

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 17.11.2016

Judgment pronounced on : 23.11.2016

CORAM

THE HONOURABLE DR. JUSTICE **G. JAYACHANDRAN**

S.A.No. 149 of 2008
and MP No.1 of 2008

Kesavarman

...Appellant

Vs.

Vasudevan

...Respondent

Prayer:- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 30.10.2002 made in As No.29 of 2002 on the file of Principal District Court, Pondicherry, as confirmed by the judgment and decree dated 30.11.2001 made in O.S.No.412 of 2000 on the file of Principal District Munsif, Pondicherry.

For Appellant : Mr.A.Jenasenan

For Respondent : Mr.R.Saseetharan

JUDGMENT

The plaintiff in the suit is the appellant before this Court. In the suit for permanent injunction filed by the plaintiff alleging that his predecessor in title Ramabai Ammal purchased the suit property in the year 1950

through Notary Sale Deed dated 26.08.1950 and later died intestate on 05.10.1990. After her death, her son Vengadachalapathy Reddiar, who was in continuous possession and enjoyment of the suit property sold it in favour of the plaintiff on 10.09.1998 through a registered Sale Deed. The said Sale Deed has been acted upon. The plaintiff was put to possession and enjoyment of it. Since there was some discrepancies in the Sale Deed, the said discrepancies were rectified through the rectified Deed dated 13.01.1999. The defendant who is the half blood brother of Vengadachalapathy Reddiar, is now disturbing the peaceful possession of the plaintiff. Hence, the suit for injunction.

2. The defendant has filed the written statement wherein he had submitted that Varadarajalu Reddiar had two wives and through each of them he had sons. While vendor of the plaintiff Vengadachalapathy Reddiar is the son born through first wife of Varadarajalu Reddiar, the defendant was born through second wife of Varadarajalu Reddiar.

3. The defendant contended that properties were donated by Varadarajalu Reddiar in the year 1965 to the issues born to him. The suit property was donated to the defendant and his brother Lakshminarayanan.

While, Venkatachalapathy who is the vendor of the plaintiff not satisfied with the donations more particularly regarding the suit property which was donated to the defendant and his brother, filed a suit before the learned Additional Sub Judge, Pondicherry. He questioned the donation but failed. After the dismissal of the suit, the issue regarding title got settled and any claim over the suit property is barred by *resjudicata*. Hence, the present suit is barred Under Section 11 of CPC. The plaintiff, who is claiming the right through his vendor Vengadachalapathy Reddiar is not entitled to seek injunction against true owner. Hence suit is liable to be dismissed. The Trial Court framed the following four issues:-

1. *Whether the suit is barred by Resjudicata?*
2. *Whether the plaintiff is in enjoyment and possession of the suit property as on the date of plaint?*
3. *Whether the plaintiff is entitled for a decree and judgment as prayed for?*
4. *To what other relief the plaintiff is entitled to?*

4. After apprising the evidence let in by parties, the Court held that plaintiff has failed to prove his possession and enjoyment of the suit property as on the date of plaint. Therefore, the suit for injunction dismissed. Further the suit is also barred by *Res judicata*.

5. On appeal, the judgment of the Trial Court was confirmed. While, confirming the order of the Trial Court, the learned Appellate Judge has held that:-

12. The title of the property is vested with the defendant, by virtue of the donation-cum-partition deed, dated 02.09.1965. Vengadachalapathy Reddiar has no right in the suit property when he executed Ex.A4-Sale deed and Ex.A5-rectification deed to the plaintiff. The plaintiff cannot claim any right or title over the suit property.

13. The plaintiff has filed a joint patta Ex.A6 to show his possession, but the name of the defendant is also mentioned in the joint patta and Ex.B5 is another patta issued to the defendant. Patta is not a document of title and the plaintiff cannot claim any title and therefore, he cannot claim any possession.

