



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.04.2015

CORAM :

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

Second Appeal (MD) No.576 of 2013

WEB COPY

A.Mohammed Sulthan

... Appellant/Respondent/
Cross Appellant/Plaintiff

Vs.

Mymum Beevi

... Respondent/Appellant/
Respondent/Defendant

Second Appeal is filed under Section 100 C.P.C against the judgment and decree in A.S.No.39 of 2010, dated 16.09.2011 and Cross Objection No.39 of 2010 on the file of the Sub Court, Paramakudi reversing the judgment and decree passed in O.S.No.117 of 2007, dated 09.06.2010 on the file of the District Munsif Court, Paramakudi.

For Appellant : Mr.K.Govindarajan

For Respondent : No appearance

JUDGMENT

The sole plaintiff, who filed the suit in O.S.No.117 of 2007 on the file of the District Munsif, Paramakudi for declaration of title in respect of the suit property, injunction not to disturb his alleged possession and enjoyment and further injunction restraining the respondent herein/defendant from alienating or encumbering the suit property, partly succeeded before the trial Court as the prayer for declaration was declined and the relief of injunction was alone granted by the trial Court by its judgment and decree, dated 09.06.2010. The respondent herein/defendant preferred an appeal on the file of the lower Appellate Court, (Sub Court), Paramakudi in A.S.No.39 of 2010 against grant of the relief of permanent injunction as prayed for by the plaintiff.

2.The appellant herein/plaintiff also preferred a cross objection before the lower Appellate Court in the above said appeal preferred by the respondent herein/defendant as against that part of the decree of the trial Court disallowing his claim for declaration of title. The learned Sub Judge, Paramakudi allowed the appeal and dismissed the cross objection, with the result, that part of the decree granting the relief of perpetual injunction passed by the trial court was set aside and the Original Suit was dismissed in its entirety. It is as against the said decree of the lower Appellate Court allowing the appeal in A.S.No.39 of 2010 and dismissing the cross objection filed therein, the present Second Appeal has been filed on various grounds setting out in the memorandum of grounds of Second Appeal.

3.Though the respondent was served with a notice before admission, the respondent has not chosen to enter appearance. Hence, the



arguments advanced by Mr.K.Govindarajan, learned counsel for the appellant are heard. This Court carefully considered the submissions made by the learned counsel for the appellant/plaintiff and also perused the judgments of the Courts below as well as the copies of the documents produced in the form of typed set of papers.

WEB COPY 4.The brief facts, leading to the filing of the Second Appeal can be stated thus:-

The appellant herein/plaintiff is none other than the brother of the respondent herein. Both of them are son and daughter respectively of one Abdul Majith. The appellant herein/plaintiff claimed that the suit property was his ancestral property and it was originally held by his paternal grand father. According to him, after the death of his paternal grand father, the property was held by his senior paternal uncle by name Mohammed Mushthafa for some time and the same was held by Abdul Majith, the father of the parties to the present appeal. He further contended that in a family arrangement that took place in his family, the patta for the suit property came to be issued in his name and that it was he who enjoyed the property through out by growing acacia trees (Kattukaruvelam) and periodically cutting and selling the same. In addition, he also claimed that due to a long, continuous and open enjoyment, he acquired prescriptive title to the suit property. Contending that the respondent herein/defendant, who is none other than the sister of the appellant herein/plaintiff, was making attempts to sell the property to third parties from 15.11.2007, the appellant herein/plaintiff filed the above said suit in O.S.No.117 of 2007 for the following reliefs:

"(i)A declaration that he is the absolute owner of the plaint schedule property and for a consequential injunction restraining the respondent herein/defendant from interfering with his peaceful possession and enjoyment;

(ii)a decree of perpetual injunction restraining the respondent herein/defendant from encumbering the suit property by creating mortgage with or without possession (அடமானம்/ஒத்தி); and

(iii) for costs".

