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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.06.2015

CORAM :

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

Second Appeal (MD) No.258 of 2015

1.Govindan @ Govindaraj

2.Tiruppathi

3.Mariyaee

... Appellants/

Appellants/Defendants

Vs.

Valiyan

... Respondent/Respondent/Plaintiff

Second Appeal is filed under Section 100 C.P.C against the judgment and decree passed in A.S.No.39 of 2013, dated 17.02.2014 on the file of the Principal Sub Court, Trichy, confirming the judgment and decree passed in O.S.No.212 of 2010, dated 30.11.2012 on the file of the District Munsif Court, Musiri.

For Appellants

: Mr.H.Arumugam

JUDGMENT

This Second Appeal arises out of a decree passed by the Principal Subordinate Judge Trichy (lower Appellate Judge), dated 17.02.2014 made in A.S.No.39 of 2013 dismissing the said appeal and confirming the decree of the trial Court (District Munsif Court Musiri), dated 30.11.2012 made in O.S.No.212 of 2010.

2.The unsuccessful defendants are the appellants. The original suit was filed by the respondent herein/plaintiff for permanent injunction restraining the appellants herein/defendants from in any manner causing disturbance to the peaceful possession and enjoyment of the respondent herein/plaintiff in respect of the suit property and for costs.

3.The said prayer was made based on the averments made in the plaint which are, in brief, as follows:

One Kolunthan, father of the respondent herein/plaintiff purchased the suit property under a sale deed dated 26.03.1934. He was in possession and enjoyment of the same ever since such his purchase. Thereafter, he effected a partition of the said property equally among his sons and daughters. For Chellamuthu, the other son of Kolunthan another property was allotted by him. Since his daughters were given in marriage providing Seervarisai, they were not given any share by kolunthan. The



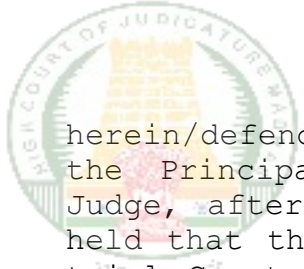
respondent herein/plaintiff put up a concrete storeyed building in a part of the property and the rest of the property is kept vacant. The appellants herein/defendants have no manner of right or title in respect of the suit property. They are the owners of the properties lying on the west and north of the suit properties. They made an attempt to form a track (ghij) in the suit properties and the said attempt was thwarted with much difficulty by the respondent herein/plaintiff. Still the appellants herein/defendants are proclaiming that they would forcibly enter into the suit property and form the track and that if the respondent herein/plaintiff would make any attempt to stop them, he would have to face serious consequences, including the risk of losing his life and properties. Hence, the respondent herein/plaintiff was constrained to file the suit for the above said relief.

4.The suit was resisted by the appellants herein/defendants based on the written statement filed by the first appellant which was adopted by the appellants 2 and 3. In the said written statement, besides making parawar denial of the plaint allegations, the appellants herein/defendants, made the following averments:

The property lying immediately on the north of the house constructed in the suit property still remains an agricultural land and the family members of the appellants herein/defendants are cultivating the said land. Taking advantage of issuance of patta under natham survey wrongly in respect of the said agricultural land in favour of the respondent herein/plaintiff, the respondent herein/ plaintiff got an interim order and using the same he is preventing the appellants herein/defendants from carrying on their cultivation activities. The alleged attempt made to form a track is totally false. The respondent herein/plaintiff cannot take advantage of the patta issued wrongly under natham survey in respect of the agricultural land. Hence, the suit must be dismissed with costs. The suit is also bad for non joinder of necessary parties since Pazhaniyandi, brother of the respondent herein/plaintiff, has not been made as a party to the suit. The appellants herein/defendants have got ancestral agricultural land lying on the north and west of suit property. The Government poramboke land lying on the east of the said land is also under cultivation of the appellants herein/defendants for more than 100 years and they have planted neem trees and other trees.

5.The learned trial Judge framed necessary issues and conducted a trial. During trial, one witness was examined as P.W.1 and 7 documents were marked as Exs.A.1 to A.7 on the side of the respondent herein/plaintiff. Three witnesses were examined as D.Ws.1 to 3 and four documents were marked as Exs.B1 to B.4 on the side of the appellants herein/defendants. The report and plans submitted by the Commissioner appointed by the trial Court were marked as Exs.C1 to C3 (Court documents).

