subject matter of Exs.A7 and A8 and Ex.A1, cannot at all be accepted and the finding of the courts below upholding the oral sale in favour of the plaintiff on the basis of the custody of documents, is hence baseless and perverse.

16.The next set of documents relied on by the courts below to decide the title in favour of the plaintiff are Exs.A2 to A6. Ex.A2 which is the order of the Executive Officer relating to transfer of house tax assessment in favour of the plaintiff, does not disclose as to whether the same was after due notice to the defendants and after due enquiry. However, the same was under Ex.X2 order, retransferred in the name of DW4/K.K.Kuppusamy during 1985, as such, no serious reliance can be placed on Ex.A2. Ex.A3 series is the house tax receipts in respect of D.No.16 filed by the plaintiff

for the assessment years 1977 to 1978. In the absence of any proof regarding the oral sale, the transfer of assessment, which is subsequently cancelled and the payment of house tax receipts cannot be a ground to uphold the claim of the plaintiff.

17.The other documents to be considered are Exs.A4, A5 and A6 relating to service connection No.721 pertaining door number D.No.1/18. Admittedly the door number which is situated within four boundaries mentioned in the suit schedule in respect of which the relief sought for, is D.No.16, as such, the receipts for payment of the electricity consumption charges relating to D.No.18 are of no help to the plaintiff to prove either her title or possession. The defendants have also produced Ex.B4, Ex.X7 and Ex.X8 -voters list for the years 1983, 1988 and 1993 which would not support the case of the plaintiff that the plaintiff has been in possession of the suit property bearing D.No.1/18 or 1/19 or 1/16. In the voters list relating to the period as mentioned above, D.No.16 is shown as in the occupation of the defendants. The plaintiff through out the proceedings has been not consistent regarding the correct door number of the suit property. However, both the Courts below have ignored such stand taken on the part of the plaintiff in not identifying the correct door number and his conduct in not coming forward to take steps for any amendment in respect of the door number of the property in question during the pendency of the suit before the trial Court.

18.When the suit is filed for the relief of permanent injunction, the property tax receipt and receipt for payment of electricity consumption charges would not by itself go to prove the actual possession and enjoyment of the plaintiff. The trial court found the possession aspect in favour of the plaintiff only by upholding the oral sale and there seems to be no independent discussion regarding actual possession and enjoyment of the property. The trial court also cast the burden on the defendants to disprove the case of the plaintiff. It is the well laid down principle that the plaintiff has to succeed or fail on the basis of her own case and the plaintiff in this case failed to prove her claim.

19.Both the courts below have without properly appreciating the nature of the issue involved herein and without correctly advertng to the actual state of affairs as disclosed from the oral and documentary evidence adduced on both sides and contrary to the principles laid down by the Hon'ble Supreme Court in (2008) 4 SCC 594 Ananthula Sudhakar V. P.Buchi Reddy (dead) by LR's and others erroneously decided the issue relating to the title on the basis of oral sale without any declaratory relief and further decided the issue of possession based on such title in favour of the plaintiff.

Such course adopted by the Courts below in my considered view is legally unsustainable. As the finding of the Courts below regarding possession and enjoyment is not based on proper evidence and not supported by sufficient reasoning, the same warrants interference by this court. The substantial questions of law are hence answered in favour of the defendants.

20.In the result, the second appeal is allowed by setting aside the judgment and decree of the Courts below and by dismissing the suit. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

tsh/rk

To

- 1.The Sub Court,
Sankari.
- 2.The District Munsif Court,
Sankari.
- 3.The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.N.Manokaran, Advocate, S.R.No.5582
+lcc to Mr.D.Shivakumaran, Advocate, S.R.No.5950

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