

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

SA.No.461 of 2015 and
MP.No.1 of 2015

Elavarasi ..Appellant/1st Respondent/1st defendant

Vs.

1. Subramanian .. 1st Respondent/Appellant/plaintiff

2. Duraisamy

3. Govindasamy

4. Natarasan ..2 to 4 Respondents/ 2 to 4 Respondents/
Defendants 2 to 4

PRAYER:

The Second Appeal is filed under Section 100 of the Civil Procedure Code against Judgment and Decree dated 10.02.2015 in A.S.No.29 of 2014 on the file of Subordinate Court, Arni reversing the Judgment and Decree dated 06.06.2014 in O.S.No.379 of 2006 on the file of District Munsif Court, Polur.

For Appellant :Ms.D.Chitra Maragatham
For Respondents : Mr.A.R.Suresh for R1
: R2 to R4 (Ex-parte)

ORDER:

The brief facts of the case is as follows:

The first defendant who suffered decree before the lower appellate court has filed the second appeal before this Court. The plaintiff / the first respondent has filed the suit in O.S.No.379 of 2006 before the District Munsif, Polur for permanent injunction against the first defendant / the appellant stating that the plaintiff had been in possession and enjoyment of the suit property for more than twenty years and the plaintiff had been paying house taxes due to the Government to the suit property, to that effect the plaintiff had also filed necessary documents before the trial court. According to the

plaintiff, the first defendant filed a suit in O.S.No.240 of 1993 before the District Munsif, Polur for mandatory injunction. The first defendant also obtained a decree against the defendants 2 to 4 in the aforesaid suit. The decree was obtained by the first defendant behind the back of the plaintiff and taking advantage of the said Judgment and Decree, the first defendant was attempting to evict the plaintiff from the suit property. After that, the first defendant filed written statement by stating that the allegations made against the first defendant were not correct and submitted that the plaintiff is not entitled to relief as prayed in the suit and there is no cause of action arises in the present suit. The trial court after considering the oral and documentary evidence dismissed the suit stating that the relief as prayed in the suit was not maintainable and the petitioner has to file a suit seeking an appropriate relief, if so aggrieved. Challenging the said Judgment and Decree, the plaintiff / first respondent filed an appeal in AS.No.29 of 2014 before the Sub Court, Arani. After hearing the parties concerned, the Appellate court accepted the findings of the trial court and held that the relief as prayed for in the suit is not acceptable. But, to protect the possession of the plaintiff / first respondent, the Appellate court moulded the relief and granted permanent injunction. Challenging the said Judgment and Decree, the first defendant has filed the present appeal before this Court.

2. The following substantial questions of law have been framed at the time of admission.

(a) Whether the suit for injunction from executing the decree is maintainable, especially when the property in which the plaintiff is interested is not the property scheduled in the decree as admitted by him?

b) Is the learned Subordinate Judge right in ignoring and not considering the admission of the plaintiff as PW1 to the effect, the decree obtained by the first defendant with reference to the property of D2 to D4?

3. The learned counsel for the appellant/first defendant would submit that the Appellate court without considering the relief as prayed for in the suit has moulded the relief and granted permanent injunction from executing the decree granted by the trial Court in O.S.No.240 of 1993. The said findings is beyond its jurisdiction, perverse and unsustainable in law. The learned counsel for the appellant would submit that the decree granted by the trial Court in OS No.240 of 1993 is in respect of S.No.381/2 whereas the present suit is in respect of S.No.380. According to the learned counsel for the appellant, the trial court has considered the

relief as prayed for in the suit and rightly came to the conclusion that the relief of permanent injunction from any manner executing the decree cannot be granted without challenging the decree in O.S.No.240 of 1993. Therefore, the suit in O.S.No.379 of 2006 is not maintainable and rightly answered against the plaintiff / first respondent. Further, the Appellate court held that the decree obtained by the appellant herein in O.S.No.240 of 1993 is not binding the first respondent herein/plaintiff in the present suit for the reason that he was not a party in O.S.No.240 of 1993. Therefore, the Appellate Court moulded the relief, which is perverse and unsustainable in law.

4. The learned counsel for the first respondent/plaintiff would submit that the relief prayed for in the present suit is for limited scope that when the plaintiff / first respondent is not a party in O.S.No.240 of 1993, the appellant/1st defendant, taking advantage of the above decree, is attempting to execute the decree against the plaintiff / first respondent which is unsustainable in law. Hence, the present suit has been filed. By considering the nature of the suit, the Appellate court has rightly considered and moulded the relief by granting permanent injunction against the appellant / first defendant. Therefore, there is no warrants to interfere with the judgment and decree passed by the Appellate court.

5. Therefore, suit for injunction from executing the decree granted in O.S.No.240/1993 is not maintainable, especially when admittedly, the suit property is not one and the same. The Appellate Court without considering the above fact, granting injunction against the appellant herein. The Judgment and Decree passed by the Appellate court is beyond its scope, unsustainable in law and the same is liable to be set aside. The questions of law framed in the Second appeal are answered in favour of the appellant.

6. As rightly contended by the learned counsel for the appellant, the decree passed in O.S.No.240 of 1993 is not binding on the first respondent / plaintiff. The allegation of the plaintiff in the suit, the first defendant / appellant is attempting to execute the said decree against the plaintiff. The learned counsel for the appellant would also state that the decree obtained against the defendants 2 to 4 in O.S.No.420 of 1993 was also admitted by the plaintiff in the present suit and the plaintiff is not a party to the suit in O.S.No.240 of 1993 and admittedly the schedule suit property is also not one and the same. Therefore, the first respondent / plaintiff is not in a position to justify relief granted by the Appellate court.

7. It is made clear that in the light of the above facts, the Judgment and Decree passed in O.S.No.240 of 1993 will not cover the suit property in the present suit. If any of the parties is aggrieved, can be agitated before the appropriate forum and the same shall be considered independently, without being influenced by the observations made in this Second appeal.

8. Therefore, the Judgment and Decree passed by the Appellate court in AS.No.29 of 2014 is set aside and the Second appeal is allowed. No costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

- 1) The Subordinate Judge, Arni
- 2) The District Munsif, Polur.

Copy to

The Section Officer, V.R. Section,
High Court, Madras.(2 copies)

+1cc to Mr.A.RAJENDRAN, Advocate, S.R.No. 54205

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PPA(CO)
TR(26/03/2018)

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