6.Upon considering the pleadings and evidence, the learned trial Judge accepted the case of the respondent herein/plaintiff in respect of the northern half of the suit property and accordingly decreed the suit and granted relief in respect of the northern half of the suit property holding that the southern half of the suit property admittedly belonged to the brother of the respondent herein/plaintiff. The suit was dismissed in respect of the southern half of the suit property. As against the said decree of the trial Court, dated 30.11.2012, the appellants



herein/defendants preferred an appeal in A.S.No.39 of 2013 on the file of the Principal Subordinate Judge, Trichy. The learned lower Appellate Judge, after hearing, concurred with the finding of the trial Court and held that there was no reason to interfere with the decree passed by the trial Court. Accordingly, the lower appellate Judge dismissed the appeal with costs by judgment and decree dated 17.02.2014. It is as against the said appellate decree of the lower appellate Court, the present Second Appeal has been filed on various grounds set out in the memorandum of grounds of Second Appeal.

7.Today, the matter stands listed for admission. The arguments advanced by Mr.H.Arumugam, learned counsel for the appellants are heard. The copies of the judgments of the Courts below and the copies of other documents produced in the form of typed set of papers are also perused.

8.As per Section 100 C.P.C, a Second Appeal will lie against an appellate decree of the Court subordinate to the High Court only on a substantial question of law/substantial questions of law. A party filing the Second Appeal should not only state precisely the substantial questions of law involved in the Second Appeal but also satisfy the High Court that such question is really a substantial question of law and it is really involved in the Second Appeal. The appellants herein/defendants have suggested the following questions to be the substantial questions of law:-

"(a)Whether the Courts below are right in decreeing the suit in respect of 23.63 cents when admittedly under Ex.A.1 only 2.32 cents is conveyed?

(b)Whether the suit is hit by non joinder of necessary party and whether the courts below are right in granting the relief even after giving a finding regarding the non joinder?

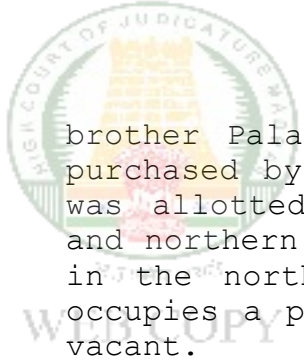
(c)Whether the courts below are right in granting the relief of injunction ignoring the admission of P.W.1 and evidence of D.W1, D.W.2, and D.W.3 confirming possession of defendants?

(d)Whether the suit for injunction without relief of declaration is maintainable as per "Section 34"" of Specific Relief Act, 1963 when the plaintiff has no title in respect of the suit property?

(e)Whether the Courts below are right in decreeing the suit when there is no cause of action and the defendants admit Ex.A.1?"

9.Learned counsel for the appellants herein/defendants argued that the Courts below omitted to consider the contention that the suit was hit by non joinder of necessary party; that the admissions made by P.W.1 and the evidence of D.Ws.1 to 3 regarding the claim of the appellants herein/defendants that they are in possession of the suit property were ignored and hence, the finding in respect of the same could be termed perverse and that the Courts below failed to consider that a suit for injunction without seeking a relief of declaration is not maintainable. The above mentioned three submissions are sought to be projected as substantial questions of law involved in the Second Appeal.

10.It is the clear the case of the respondent herein/plaintiff that the property of which, the suit property forms part was purchased by the respondent herein/plaintiff under a sale deed dated 26.03.1934 and that the same was divided by the father of the respondent herein/plaintiff equally between the respondent herein/plaintiff and his



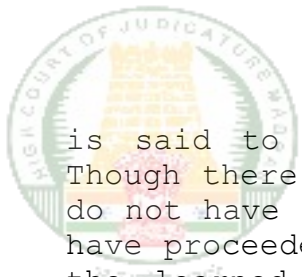
brother Palaniyandi. It is his further contention that in the property purchased by his father under Ex.A.1 dated 26.03.1934, the southern half was allotted to Palaniyandi, brother of the respondent herein/plaintiff and northern half was allotted to the respondent herein/plaintiff and that in the northern half, a concrete storied building constructed by him, occupies a portion whereas the rest of the property on the north is kept vacant.

11.It has also been admitted by the appellants herein/defendants that the respondent herein/plaintiff was granted patta in natham survey in respect of the suit property. Exs.A2 to A4 show that the respondent herein/plaintiff was paying house tax and electricity charges for the house put up by him. Ex.A5 is the certificate issued by the Headquarters Deputy Tahsildar of Musiri. Ex.A.6 is the joint patta issued in the name of the respondent herein/plaintiff and his brother Palaniyandi and Ex.A.7 is the village map of Kamatchipatti.

