

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.07.2017

PRONOUNCED ON : 01.08.2017

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.2016 of 2000 &
C.M.P.No.19816 of 2000

Kannamal

...Appellant/Appellant/Plaintiff

Vs

Sekar

...Respondent/Respondent/Defendant

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 29.09.2000 made in A.S.No.46 of 2000, on the file of the Principal District Judge, Tiruvannamalai, confirming the judgment and decree dated 27.11.1999 in O.S.No.896 of 1991, on the file of the District Munsif Court, Tiruvannamalai.

For Appellant : Mr.P.Dinesh Kumar for
M/S Sarvabhuman Associates

For Respondent : Mr.R.Siddharth for
Mr.T.R.Rajaraman

JUDGMENT

The plaintiff is the appellant before this Court. This appeal is directed against the concurrent finding of the Courts below in the suit filed for bare injunction.

2.The brief facts of plaint averment is as follows:-

"A" Schedule property belong to one Karuppi Ammal, settled it in favour of Ammani Ammal, in the year 1943. Ammani Ammal is the mother of the plaintiff. Through her mother, the plaintiff got possession and enjoyment of "A" schedule property. As far as the "B" schedule property is concerned, it originally belong to one Muniyammal who settled the property in favour of Kuppan in the year 1943. The plaintiff who is the daughter of Kuppan is in possession and enjoyment of the 'B' schedule property after the

death of her father. Thus, both 'A' and 'B' schedule properties are in possession and enjoyment of the plaintiff. In short, the plaintiff got 'A' schedule property through her mother, Ammani Ammal and 'B' schedule property from her father, Kuppan.

3.While so, earlier, there was a suit filed by one Kailasam in respect of the suit properties which was dismissed in favour of the plaintiff. The first defendant who has no right or title over the property trying to trespass into the suit properties therefore, the suit for permanent injunction was laid.

4.This averment made in the plaint was denied by the first defendant. In his written statement he contended that the 'A' schedule property never owned by Karuppi Ammal and the alleged settlement deed in favour of Ammani Ammal in the year 1943, is not true and valid. Likewise, in respect of 'B' schedule property, the alleged settlement deed in favour of Kuppan by Muniyammal is also not valid and genuine. In fact, Town S.No.571 Tiruvannamalai measuring 2075 sq.ft was originally owned by Ammaiappan. The Western half portion of the property was with Amaiyappan who died leaving behind his two sons viz., Munusamy and Kannan. The first defendant is the son of Munusamy. After the demise of Munusamy, he is in possession and occupation of the Western portion of the suit property. According to the first defendant he having inherited the property through his predecessor in title (his grand father), enjoying it absolutely. Therefore, the suit for bare injunction filed against him is not sustainable. Kailasam, who has laid the suit earlier against the plaintiff is in possession and occupation of the remaining portion. The plaintiff who has sold a portion of the 'A' schedule suit property to one Kannan s/o Ammaiappan. The suit filed for bare injunction without impleading the true owners, is bad for non joinder of necessary party. Hence, according to the defendants, the suit is not maintainable.

5.The trial Court has framed the following issues:-

"1.Whether the settlement deed in favour of plaintiff's mother is true and genuine?

2.Whether the settlement deed in favour of plaintiff's father is true and genuine?

3.Whether the plaintiff is in possession and enjoyment of the suit property?

4.Whether the plaintiff is entitled for permanent injunction without seeking the relief of declaration?

5.Whether the suit is bad for non-

joinder of necessary parties?

6. Whether the payment of Court fee is correct ?

7. To what relief ?

6. The trial Court, examined P.Ws.1 & 2; marked 16 exhibits on behalf of the plaintiff under 'A' series and examined D.W.1 and marked 39 exhibits under 'B' series on behalf of the defendants.

7. To prove the title, the plaintiff has relied upon Ex.A.1 which is a truncated document. Except the first page, the remaining portion of the document is not available. Therefore, the registration copy of the said document is marked as Ex.A.2 and relied upon. The property tax receipt Exs.A.4 & A.5 pertaining to 'A' schedule property stands in the name of the plaintiff. It is pertinent to note that in so far as 'A' schedule property is concerned, the defendants have not disputed the possession of the plaintiff, except questioning the manner in which, the plaintiff has alleged to have acquired the title over the property. Hence, the trial Court has concluded that the settlement deed Exs.A.1 & A.2 are true and genuine. Thus, held the title in respect of the property covered under Ex.A.2.

8. In respect of 'B' schedule property, which lie and locate on the Eastern side, the Trial Court has rejected Ex.A3 - settlement deed purported to have been executed by Muniammal in favour of Kuppan. The trial Court has relied upon the deposition of P.W.1, who has admitted that originally, the suit property was held by Periyapaiyan and Parasuraman and on partition among them, the share of Parasuraman devolved upon the first defendant through his grandfather Ammaiappan and father Munisamy. Thus, Exs.B5 to B9 proves the possession of 'B' schedule property with the first defendant and not with the plaintiff. Finally, the Trial Court considering Ex.B.2 and found that the plaintiff has sold away 462 sq.ft of land to one Kannan which is part of 'A' schedule property. Without discussing the fact and impleading the subsequent purchaser, the suit is bad in law for non joinder of necessary party.