6. In the Second Appeal the learned counsel for the appellant pointed this portion of the Appellate Court judgment and contended that in a suit for injunction the Court ought to have look into who is in possession and title can be gone into only incidentally. On the contrary, the First Appellate Court has first decided upon the title and held against the appellant. The learned counsel for the appellant submitted that both the

Courts have not properly appreciated Exhibit A5 and Exhibit A6 which are the chitta issued to the respective parties for the same suit property. While admitting the Second Appeal this Court has formulated the following substantial question of law:

Whether the Courts below are right in holding that the suit property was allotted to the respondent under the donation deed, when the original owner Ramabai Ammal was not a party to the said donation deed.

7. The admitted fact in this case is that the suit property was purchased by Ramabai Ammal on 26.08.1950. She is the first wife of Varadarajalu Reddiar, who had another wife by name Saraswathiammal. No doubt, the Notarial Donation Deed has been executed on 02.09.1965 covering the suit property. In the said donation deed the Children of Ramabai Ammal and Saraswathiammal born to common father Varadarajalu Reddiar were given certain properties. This Donation Deeds were subject matter of earlier suit in OS.No.326 of 1995 the judgment which marked as Exhibits B6 and B7. The court has held this Donation Deeds as valid.

8. The plaintiff claiming title and possession over the suit property based on the Sale Deed executed by Vengadachalapathy Reddiar who is son of Ramabai Ammal born to Varadarajalu Reddiar seeks bare injunction. The First Appellate Court has categorically held that there is no doubt that the suit property was purchased by Ramabai Ammal in the year 1950 and there is no doubt regarding description of the property and cadastre number, re-survey number and its extent. It doubted the truthfulness of chitta Ex.A6 and Ex.B5 which are inconsistent to each other. This doubt led to the dismissal of the appeal suit confirming the judgment of the Trial Court.

9. This Court finds that Exhibit A6 is chitta which stands jointly in the name of plaintiff and one Lakshminarayanan, who is the brother of the defendant. This for the year 1999. ExB5 is chitta which stands in the name of the Defendants for 1997 the year prior to execution of ExA4. No evidence to show the plaintiff predecessor in title had possession till 1997. Thus it is clear the claim of the plaintiff that he was put in possession by his vendor after he purchased the property in the year 1999, rightly found to be incorrect by the Courts below.

10. The question whether the Court can look into title in the Suit for bare injunction, the answer is 'yes' in circumstances the question of possession is to be ascertained whether it is lawful or settled possession.

In ***S.KBalaguru Pandian v. S.K.Murugesu Nadar, reported in [2010 (6) CTC 279]*** after considering catena of judgments touching upon this point Court has summarized as under:-

27. It is well settled that in a Suit for injunction simplicitor, the Plaintiff has to prove prima facie title and possession on the date of filing of the Suit. It is also well settled that whether the Plaintiff has a right for lawful possession is a question of title and it is open to the Court to go into the title incidentally in a Suit for Injunction simplicitor.

28. In the case of the decision of Nainar Sundaram, J. (as he then was), which was reported in Krishnan v. Lakshmi Ammal, 1989 (2) LW 76 (marked portion), which is as under:

“In an identical circumstances, the learned Judge has concluded:

“To have her possession protected the plaintiff has to demonstrate that her possession could not be unlawful. Hence, for the purpose of finding out whether the Plaintiff has got right to lawful possession, so as to maintain that possession the question of title can certainly be gone into”

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11. In the case in hand, the plaintiff vendor has no title when he executed ExA4. The description of the property also not correct in the sale deed so it was rectified only by ExB5. The chitta relied by the plaintiff ExB6 is for the year 1999, whereas the chitta for the previous year is not in the name of the plaintiff's vendor but in the name of the defendants. Therefore this Court finds no error in the judgment and finding of the Courts below. Since the issue of validity of donation deed already been settled in the previous proceedings. No substantial question of law is involved in this case. Second Appeal dismissed. No Costs. Consequently, the connected miscellaneous petition M.P.No.1 of 2008 is also closed.

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Index :Yes/No

Internet:Yes/No

To

1 The Principal District Court, Pondicherry

2 The Principal District Munsif, Pondicherry.

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