



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 26.09.2016

C O R A M

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THE HONOURABLE MR. JUSTICE S.S.SUNDAR

Second Appeal (MD) No.554 OF 2016

AND

C.M.P(MD)No.7597 of 2016

1.Rajammal

2.Jebasingh

: Appellants/Appellants/Defendants

Vs.

Lenin Jackson

: Respondent/Respondent/Plaintiff

Prayer: - Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, against the judgment and decree passed in A.S.No.102 of 2013 dated 12.01.2016 on the file of the Principal Subordinate Court, Nagercoil, by confirming the judgment and decree passed in O.S.No.9 of 2012 dated 07.10.2013 on the file of the Principal District Munsif, Nagercoil.

For Appellant

: Mr.F.Deepak

For Respondent

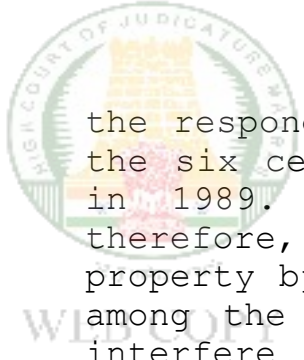
: Mr.M.P.Senthil

JUDGMENT

The Defendants are the appellants in the above Second Appeal.

2. The respondent herein filed a suit in O.S.No.9 of 2012 on the file of the Principal District Munsif Court, Nagercoil, Kanyakumari District, for a decree for permanent injunction restraining the appellants herein from interfering with in any way his peaceful possession and enjoyment of the plaint schedule property.

3. The suit property is an extent of 12 cents in Re-Survey No.1070/2 in Neendakarai B Village. The suit property is also described with reference to four boundaries. The case of the respondent herein is that the suit property originally belongs to paternal grandfather of the plaintiff one Jacob. It is the further case of the respondent that after the death of the said Jacob, the suit property devolved upon two sons, namely, Thankaraj and Devaraj. Though it is admitted that the suit property was equally divided between the two sons of Jacob, it is the case of



the respondent that the brother of the Thankaraj and Devaraj sold the six cents of the land in favour of the Thankaraj by document in 1989. The respondent being the son of the Thankaraj, therefore, claimed that he became the absolute owner of the suit property by virtue of registered partition deed, dated 27.05.2008, among the children of Thankaraj. Since the appellant tried to interfere with his possession, it is alleged that the suit was filed.

4. The suit was resisted by the appellants disputing the title of the respondent. The defendants claimed right to an extent of three cents in the same survey number, even though they have not produced any document of title deed, except the gift deed executed by the first defendant in favour of the second defendant. the appellants disputed the title of respondent to the extent of three cents.

5. The trial Court decreed the suit, specifically holding that the plaintiff/respondent has proved his title to an extent of 12 cents on the basis of documents of title deed and other evidence. The trial Court has also entertained a doubt as to the identity of the property covered under Ex.B1 and disbelieved the case of the defendants/appellants on the basis of Ex.B1. Hence, the trial Court decreed the suit as prayed for. However, the trial Court also has granted a decree more than the suit prayer by directing the plaintiff to measure his property with the help of a Surveyor and the Revenue Officials and fix the four boundaries of his properties before commencing to put up any construction in the suit property.

6. The judgment and decree of the trial Court was challenged by the appellants before the lower appellate Court in A.S.No.102 of 2013 and the lower appellate Court by judgment and decree dated 12.01.2016, dismissed the appeal confirming the judgment and decree of the trial Court.

7. Aggrieved by the same, the defendants who have lost before the Courts below have preferred this second appeal.

8. It is to be noted that the appellate Court has also elaborately considered the documents of title deeds filed by the respondent and the document relied upon by the appellants, namely, Ex.B1 and all other material documents and evidence.

9. The appellate Court specifically rendered specific findings as to the title of the respondent and the continuous enjoyment based on oral and documentary evidence. The point canvassed by the appellants are that the suit for bare injunction is not maintainable, without the prayer for declaration of the title and that the Courts below have failed to appreciate the admission of <https://hcservices.collegal.com/hcservices/> with regard to the existence of the property belonged to the appellant on one side of the property of the plaintiffs. It was also contended that the decree of trial Court

giving further direction is unwarranted and that such direction is only because the plaintiff could not identify the land in his possession.

10. The appellants also contended that the plaintiffs have admitted the title of the appellants with regard to the three cents conveyed to the second defendant under Ex.B1 by admitting the execution of Ex.B1. The appellate Court after considering the arguments on the side of the appellants specifically held that the defendants have not established their right to an extent of three cents. The appellate Court has also found that the defendants have admitted the right of the plaintiff under Ex.B1. When the document under Ex.B1 was analysed by the appellate Court in the light of the arguments, the appellate Court has specifically rendered a findings that it is the defendants, who admitted the title of the plaintiff under Ex.B1 by showing western and northern boundaries of their property as its property of plaintiff.