9. On appeal, the First Appellate Court dismissed the appeal and while confirming the Trial Court Judgment, it observed that if the plaintiff wants to establish that she is the absolute owner of 'A' schedule and 'B' schedule properties on the basis of Exs.A2 and A3 settlement deed then, she should have filed a suit for declaration of title and sought her remedy. Until then, the plaintiff has no right to ask for permanent injunction against the defendants, who are admittedly in possession and

enjoyment of western 1037.1/2 sq.ft. in the 'B' schedule property in T.S.No.527.

10. Aggrieved by the concurrent finding of the Courts below, the plaintiff has filed this Second Appeal. This Court has formulated the following substantial question of law for consideration:-

"Whether the Courts below are correct in dismissing the suit for bare injunction overlooking the fact that in a suit for bare injunction factum of possession is the only criteria?"

11. Heard the learned counsel for the appellant and the learned counsel for the respondents.

12. The suit filed for the relief of bare injunction is contested both on the ground of title as well as possession. As far as 'A' schedule property is concerned, though, title is held in favour of the plaintiff, the subsequent alternation of 462 sq.ft out of 1037 1/2 sq.ft to one Kannan being suppressed and no rival claim for possession was made by the defendants, the Courts below have declined to grant the relief of injunction. The deeds relied on the side of the plaintiff does not establish the title of the plaintiff over the 'B' schedule property. Contrarily, the revenue records produced by the defendants has proved the possession of 'B' schedule property with the defendants.

13. In the light of the facts elucidated and canvassed, it is proved that the plaintiff has sold away a portion of the 'A' schedule property and has no valid title deed in respect of 'B' schedule property, the relief of bare injunction regarding possession of entire suit property cannot be countenanced. The Courts below have gone into, the question of title incidentally since, there is denial of title as well as possession. This Court does not find any excessive exercise of jurisdiction in this regard.

14. Regarding the relief of injunction, the plaintiff has not made out clear case of possession in respect of the suit schedule properties. In fact, though, the defendants do not claim any right over 'A' schedule property, third party, by name Kannan appears to be the title holder in respect of a portion of the 'A' schedule property. At the appellate stage, though attempt have been made to mark the cancellation of sale deed, the same has not been entertained by the First Appellate Court. Therefore, for not disclosing the alienation or subsequent cancellation, this Court hold that, apart from the reasons stated by the Courts below for dismissing the suit, approaching

the Court suppressing vital facts also dis-entitle the appellant/plaintiff to get the relief of injunction.

15.In the result, the Second Appeal is dismissed. The Judgments and decrees passed by the Courts below are confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

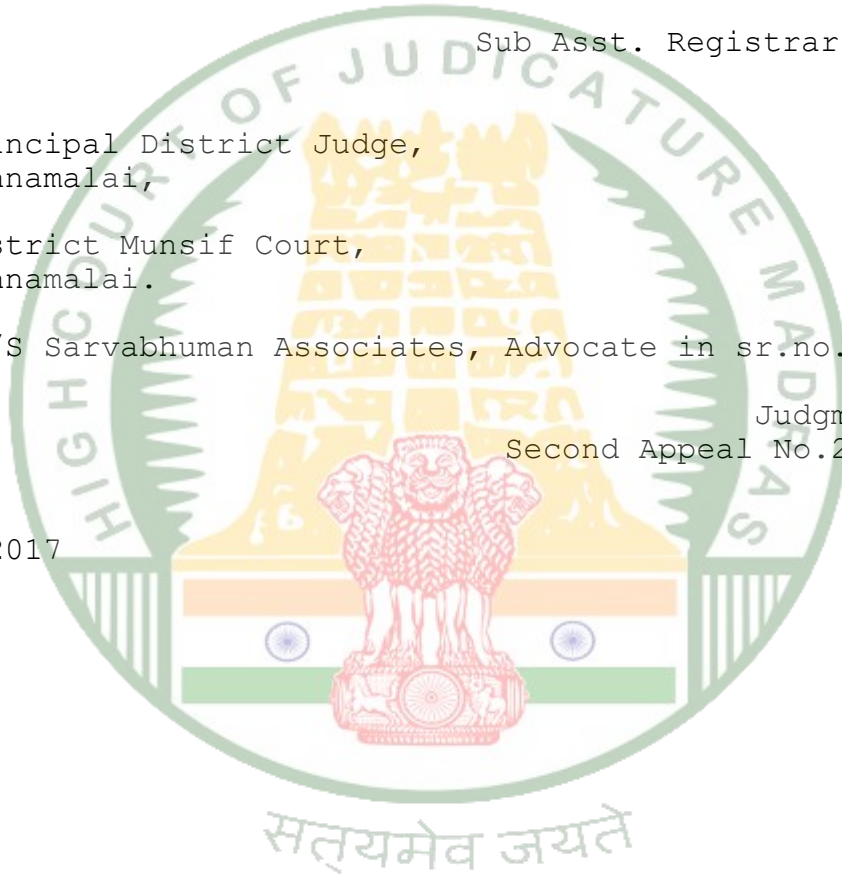
To

1. The Principal District Judge,
Tiruvannamalai,
2. The District Munsif Court,
Tiruvannamalai.

+1cc to M/S Sarvabhuman Associates, Advocate in sr.no.54868

Judgment made in
Second Appeal No.2016 of 2000

GJ(CO)
NR 21/09/2017



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