

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal Nos.524 and 553 of 2016
and
C.M.P.Nos.9260 and 10092 of 2016

S.A.No.553 of 2016

1. Umayavalli
W/o R.Elango
 2. Ashwin,
S/o R.Elango
- ... Appellants/Defendants 2 & 3

vs.

1. S.Kuppusamy
S/o Late Chellamuthu Gounder
 2. P.S.Moorthy
S/o Subramania Gounder
 3. P.Arunguam
S/o Perumal Gounder
 4. K.M.Palanisamy
S/o Late Marappa Gounder
 5. P.Sengottuvelu
S/o Palaniappa Gounder
 6. K.Kuppana Gounder
S/o Kolantha Gounder
 7. R.Subramani
S/o Ramasamy Gounder
 8. R.Elango
S/o P.C.Ramasamy
- ... Respondents 1 to 7/Plaintiffs.
- ...8th Respondents/1st Respondent.

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 18.02.2016 made in A.S.No.29 of 2015 on the file of the Second Additional District Court, Erode,

confirming the judgment and decree dated 25.03.2014 made in O.S.No.127 of 2012 on the file of the Sub-Court, Perundurai.

For Appellants : Mr.R.Prabakar

For Respondents: Mr.S.Mukunth
for M/s.Sarvabhauman Associates
for R1 to 5 & 7
Mr.N.Manokaran for R8

S.A.No.524 of 2016

R.Elango

S/o P.C.Ramasamy

.... Appellant/1st Respondent

vs.

1. S.Kuppusamy
S/o Late Chellamuthu Gounder

2. P.S.Moorthy
S/o Subramania Gounder

3. P.Arunguam
S/o Perumal Gounder

4. K.M.Palanisamy
S/o Late Marappa Gounder

5. P.Sengottuvelu
S/o Palaniappa Gounder

6. K.Kuppana Gounder
S/o Kolantha Gounder

7. R.Subramani
S/o Ramasamy Gounder Respondents 1 to 7/Plaintiffs

8. Umayavalli,
W/o R.Elango

9. Ashwin,
S/o R.Elango ... Respondents 8&9/Defendant 2& 3

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 18.02.2016 made in A.S.No.64 of 2014 on the file of the Second Additional District Court, Erode, confirming the judgment and decree dated 25.03.2014 made in O.S.No.127 of 2012 on the file of the Sub-Court, Perundurai.

For Appellant : Mr.N.Manokaran

For Respondents: Mr.S.Mukunth
for M/s.Sarvabhauman Associates
for R1 to 5 & 7
Mr.R.Prabakar for R8 & 9.

C O M M O N J U D G M E N T

Second Appeal No.524 of 2016 is filed by the first defendant whereas Second Appeal No.553 of 2016 is filed by the second and third defendants in O.S.No.127 of 2012 on the file of Sub-Court, Perundurai, filed by the respondents herein for bare injunction. Both the Courts below have concurrently held in favour of the plaintiffs and granted the decree for permanent injunction. Now, these appeals are listed before me under the adjourned admission caption wherein the plaintiffs have entered appearance as Caveators. Therefore, this Court has to see as to whether any substantial question of law arises for consideration in these appeals for entertaining the same for further hearing on such question of law.

2. The case of the plaintiffs is as follows:

The suit property was given to the 1st defendant by way of partition dated 07.04.1980. The first defendant, for himself and for his minor son, namely, the third defendant, executed a sale deed dated 16.09.2004 marked as Ex.A2 and sold the suit property to the plaintiffs. The 2nd defendant is the wife of the first defendant. Pursuant to the sale, the plaintiffs were put in possession. Mutation of revenue records had also taken place and they are paying the kist to the suit properties in their name. However, the defendants attempted to interfere with the possession of the suit property and hence, the present suit.

3. The first defendant contested the suit as follows:

i) There was no intention to sell the suit property. The plaintiffs are money lenders and insisted the first defendant to sell the suit property when the defendant wanted only a loan. Therefore, the sale deed executed by the first defendant was not with an intention to sell or purchase the suit property as the possession of the suit property has not been parted with. However, when the plaintiffs tried to trespass into the suit property, a police complaint was given. The plaintiffs secured patta in their name by influencing the revenue officials. Steps are being taken to cancel the patta granted to the plaintiffs.

ii) The defendants 2 and 3 remained exparte.

