

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED : 02.08.2016

ORDERS DELIVERED : 19.08.2016

DATED: 19.08.2016

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

Second Appeal No.318 of 2015

and

M.P.No.2 of 2015

S.Parthasarathy ... Appellant/Plaintiff

Vs.

Narayanasamy ... Respondent/Defendant

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree of the learned Subordinate Judge, Udumalpet made in A.S.No.10 of 2013 dated 20.10.2014 thereby reversing the judgment and decree of the learned District Munsif, Udumalpet made in O.S.No.124 of 2000 dated 20.08.2013.

For Appellant : M/s.P.Bagyalakshmi
For Respondent : Mr.S.Gunalan

J U D G M E N T

The appellant is the plaintiff in a suit for bare injunction.

2.The case of the plaintiff is as follows:

The suit property belonged to his grandfather Rangasamy Naicker. After his death, the father of the plaintiff viz., one Subbusamy managed the property which was purchased by the said Rangasamy Naicker for the purpose of conducting certain poojas and other activities at Kothandaramasamy temple, Periyavalavadi village. Thus, the plaintiff's father constructed a house in the suit property for the use of the employees of said temple. After the plaintiff's father, the plaintiff has been managing the temple and the property by developing the garden for the

purpose of conducting pooja at the said temple. The defendant was appointed by the plaintiff as a coolie worker for carrying out agricultural operation at the suit property for planting coconut trees, irrigating water to the plants, etc., Taking advantage of such position, the defendant, who has no right or title over the property, made attempt to trespass into the suit property. Therefore, the present suit is filed seeking for permanent injunction restraining the defendant from trespassing or interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

3.The case of the defendant is as follows:

The suit property is not ancestral property of the plaintiff. It is a village natham. The defendant is in possession and enjoyment of the suit property by constructing a dwelling house with a cattle shed for more than 15 years. The defendant is residing with his family in the suit property till this date. He had applied to the Government for grant of patta and his application is pending consideration. The door number of the house is 5/150 and the natham Survey Number in which the house is situated has been sub divided as 377/10.

4.The plaintiff in support of his case marked Exs.A1 to A15 and examined himself as PW1. One Perumalsamy was examined as PW2. The defendant in support of his case marked Exs.B1 to B15 and examined himself as DW1. He further examined the Village Administrative Officer and the Revenue Thasildar as DW2 and DW3 respectively. Exs.C1 and C2 were marked through those revenue officials.

5.The trial court decreed the suit. The defendant preferred the appeal which came to be allowed thereby dismissing the suit. Now, the plaintiff has filed the present second appeal challenging such reversing finding of the appellate court.

6.This court while admitting the above second appeal, raised the following substantial questions of law:

"Whether Exs.A5 to A13/public documents substantially established the right, title and interest of the plaintiff to protect the property of the temple which is notified as Nandhavanam belonging to the temple?

b) Whether the defendant has clearly accepted the fact that the land is notified as Nandhavanam belonging to the temple by his own documents and evidence adduced through D.W.2 and D.W.3?"

7.Learned counsel appearing for the appellant submitted that the suit property totally measuring 40 cents was purchased by

the grandfather of the plaintiff by way of 4 sale deeds, commencing from the year 1925 and the plaintiff's father has constructed a house in the suit property for the use of the employees in temple services. Therefore, she contended that the defendant who was appointed by the plaintiff to look after the plants and trees in the suit property, is not having any right or title over the same.

8. Per contra, the learned counsel appearing for the respondent contended that the suit was rightly dismissed by the lower appellate court by giving a finding on the factual aspects of the matter to the effect that the defendant is in possession and enjoyment of the suit property. Therefore, he contended that such factual finding rendered need not be disturbed especially, when the substantial questions of law raised herein are nothing but dealing with the factual aspects of the matter only which the appellate court has already dealt with and found in favour of the defendant.

9. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the materials placed before this court.