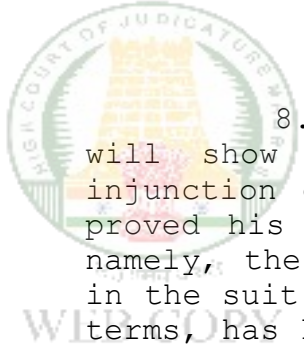
5.The respondent herein/defendant resisted the claim contending that the plaint allegations, excepting the relationship of appellant herein/plaintiff and the respondent herein/defendant, were false and concocted. It was her claim before the trial Court that the suit properties jointly belonged to one Abdul Majith (father of the parties to the suit), his brother K.M.Kani and their brother and sisters; that in a partition effected in their family, the suit properties came to be jointly allotted to Abdul Majith and K.M.Kani; that the half share of K.M.Kani was purchased by her under a sale deed dated 11.06.1975 and the remaining half share referable to her father Abdul Majith was settled on her under a registered settlement deed dated 06.08.1975 and that thereafter, the respondent herein/defendant was in possession and enjoyment of the entire suit property. The further contention made by the respondent herein/defendant was that in view of the claim made by the respondent herein/defendant in respect of a property at Parthibanoor in which the appellant herein/plaintiff has put up construction and is residing therein, the appellant herein/plaintiff clandestinely got patta for the suit property changed in his name and filed the present suit in



order to deter the respondent from staking any claim to the house property in the possession of the appellant herein/plaintiff.

6. Learned trial Judge, after trial came to the conclusion that the mere fact that after the death of the father of the parties, patta came to be issued in the name of the son namely, the appellant herein/plaintiff shall not be enough to deny the right of the respondent herein/defendant to have a share in the property of her father. The learned trial Judge also rejected the contention of the appellant herein/plaintiff that he got prescriptive title to the suit property to the exclusion of his brother and sisters. Accordingly, the learned trial Judge rejected the claim of the appellant herein/plaintiff that he is the absolute owner of the suit property and the suit was dismissed so far as the relief of declaration of title is concerned. However, the learned trial Judge rejecting, the contention of the respondent herein/defendant that she derived title to the suit property under the sale deed dated 11.06.1975 and settlement deed dated 06.08.1975 marked as Exs.B.1 and B2, held that the respondent herein/defendant did not have proved her title to the suit property. Based on the said finding and relying on the patta and kist receipts, the trial Court held that it was the appellant herein/plaintiff, who was in possession and enjoyment of the suit property granted the relief of interim injunction as sought for in the plaint.

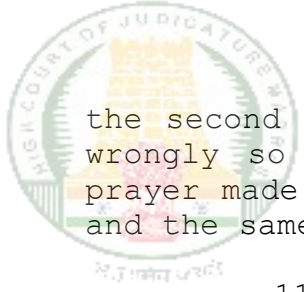
7. The finding of the trial Court that the respondent herein/defendant had not proved her title to the suit property was challenged before the lower Appellate Court in A.S.No.39 of 2010. As against the dismissal of the suit in respect of the prayer for declaration of title, the appellant herein/plaintiff filed cross objection. The lower appellate Judge, on re-appreciation of evidence, came to the conclusion that the appellant herein/plaintiff did not prove his title to the suit property and that the finding of the trial Court in this regard could not be found fault with. Accordingly, the cross objection was dismissed by the lower Appellate Court. So far as the prayer for injunction is concerned, the learned lower Appellate Judge concurred with the finding of the trial Court that the respondent herein/defendant also failed to substantiate her contention that she became entitled to the entire suit property by virtue of Exs.B-1 and B-2. The lower Appellate Judge proceeded further held that there was an admission that the suit property was owned by Abdul Majith, his brother K.M.Kani and also their brother and sisters and that therefore, the purchase made under Ex.B1 and the settlement made under Ex.B2 would not confer title to the entire suit property and that the other heirs of father of K.M.Kani and Abdul Majith were also having a right to share in the suit property. In line with the said finding, the lower Appellate Judge held that the appellant herein/plaintiff, having failed to substantiate his contention that he is the absolute owner of the suit property, when the respondent herein/defendant has proved that she is having at least a share in it by virtue of Exs.B-1 and B-2 cannot be successful in seeking an injunction as prayed for in the plaint. Accordingly, the learned lower Appellate Judge set aside the decree granted in respect of the relief of injunction and dismissed the suit in its entirety.