4. The plaintiffs, in support of their case, examined the first plaintiff as P.W.1 and marked Ex.A1 to A9. On the other hand, the defendants examined D.W.1 and D.W.2 namely, the first defendant and one Karuppasamy respectively on their side and they did not mark any document in support of their contention. The trial Court, on appreciation of the respective pleadings of the parties and the evidence let in by them, found that the plaintiffs are in possession and enjoyment of the suit property in pursuant to the sale and consequently, granted the decree for injunction. Challenging the same, the 1st defendant filed appeal in A.S.No.64 of 2014 and the defendants 2 and 3 filed separate appeal in A.S.No.29 of 2015. Both appeals were heard together and decided by a common judgment. The lower Appellate Court concurred with the findings rendered by the trial court and dismissed the appeals. Thus, the present Second Appeals are filed before this court by the defendants as stated supra.

5. Mr.N.Manoharan, learned counsel for the appellants in S.A.No.524/2016 submitted that the sale deed was not executed with an intention to sell the property as the possession of the suit property is still with the defendants. He further submitted that on the same day of execution of the sale deed, another sale agreement was entered into between the parties in respect of the remaining portion under the same Survey Number and in respect of such sale agreement, though a suit in O.S.No.172/2007 instituted by the same plaintiffs for specific performance was decreed by the trial court, the First Appeal preferred by these defendants against such decree before this Court in A.S.No.870/2008 was entertained and the said appeal is still pending an interim order. Therefore, he contended that the issue between the parties has to be considered and decided by clubbing both the matters together. He also submitted that the sale deed executed in favour of the plaintiffs under Ex.A1 includes the share of the minor and therefore, such sale is void as no permission from the Court was obtained to sell the share of the minor. Thus, he contended that such issue has also to be gone into in this matter. In support of his submission, learned counsel relied on 2013(9) SCC 419 (Rohit Chauhan v. Surinder Singh) and 1999 (8) SCC 511 (U.Nilan v. Kannayyan).

6. Learned counsel appearing for the appellants in S.A.No.553/2016 submitted that the 2nd appellant's father who executed the sale deed including the minor share was not competent to do so. Thus, he submitted that the lower Appellate Court has specifically given a finding that the 3rd defendant, can get his equal share from and out of the other properties available with the 1st defendant. Therefore, he contended that the 3rd defendant must be given liberty to agitate his right by way of filing a separate suit.

7. Learned counsel appearing for the plaintiffs supported the decision rendered by the Courts below by pointing out that the present suit is one for bare injunction and both the courts have gone into the question of possession over the suit property and found that the plaintiffs are in possession, based on the evidence. Therefore, he contended that such factual finding rendered by the courts below need not be interfered with.

8. Heard Mr.N.Manoharan, learned counsel for the appellants in S.A.No.524 of 2016, Mr.R.Prabakar, learned counsel for the appellants in S.A.No.553 of 2016 and Mr.S.Mukunth, the learned counsel appearing for the Caveators.

9. It is not in dispute that the first defendant for himself and also on behalf of his minor son, namely, 3rd defendant, executed the sale deed dated 16.09.2004 in favour of the plaintiffs in respect of the suit property which is measuring an extent of 2.49 acres, out of the total extent of 3.94 acres at S.No.925/1 in Perundurai Village. It is also an admitted fact that neither the first defendant nor the minor son, namely, the third defendant, have chosen to challenge the said sale. It is also seen that in pursuant to the sale, the plaintiffs effected mutation of revenue records, as could be seen from the Exhibits viz., Ex.A3 patta, Ex.A5 copy of A-Register and Ex.A8 and A9 kist receipts. It is also seen that the plaintiffs filed a police complaint on 09.01.2007 marked as Ex.A6 and the receipt given by the police as Ex.A7, complaining that the defendants are trying to interfere with their possession. These documents marked before the trial Court would show and establish that the plaintiffs, in pursuant to the sale, are in possession and enjoyment of the suit property.

10. No doubt, the defendants have contended that the sale deed was not intended to be acted upon and that the actual possession has not been parted with. Even though such contention was raised by the first defendant, the same was not established before the trial Court by adducing any evidence in support of such claim. As already stated supra, the defendants have not marked any document, except examining the first defendant as D.W.1 and one Karuppasamy as D.W.2.

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.

