

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

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SECOND APPEAL No.160 of 1998

Date:05.06.2015

Between:

Majji Thavitamma

...Appellant.

AND

Lenka Chinnam Naidu and another.

...Respondents.

The Court made the following:

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

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SECOND APPEAL No.160 of 1998

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JUDGMENT:

This appeal is preferred against judgment dated 11-09-1995 in A.S.No.33/1993 on the file of Subordinate Judge (presently Senior Civil Judge), Rajam whereunder judgment dated 16-08-1993 in O.S.No.06/1988 on the file of District Munsiff (presently Junior Civil Judge), Rajam is reversed.

2. Appellant herein is first defendant, first respondent herein is plaintiff and second respondent herein is D2 in the above referred O.S.No.6/1988. Parties are hereinafter referred to as plaintiff and defendants for convenience.

3. Brief facts leading to this appeal are as follows:-

Plaintiff filed the above suit for the relief of permanent injunction against D1 & D2 and only D1 contested the suit and on a consideration of oral and documentary evidence, trial Court dismissed the suit holding that the plaintiff is not entitled for injunction. According to plaintiff,

he purchased the plaint schedule property from one D. Chinnappadu through a registered sale deed dated 05-06-1964 and from the date of purchase, he is in possession and enjoyment of the plaint schedule land and that the defendants who are highly influential and powerful persons in the village are attempting to trespass into the land highhandedly and prayed for permanent injunction restraining defendants from interfering with peaceful possession and enjoyment of the plaint schedule property. According to D1, she is widow of Boddala Suryanarayana, plaintiff in order to knock away the suit property fraudulently brought into existence a collusive sale deed and that the plaintiff's vendor had no title and enjoyment over the suit schedule property at any time and they are no way connected with the suit land. According to D1, one Seethaiah was the original pattedar and her husband is the only son of said Seethaiah. It is also contended that plaint schedule is not

correct and that the plaintiff has given wrong survey numbers and boundaries and filed the suit. On these pleadings, trial Court framed four material issues and examined four witnesses on plaintiff side, and five witnesses on defendant side besides marking six documents on plaintiff side and seven documents on defendant side and on a over all consideration of oral and documentary evidence, dismissed the suit. Aggrieved by the same, plaintiff preferred appeal to the Senior Civil Judge, Rajam and the appellate Court allowed the appeal and granted injunction in favour of plaintiff. Now Aggrieved by the same, D1 preferred present appeal.

4. The following are the substantial questions of law that are raised in the second appeal:-

“Whether the plaintiff is entitled to a decree of injunction, when the link documents Ex.A2 dated 05-06-1964 in favour of Vendor and Ex.A3, dated 15-06-1967 in favour of his vendor’s vendor, show different extents of land and whether the plaintiff could be held to be having any legal right in respect of the land of which he has neither title nor possession.

Whether the appellate court is justified in holding that though there is variation the plaintiff could be deemed to be in possession of the land on the ground of weakness of the defendant’s case.”

5. This Court admitted the second appeal treating above two grounds as substantial questions of law.

6. Heard both sides.

7. Advocate for appellant submitted that Exs.A2 & A3 are the link documents for Ex.A1-document through which plaintiff claimed to have purchased suit property.

He submitted that these two link documents show different extents of

land and when a specific plea is taken that the plaint schedule is not correct and survey numbers are also not correct, the appellate Court completely ignoring it granted injunction though lot of documentary evidence is produced to show that D1 is in physical possession and enjoyment since a very long time. He further submitted that the findings of the appellate Court have to be treated as perverse as they are contrary to the material on record and that the second appeal has to be allowed.

8. No arguments are advanced on behalf of respondent/plaintiff.

9. Now the point that would arise for my consideration in this second appeal is whether the findings of appellate Court are perverse and that there is any substantial question of law to be considered by this Court?