8. A consideration of the judgment of the lower Appellate Court will show that the lower Appellate Court declined the relief of injunction on the ground that the appellant herein/plaintiff having not proved his title cannot seek such an injunction against a true owner, namely, the respondent herein/defendant, who is having at least a share in the suit property. The lower Appellate Court, in clear and categorical terms, has held that the trial Court did not commit any error or mistake in holding that the appellant herein/plaintiff did not establish his title to the suit property and the prayer for injunction was declined only on that ground. The appellant herein/plaintiff who approached the Court with the suit for declaration and injunction shall stand or fall in accordance with the strength of his own case and he cannot succeed by pointing out the weakness in the case of the respondent/defendant.

9. Though the appellant/plaintiff tried to trace his title through his paternal grand father, he has not chosen to clearly plead and prove the line of succession. The name of the paternal grand father was also not furnished. He simply stated that the suit property ancestrally belonged to him. However, in the next sentence itself, he stated that in a family arrangement that was effected among himself and his brother and sisters, the entire property was allotted to him. It is the further plea made in the very same paragraph of the plaint, namely, paragraph 2 of the plaint, that the patta for the property had been in the name of his senior paternal uncle Mohammed Musthafa and after some time, it was changed to the name of his father Abdul Majith and that subsequently, pursuant to the family arrangement patta for the suit property came to be issued in his name. Ambiguous, confusing and contradictory pleas have been made by the appellant/plaintiff. The same shall be obvious from the fact that in the very same paragraph of the plaint, the appellant herein/plaintiff claimed that he had got prescriptive title to the suit property. It is not known in what context the appellant herein/plaintiff had taken a stand that he had got prescriptive title to the suit property. If at all, it was by way of perfection of title by adverse possession, he should have known that the property belongs to other persons including the respondent/defendant and he should have held the property and was enjoying the same openly to the knowledge of the real owner and adverse to the real owner, over and above the statutory period. When a party claims prescriptive title by adverse possession, he must state the date from which his possession became adverse and the person against whom, the possession became adverse and prove that such adverse possession to the knowledge of the real owner was over and above the statutory period. The evidence adduced on the side of the appellant herein/plaintiff shall not be enough to prove that the appellant herein/plaintiff had perfected title by adverse possession.

10. Both the courts below have rendered a concurrent finding in this regard, which this Court does not consider to be either defective or infirm, much less perverse. In view of the finding that the appellant herein/plaintiff miserably failed to substantiate his title to the suit property and in view of the finding that the person against whom injunction has been sought for is proved at least to be a co-owner of the property, the lower Appellate Court has not committed any wrong in interfering with the decree of the trial Court granting the relief of injunction and dismissing the suit of the appellant herein/plaintiff in its entirety. No substantial question of law is found to have arisen in



the second appeal and not even a question of law is shown to be decided wrongly so as to enable the appellant herein/plaintiff to sustain his prayer made in the Second Appeal. There is no merit in the Second Appeal and the same deserves to be dismissed.

11. In the result, the Second Appeal is dismissed. However, there shall be no order as to costs. Consequently, M.P(MD)No.1 of 2013 and 1 of 2015 are closed.

Sd/-
Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To

1. The Subordinate Judge, Paramakudi, Ramanathapuram.

2. The District Munsif, Paramakudi, Ramanathapuram.

Sms

SR/SAR I : 12.05.2015 : 5p/3c

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22.04.2015