10. The appellant as the plaintiff sought for permanent injunction against the defendant restraining him from interfering with his peaceful possession and enjoyment of the suit property. Thus, it is evident that the suit is not for declaration of title to the suit property and for any consequential relief. It is seen that the plaintiff claimed title to the suit property by tracing the same from his grandfather viz., Ranganathan Naicker. It is his admitted case that his father constructed a house in the suit property for the use of employees in temple services of Kothandaramasamy temple. It is also the admitted case of the plaintiff that the defendant was appointed by the plaintiff as an agricultural worker to do such work inside the suit property. Therefore, the presence of the defendant in the suit property is admitted by the plaintiff though not by accepting his right or title over the same but however, as the worker or employee of the plaintiff.

11. The trial court after considering the evidence let in by both parties, pointed out that though the defendant filed documents to show his possession in respect of door No.5/150, has however failed to establish that the said door number relates to the suit property (D.No.150). However, the trial court observed that even though the defendant is in possession of the portion of the suit property, he cannot get any title on such portion of the suit property as he has not sought for such title by way of adverse possession. The trial court thus has

given a categorical finding that the suit property belong to the plaintiff and consequently granted the relief of injunction.

12.The Appellate Court found from the evidence of DW2 and DW3 that the defendant is in possession and enjoyment of the property at Survey No.377/16 and that the said property was shown in the revenue records as the property belonging to the temple only after filing of the suit. It is also pointed out by the appellate court that the suit property was originally bearing old survey No.377/1, which was later sub divided as 377/16 and 377/10 out of which 377/16 was shown as natham cart track. The lower appellate court also pointed out that the Tahsildar who was examined as DW3 has deposed that he is personally aware of the fact that the defendant is in possession and enjoyment of the property at Survey No.377/16 for more than 10 years and that old door number of the suit property is 5/150 with new door No.5/86. The Appellate Court also pointed out that the house tax receipts filed by the plaintiff in respect of the suit property, except one, are all obtained later to filing of the suit. Even in respect of one obtained prior to the suit, the appellate court pointed out that the same was obtained two months prior to the suit with the help of the Panchayat President who is admittedly related to the plaintiff. Based on Ex.A7 plan, the lower Appellate Court found that the Survey No.377/10 does not contain a house property and that the suit itself was filed only in respect of Survey No.377/10. It is also pointed out by the lower Appellate Court that the attempt made by the plaintiff to include the other survey No.377/16 by way of amendment of the plaint was rejected and such order has become final. Therefore, the lower Appellate Court found that the plaintiff has not established that the house is situated at S.No.377/10 as pleaded in the plaint and on the other hand, the house constructed is lying at Survey No.377/16, for which the defendant has filed documents to show his possession and enjoyment.

13.From these factual findings rendered by the lower Appellate court, it is evident that the suit was filed in respect of Survey No.377/10 alone and not in respect of Survey No.377/16. When the fact remains that S.Nos.377/16 and 377/10 are only sub division of original Survey No.377/1, it is for the plaintiff to establish his right and title over the suit property as well as other survey No.377/16 by filing appropriate suit for declaration and for consequential reliefs against the defendant, if at all the plaintiff has material documents in support of his claim. Unfortunately, the trial court has proceeded to decide the case as if it is the one filed for declaration of title. The trial court has also given a finding that the property at Survey Nos.377/10 and 377/16 belongs to the

plaintiff, when Survey No.377/16 is not at all the suit property. When the plaintiff claims in the suit that a house in Survey No.377/10 was constructed by him and that such house is in existence in that survey Number, it is for him to establish the same, which in my considered view has not been done in this case. At any event, in a suit for bare injunction, too much of going into the title to the suit property, probing the same and giving a categorical finding on such issue is not proper, as the parties have to raise and agitate such issue by way of filing a separate suit. At this juncture, a recent judgment of this court made in S.A.Nos.524 and 553 of 2016 dated 21.07.2016 is relevant to be quoted. At paragraph No.11, it has been observed as follows:-