10. **Point:-** As already referred above, the suit is filed for mere injunction and the plaintiff claimed right over the suit property through Ex.A1. The main contention of the appellant is that Exs.A2 & A3 are the link documents for Ex.A1 and if a comparison is made, the extents are not tallied. As seen from the document-Ex.A1, an extent of Acs.0-11 cents in Survey No.36/9 is purchased for Rs.605/- on 06-01-1988 from D.Chinnapanaidu. According to recitals of this Ex.A1, the vendor of plaintiff purchased this property from Majji Appalanaidu. Said Majji Appalanaidu acquired the said land from one Seethayya through Registered Sale Deed dated 15-07-1957. Sale deed in favour of D. Chinnapanaidu is marked as Ex.A2 and sale deed in favour of M. Appalanaidu is marked as Ex.A3.

As seen from this Ex.A2, the property purchased was only Ac.0-10 cents in P.No.61. In the cross-examination, P.W.1 stated that the extent of plaint schedule property is Ac.0-22 cents. He further stated that the survey number for the land purchased under Ex.A1 is 36/9. D1 specifically pleaded in the written statement that the plaint

schedule is not correct and the plaintiff has given wrong survey numbers and wrong boundaries when such a specific plea is taken, though there is a discrepancy in the extent and also in the survey number, no explanation is offered by the plaintiff. Ex.A3 is the link document for Ex.A2. According to Ex.A3, the vendee under Ex.A3 purchased Ac.0-25 cents, but according to Ex.A2, only Ac.0-10 cents was sold to plaintiff's vendor. Now the contention of the plaintiff is that his vendor purchased the entire extent covered by Ex.A3 and therefore, the extent of suit property is Ac.0-23 cents and that he is in possession and enjoyment of the same. From a plain perusal of Exs.A1, A2 & A3, it is crystal clear that there is a cloud over the title of plaintiff in respect of plaint schedule property. Further, in Ex.A1, the survey number referred is 26/9, but the plaint schedule refers to Plot No.61 in survey No.36/9. On behalf of D1, cist receipts and adangal copies are produced from the year 1978, which only refer to the name of D1, but not the name of plaintiff's vendor. Considering these aspects, trial Court held that plaintiff is not entitled for the relief of permanent injunction and dismissed the suit. Learned appellate Judge, by ignoring the oral and documentary evidence, produced on behalf of D1, which would clinchingly show that D1 is in possession and enjoyment of the suit property as on the date of the suit, carried away with Ex.A1-registered sale deed in favour of the plaintiff though it do not reflect the extent as pleaded in the plaint. In a suit for injunction, the main criteria is possession as on the date of the suit and title aspect will be examined only incidentally. Here it is admitted case of plaintiff that the extent of plaint schedule land is Ac.0-22 cents, whereas the document-Ex.A1 is only for Ac.0-11 cents. It is also further clear that vendor of plaintiff has purchased only Ac.0-10 cents and therefore, he cannot convey more land than that, but ignoring all these aspects, the appellate Judge, on presumptions and surmises, interfered with findings of the trial Court, which are based on material evidence. Therefore, as rightly pointed out by Advocate for appellant, the findings of the appellate Court have to be treated as perverse, particularly when Exs.A2 & A3-sale deeds in favour of plaintiff's vendor and his vendor's vendor are not supporting the

extent claimed by the plaintiff. As already observed above, there is a clear cloud over the title of the plaintiff and plaintiff without getting her title declared and without establishing possession as on the date of the suit is not entitled for the relief of injunction, therefore, the findings of the appellate Court are to be set aside.

11. For these reasons, second appeal is allowed and the judgment and decree of the Subordinate Judge (presently Senior Civil Judge), Rajam dated 11-09-1995 in A.S.No.33/1993 is hereby set aside and the judgment of the Junior Civil Judge, Rajam dated 16-08-1993 in O.S.No.06/1988 is restored. No costs.

12. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand disposed of.

JUSTICE S. RAVI KUMAR

Date:05.06.2015

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