

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.11.2016
PRONOUNCED ON : 02.12.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.121 of 2011

Ranganayaki Ammal ... Appellant/Appellant/Plaintiff
Vs.

1. Sagunthala
2. Nagarajan
3. Tamilzhanbu
4. Inbasekaran
5. Munusamy

... Respondents/Respondents/Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree of the learned Subordinate Judge, Gingee, in A.S.No.5 of 2006 dated 28.07.2010 confirming the judgment and decree of the learned Additional District Munsif, Gingee in O.S.No.526 of 1995 dated 29.11.2005.

For Appellant : Mr. A.K.Kumarasamy
For Respondents : Mr.P.Dinesh Kumar
No.1 and 3
For Respondents : No appearance
No.2 & 4
For Respondent : Mr.J.Suresh
No.5

JUDGMENT

The plaintiff in this second appeal has challenged the judgment and decree dated 28.07.2010 passed in A.S.No.5 of 2006 on the file of the Subordinate Court, Gingee, confirming the judgment and decree dated 29.11.2005 passed in O.S.No.526 of 1995 on the file of the Additional District Munsif Court, Gingee.

2. The suit has been laid by the plaintiff for permanent injunction.

3. The second appeal has been admitted and the following substantial questions of law are formulated for consideration in the second appeal.

(i) Are the courts below justified in dismissing the suit without considering the admitted case of the parties and the available materials on record?

(ii) When the appellant's title to the suit property is admitted by the respondents, is the lower Appellate Court justified in dismissing the suit holding that the suit should have been filed for the declaration of title?

4. Considering the rival contentions between the parties, it could be seen that the defendants have absolutely accepted that the plaintiff has title to the suit property. Even the courts below have also noted that the plaintiff had been allotted an extent of 34 2/3 cents in survey No.10/4B, 6A and 7A, which has been shown in sketch No.8 attached to the final decree proceedings in I.A.No.39 of 1978 in O.S.No.218 of 1967. O.S.No.218 of 1967 has been laid for partition by the plaintiff's mother against the plaintiff and the plaintiff's sister Lakshmi ammal. It is admitted by the parties that in respect of the properties covered in the above mentioned suit, the plaintiff's mother, the plaintiff and the plaintiff's sister had been declared to be entitled to obtain 1/3 share in the properties. Finally, in the final decree proceedings initiated in I.A.No.39/1978, it could be seen that the plaintiff has been allotted in the above mentioned survey numbers an extent of 34 2/3 cents and the plaintiff has also taken delivery of the same through court proceedings and the same has not been disputed by the defendants. The above facts could also be seen from Exs.A1 and A2. As seen from the averments contained in the plaint as well as in the written statement it could be seen that the plaintiff has earmarked the above extent of land as plots and it is also admitted that the plaintiff has alienated some of the plots to the third parties and retained the remaining plots to herself. Now, according to the plaintiff, the same is in her possession and enjoyment and the above facts have not been disputed by the defendants.

5. A perusal of the written statement filed by the defendants would go to show that inter alia, the defendants claim title to the land purchased by them in survey No.10/5 and the defendants have not made any claim to the suit property. It could also be seen that the plaintiff is also not making any claim in respect of the property purchased by the defendants in survey No.10/5.

6. However, the defendants in their written statement have taken a vague plea of oral sale from the plaintiff and Amirtham

ammal. However, the said plea has not been established by the defendants. Be that as it may, even the above said oral plea is not with reference to the suit property. It has been clearly admitted in the written statement that the plaintiff has plotted her property allotted in the final decree proceedings and alienated the plots to Shanmugam, Kanniyappan and Govindasamy, as put forth by the plaintiff in the plaint. Further, the defendants have also clearly admitted that after selling the plots the remaining land is in the possession and enjoyment of the plaintiff.

7. The trial Court has also found that the property sold by the defendants 1 to 4 in favour of the 5th defendant is comprised only in survey No.10/5 and not in the suit survey number. Further, even the trial court has not given any finding that the defendants are making any claim over the suit property. However, the trial court has negatived the relief sought for by the plaintiff on the footing that the plaintiff has not taken steps to appoint an advocate commissioner to survey the suit property to establish her right. However, when the plaintiff's title and possession in respect of the suit property has not been put at issue by the defendants and when the property alleged to have been purchased by the 5th defendant from the other defendants lies in a different survey number and not having nexus with any suit survey numbers, it does not stand to reason as to why the plaintiff should resort to the identification of the suit property through an advocate commissioner.

8. To obviate that snag, the plaintiff in the first appeal proceedings has also taken out a commission and the commissioner after inspecting the suit property has filed his report and plan, which have been marked as Exs.C1 and C2 in the first appellate Court. Even the first appellate court has also found that the defendants are not making any claim over the suit property and it is only the plaintiff, who has got title to the suit property as per the final decree proceedings above mentioned. Despite the report of the commissioner indicating that the plaintiff has plotted her share, which had been allotted to her, the first appellate court also erred in rejecting the plaintiff's suit on the footing that the plaintiff has not made out a case for granting the relief of permanent injunction. In this connection, the first appellate court has noted that the defendants have no right or claim over the suit property and the defendants are concerned only in the property situated in survey No.10/5. Despite the above findings, the first appellate court has not accepted the case of the plaintiff and dismissed the appeal filed by her. It is contended by the plaintiff's counsel that when there is no cloud of title of the plaintiff in respect of the suit property and when the plaintiff's possession and enjoyment of the suit property as

such had been admitted and not controverted and when the defendants are making a claim in respect of the property comprised in survey No.10/5 and not to any extent in the suit survey number, particularly, with reference to the suit property and equally, when the plaintiff is also not making any claim in respect of the property purchased by the 5th defendant in survey No.10/5, according to him, the observation of the lower appellate court that the plaintiff has not made out a case and that she has to fail on account of her failure to seek the relief of declaration is fallacious and untenable it is contended that considering the facts and circumstances of the present case above detailed, according to the counsel for the plaintiff, there is no need for the plaintiff to seek the relief of declaration.