12. Keeping the above principle in mind, if we look into the present case, it is seen that the first defendant claimed that the sale deed was executed without having an intention to sell, that too, covering minor's properties. The fact remains that the minor 3rd defendant has not challenged the sale so far and that he remained exparte before the trial Court and the 1st defendant alone contested the said suit. Under these circumstances, it is clear that the possession of the plaintiff over the suit property, admittedly through the said sale, cannot be held as the one without having any right or title to the suit property. Whether such title is a defective one as claimed by the 1st defendant or not is certainly a different question which has to be agitated separately in an appropriate suit.

13. The decisions of the Honourable Apex Court relied on by the learned counsel for the appellant, are also not applicable to the present facts and circumstances in view of the fact that both the decisions are not arising out of a suit for injunction and on the other hand, the findings rendered therein were made in respect of a suit for partition in one case and the challenge made against auction sale in another. Needless to say that unless and until the defendants choose to challenge the sale of properties in favour of the plaintiffs in a manner known to law, they cannot raise all these contentions in the present suit which is the one for bar injunction. As I already pointed out, the plaintiffs are armed with the sale deed, admittedly executed by the first defendant for himself and also on behalf of the 3rd defendant and their possession is also supported by revenue records namely patta, kist etc. issued pursuant to the sale. Both the courts have considered these factual aspects of the matter and granted injunction in their favour. Therefore, I do not think that such factual findings rendered based on the material placed before the courts below require any interference by this Court, more particularly, when I do not find any substantial question of law arising for consideration in these appeals. Accordingly, both the Second Appeals fail and the same are dismissed. As I am not disturbing the findings rendered by the courts below, it is open to the minor son to

work out his remedy in the manner known to law. No costs.
Consequently, connected miscellaneous petitions are closed.
vsi

s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

1. The Second Additional District Court, Erode,

2. The Sub-Court, Perundurai.

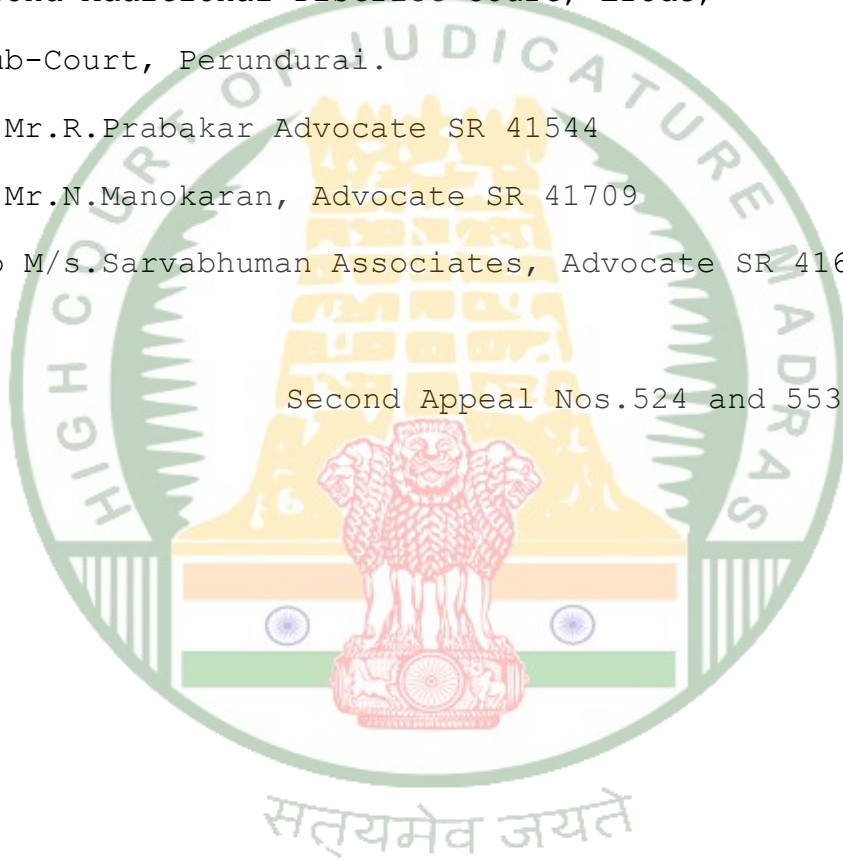
+ 1 cc to Mr.R.Prabakar Advocate SR 41544

+ 1 cc to Mr.N.Manokaran, Advocate SR 41709

+ 2 ccs to M/s.Sarvabhuman Associates, Advocate SR 41608 & 41609

kji(co)
prk31/8

Second Appeal Nos.524 and 553 of 2016



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