12.From the said documents, it is clear that for the suit property also, the respondent herein/plaintiff had got patta which probablise the case of the respondent herein/plaintiff. On the other hand, the appellants herein/defendants have chosen to produce patta passbook relating to the property which lies on the north and west of the suit property. The copy of 'A' register produced as Ex.B2 and B3 do not relate to the suit property and it simply shows that the properties of the appellants herein/defendants abut the suit property. The sale deed dated 05.01.1968 marked as Ex.B.4 also does not relate to the suit property. The report and plans submitted by the Commissioner marked as C1 and C2 also supports the case of the respondent herein/plaintiff that, out of the property purchased by the father of the respondent herein/plaintiff under Ex.A.1, northern half was allotted to the respondent herein/plaintiff and the southern half was allotted to his brother Palaniyandi and that in the portion allotted to him, the respondent/plaintiff put up a construction on the southern side leaving a vacant space on the northern side.

13.It has also been established that the Courts below on proper appreciation of evidence have also arrived at a correct conclusion that the vacant space lying on the north of the house of the respondent herein/plaintiff is part of the property allotted to him in the partition effected by his father between himself and his brother Palaniyandi and that the appellants herein/defendants do not have any manner of right or title in respect of the said property.

14.It is also pertinent to note that the appellants herein/defendants do not claim title in themselves in respect of the suit property. They simply say that it is a poramboke land lying immediately on the east of their land and a patta for the same was wrongly issued in favour of the respondent herein/plaintiff under natham survey. When the appellants herein/defendants admitted that the property is a Government poramboke and the Government issued patta in favour of respondent herein/plaintiff under natham survey, the respondent herein/plaintiff shall have every right to protect his possession by seeking injunction against the person who attempted to trespass into the suit property. <https://liservices.hccourtsgov.in/hiservices> Due to some lack of clarity in the description of property, it has been clearly mentioned that the suit property is a vacant site measuring east west of 40 feet (fhyo) and north south 45 feet (fhyo) which



is said to be a part of 0.09.50 ares comprised in Survey No.27/1. Though there is some ambiguity in the description of property, the parties do not have any doubt regarding the identity of the suit property and they have proceeded on that basis alone. However, without considering the same, the learned trial Judge seems to have assumed that the injunction was sought for in respect of entire extent of land comprised in Survey No.27/1 and the same resulted in granting a decree holding that the respondent herein/plaintiff was entitled to the northern half of the suit property and restricting the relief of injunction to the northern half of the suit property. The mistake committed by the trial Court in granting injunction in respect of the northern half of the suit property came to be rectified by the learned lower Appellate Judge holding that, though such a mistake was committed by the learned trial Judge while granting of injunction in respect of the property shown in the plaint, he did not commit any mistake in coming to the conclusion that the northern half of the property belonged to the respondent herein/plaintiff, whereas southern half belonged to his brother Palaniyandi. So far as the grant of injunction is concerned, it is a finding of the lower appellate Court that since the suit property formed part of the northern half of the property purchased under Ex.A.1 granting injunction in respect of the said part could not be found fault with.

15.The contention of the appellants herein/defendants that the suit for bare injunction is not maintainable without a prayer for declaration cannot be sustained. Section 34 of the Specific Relief Act, 1963 states that a declaration cannot be granted when a further relief could have been sought for by the respondent herein/plaintiff and the respondent herein/plaintiff has failed to seek such further relief. Similar provision is not found in any of the sections relating to the grant of injunction. It is a matter of convenience of the Court to relegate the parties to a more comprehensive suit for declaration and other reliefs, if issue of title is so complicated and unsuitable for resolutions in a suit of summary nature. The very fact that the language of Section 27 (a) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 will make it clear that the suit for bare injunction without seeking declaration, even when the title of the plaintiff is disputed, cannot be said to be not maintainable. This Court, after going through the judgments of the trial Court and the lower appellate Court, finds that though the injunction was sought for in respect of a specific portion with specific measurements lying on the north of the house of the respondent herein/plaintiff, which also comes within the northern half of the property purchased under Ex.A.1, the decree of the lower appellate Court confirming the decree passed by the trial Court can be confirmed with a clarification that relief of permanent injunction granted in favour of the respondent herein/plaintiff shall be restricted to the vacant site lying on the north of his house.

16.Accordingly, this Court hereby clarifies that the injunction granted in favour of the respondent herein/plaintiff shall be restricted to the vacant site measuring east west of 40 feet (fhyo) and north south 45 feet (fhyo) lying on the north of his house.



17. With the above clarification, the Second Appeal is dismissed.
No costs. Consequently, M.P(MD)No.1 of 2015 is closed.

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Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge, Trichy.

2. The District Munsif, Musiri.

+1cc to M/S.H.Arumugam, Advocate in SR.No 28300

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Second Appeal (MD) No.258 of 2015

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