11. The learned Counsel for the appellants persuaded this Court to consider some of the documents and contended that the conclusion of the Courts below and the judgments of the Courts below are liable to be set aside. He has also raised the following substantial questions of law in the grounds of appeal, which are extracted as under:-

a) "Whether the Courts below failed to note that in a suit for permanent injunction plaintiff should prove possession on the date of the filing of the suit which the plaintiff has miserably failed to prove the same?

b) Whether the suit for permanent injunction alone is maintainable without a prayer for declaration of suit property especially when there is dispute as to title and to possession which was the principles of law laid down by this Hon'ble Court?

c) Whether the Courts below failed to note that the original suit was bad, in the absence of a prayer for declaration of title and the suit for bare injunction would lie in view of the title dispute highlighted in the plaint itself?

d) Whether the judgment and decree of the Courts below are vitiated by its failure to consider relevant evidence on record?"

12. The Courts below have considered both oral and documentary evidence in proper perspective and arrived at a conclusion that the suit property belongs to the plaintiff and that the plaintiff is in possession and enjoyment of the suit property. The Courts below considered a specific finding as to the sustainability of the contention of the appellants on merits. This Court finds that the lower Courts have applied their mind independently and arrived



at a conclusion based on the specific finding with regard to the title and enjoyment. No irregularity is pointed out regarding the findings of the Courts below.

13. It is a settled position of law that a suit for bare injunction is maintainable against anyone who has no better title than the plaintiff. The only limitation for maintaining such a suit for bare injunction is that no injunction can be granted against the lawful owner. In the present case, the title deeds filed by the respondent are not in dispute. The documents and title deeds produced by the respondent are proved in accordance with law and the defendants also acknowledged the existence of the suit plaintiff's property on the western side and on the northern side of the property of the defendants. In a suit for injunction, the question of title can be incidentally gone into and the Courts below have rightly gone into the question of title and decided in favour of plaintiff.

14. In such circumstances, the suit for permanent injunction filed by the plaintiff against the defendants is maintainable, even without a prayer for declaration of title. The Courts below considered all the documents and there is no illegality pointed out. It is not the case of appellant that the Courts below have failed to consider some of the relevant evidence on record. Hence, all the questions of law are answered against the defendants/appellants.

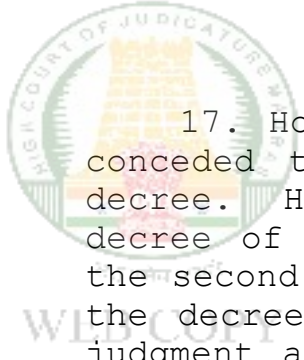
15. It is also argued by the learned Counsel for the appellants that the second clause of the trial Court decree is unwarranted as the respondent/plaintiff has never sought for the prayer which has now been granted by the trial Court.

16. The submissions of the learned Counsel for the appellants has no merit as it is always open to the Court to grant any further relief in the interest of justice.

16.1. The trial Court has granted the prayer in Clause 2 of the decree, by the following line:

"2. வாதி தன்னுடைய சொத்தில் கட்டுமானம் செய்வதற்கு முன்பாக தகுந்த நில அளவையறை வைத்து சொத்தை அளந்து தன்னுடைய சொத்தின் நான்கு எல்லைகளையும் திட்டப்படுத்திக்கொண்டு, கட்டுமானம் செய்ய வேண்டும். இதற்கு பிரதிவாதிகள் வாதிக்கு முழு ஒத்துழைப்பு கொடுக்கவேண்டும்".

16.2. Clause 2 of the decree in O.S.No.9 of 2012 is only in the nature of restricting the scope of Clause 1 of the decree. In the present context, Clause 2 of the decree is only beneficial to the defendants, so that the plaintiff's decree is only subject to Clause 2. Clause 2 cannot be construed as a further relief. However, it is only the defendants who have preferred the appeal before the lower appellate Court even though Clause 2 only restrict the scope of Clause 1 and practically may help only the defendants.



17. However, the learned Counsel for the respondent/plaintiff conceded that he has no objection in removing Clause 2 of the decree. Hence, this Court is inclined to modify the judgment and decree of the trial Court insofar as Clause 2 of the decree and the second appeal is allowed to the extent of deleting Clause 2 of the decree passed by the trial Court. In all other aspects, the judgment and decree of the Courts below are confirmed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

To

1.The Principal Subordinate Court,
Nagercoil

2.The Principal District Munsif,
Nagercoil.

+1 cc to M/s.F.Deepak, Advocate in SR.No.56196

+1 cc to M/s.M.P.Senthil, Advocate in SR.No.55992

gsr

CSL/PV/29.12.2016 :5P/5C

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26.09.2016