"11. Needless to say that in a suit for bare injunction, mainly the Court is to find out as to who was in possession of the suit property on the date of filing of the suit and therefore, it is for the parties to the suit to establish such possession by adducing relevant evidence. No doubt, while dealing with such issue, the Court is not totally precluded from going into the question of title to certain extent, incidentally, though not for the purpose of deciding the title to the suit property but for the purpose of finding out the bonafide of the parties in their respective claim regarding possession over the suit property. However, while doing so, even if the Court finds, prima facie, that the person who is in possession of the property is with some defective title, it shall not venture to give a finding on such title in the suit for bare injunction itself except by expressing its prima facie view. Under such circumstances, the Court should drive the parties to agitate such issue in a separate proceedings dealing with the title over the suit property. Therefore, the role of the Court in deciding the suit for bare injunction is highly a sensitive one and such exercise of either granting or rejecting the relief of injunction should be done with great care and caution."

14.In this case, as the finding rendered by the lower appellate court in respect of the possession of the suit property in favour of the defendant appears to be just and proper based on proper appreciation of the evidence, the lower Appellate Court is justified in reversing the finding of the trial court with which I find no infirmity or irregularity. Accordingly, I find that the substantial questions of law raised in the second appeal are to be answered against the plaintiff and thus, they are answered so.

15.Considering the above stated facts and circumstances, the second appeal fails and the same is dismissed. However, the dismissal of the present suit for bare injunction will not be a bare for the appellant to file a separate suit seeking for appropriate relief in respect of title to the property. No costs. The connected miscellaneous petition is also dismissed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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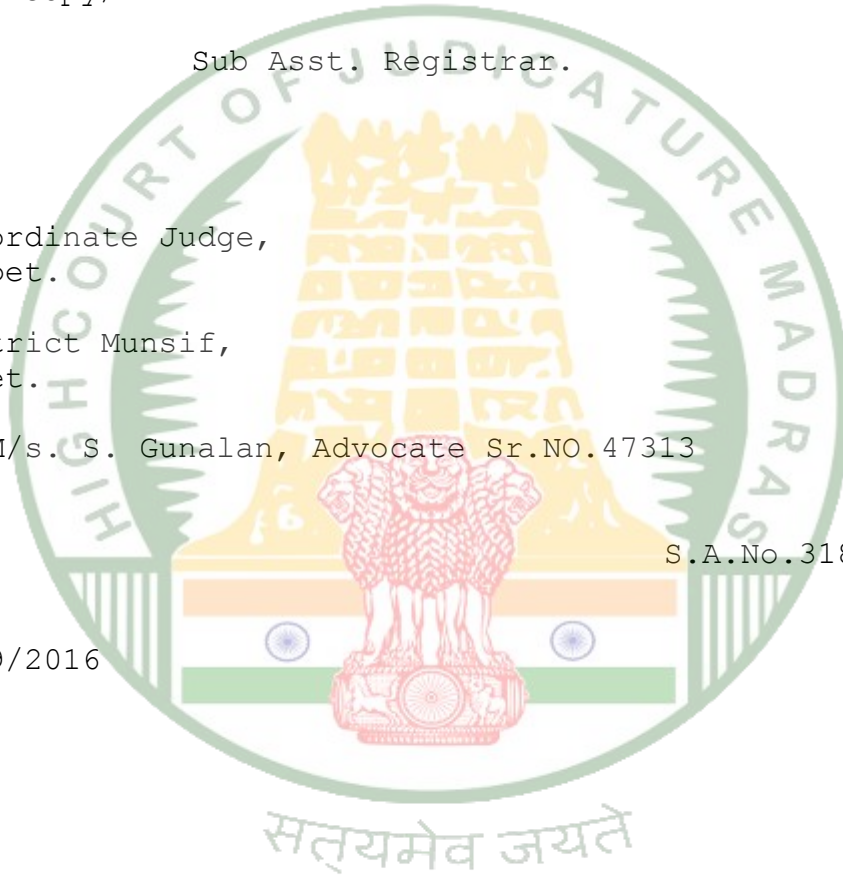
1.The Subordinate Judge,
Udumalpet.

2.The District Munsif,
Udumalpet.

+1 CC to M/s. S. Gunalan, Advocate Sr.NO.47313

S.A.No.318 of 2015

UD (CO)
MD : 20/09/2016



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