9. However, the counsel for the respondents contended that the plaintiff should not be granted the relief of permanent injunction as she has not sought the relief of declaration. In this connection, he placed reliance upon the decisions reported in (2008) 4 Supreme Court Cases 594 (Anathula sudhakar V.P.Buchi Reddy (Dead) By Lrs.And Others) and 2013 (4) CTC 45 (Venkatachalam and another V.Nallathambi). In the decision reported in 2008 4 SCC 594, the apex court was concerned as to what is the scope of a suit for prohibitory injunction relating to immovable property and on an analysis of the issue, the apex court has inter alia pointed out that the plaintiff having clear title and possession need not be driven to the necessity of filing the suit for the relief of declaration. The observation of the Supreme Court with reference to the above issues are as follows:

" ... Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter. सत्यमेव जयते

A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown.

.... But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach

upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

10. Therefore, it could be seen that applying the above principles to our case, when the plaintiff's claim of title to the suit property has not been disputed and equally when the plaintiff's possession and enjoyment of the suit property has also not been disputed and when the defendants are making a claim in respect of some other property not having nexus with the suit property, it could be seen that the plaintiff's suit simpliciter for prohibitory injunction is maintainable and considering the contest made by the defendants to the rightful claim of the plaintiff in the suit, it could be seen that the plaintiff's apprehension that the defendants are attempting to interfere with their lawful possession and enjoyment of the suit property cannot be brushed aside easily and therefore it is found that on finding a threat to her possession from the defendants, it could be seen that the plaintiff had a cause of action to lay the suit against the defendants for prohibitory injunction.

11. In the light of the above discussions, it could be seen that the courts below have completely erred in negating the relief sought for by the plaintiff, particularly when the contesting parties had admitted the title, possession and enjoyment of the plaintiff in respect of the suit property. Accordingly, the substantial questions of law formulated for consideration in this second appeal are answered in faovur of the appellant/plaintiff and against the respondents/defendants.

In conclusion, the second appeal deserves acceptance and the judgments and decrees of the Courts below are set aside and the suit is decreed as prayed for. Accordingly, the second is allowed. No costs.

s/d-
Assistant Registrar(CS-II)

//True Copy//

Sub-Assistant Registrar

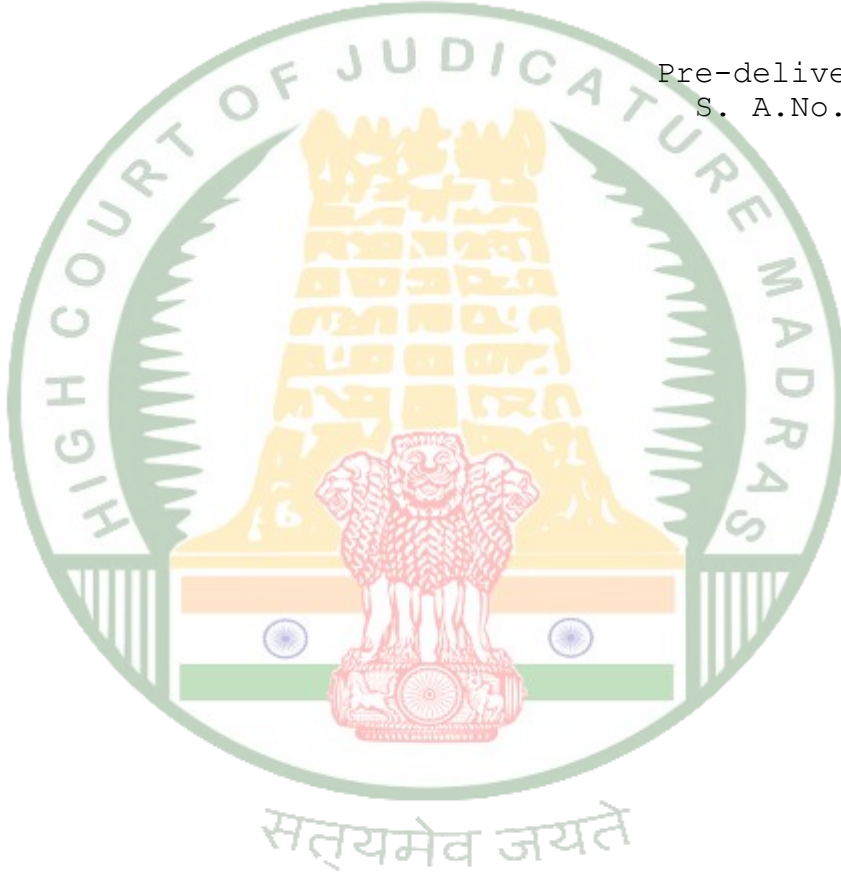
To

1. The Subordinate Judge, Gingee.
2. The Additional District Munsif, Gingee.

+1 CC to Mr. A.K. Kumarasamy, Advocate sr 71453
+1 CC to Mr. D. Ravichander, Advocate sr 71112
+1 CC to M/s. Ezhil Karolin, Advocate sr 71175

Pre-delivery order in
S. A.No.121 of 2011

GJI (CO)
sp/1/3



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