

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2017

CORAM

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A. No.944 of 2015

and

M.P.No.1 of 2015

M/s.Kongunadu Exports  
represented by its partner  
Mr.M.Sengottaiyan

Appellant/Appellant/  
Defendant

vs

P.L.Purushothaman

Respondent/Respondent/  
Plaintiff

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the Sub Court, Poonamallee, dated 07.08.2015 and made in A.S.No.94 of 2013 confirming the judgment and decree of the District Munif, Poonamallee dated 20.06.2013 and made in O.S.No.289 of 2010.

For Appellant : Mr.T.Gowthaman

For Respondent : Mr.V.Manohar

JUDGMENT

The defendant, who has lost before the Courts below, has preferred the above Second Appeal.

2. The suit is filed by the plaintiff for permanent injunction restraining the defendant from interfering with the lawful possession and enjoyment of the suit property.

3. The case of the plaintiff is that he is the absolute owner of the suit property and the plaintiff has traced his title as per the judgments, which are decreed in his favour. The plaintiff has been in lawful possession of the property and had constructed a compound wall on the North-Eastern side and kept the same unfinished. Though the land is agricultural land, the same could not be cultivated for the reason that the adjoining lands were used only for industrial purpose. The defendant is on the Southern side of the suit property running a granite unit and has got no right or title over the plaintiff's property. As the defendant was trying to interfere with the lawful possession of the plaintiff, the suit has been filed for permanent injunction.

4. The suit was resisted by the defendant contending that the suit property was purchased by him on 05.11.1998 from one R.Rahini. The said Rahini and her predecessor-in-title had been in the absolute ownership over the suit property before the date of purchase by the defendant. The defendant had established a granite cutting and polishing factory in the suit property for the last ten years. It is also contended that the Revenue Records also reflect the name of the respondent from the year 1998 and that the plaintiff did not have any right, interest or title over the suit property.

5. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and marked Exs.A1 to A9. On the side of the defendant, the defendant was examined as D.W.1 and marked Exs.B1 to B12.

6. Based on the pleadings as well as oral and documentary evidence, the Courts below had decreed the suit against the defendant. Aggrieved by the same, the above second appeal has preferred by the defendant.

7. At the time of admission, by order dated 06.10.2015, the following substantial question of law is formulated:-

"Whether the Courts below were right in holding that the earlier judgment and decree be binding on the defendants notwithstanding the fact that the plaintiff/respondent had not marked any document to prove his possession of the suit property for 25 years preceding the suit."

8. The case of the plaintiff is that the suit property was held by the plaintiff absolutely and the rights of the plaintiff had already been declared in O.S.No.149 of 1983 on the file of the District Court, Kancheepuram and the same was confirmed in A.S.No.14 of 1998 on the file of the Sub Court, Kancheepuram and S.A.No.1250 of 2001 on the file of this Court. The said suit was filed by the plaintiff against one Elumalai, S/o.Molagappa Naicker for the reliefs of declaration and injunction. Though the said suit was dismissed by the trial Court, on appeal, it was allowed and the decree for declaration and injunction was granted in favour of the plaintiff. The plaintiff had been in possession of the suit property even prior to the filing of the said suit and has been in continuous possession till today.

9. The appellant / defendant is the purchaser from one Rahini, who had purchased the same from one Surya Prakash and the said Surya Prakash had purchased it from one Elumalai, who was the defendant in O.S.No.149 of 1983. The appellant / defendant seems to have purchased the suit property under a sale deed dated 05.11.1998 and obtained patta, chitta and adangal

with respect to the suit property. The said Elumalai seems to have sold the suit property to one Surya Prakash, who in turn, had sold the property in S.No.186/3B in favour of one Rahini and the said Rahini had sold the said property in favour of the defendant. The second appeal in S.A.No.1250 of 2001 against O.S.No.149 of 1983, was dismissed on 16.09.2008 and the suit was filed in the year 2010. As the appellant / defendant has purchased the suit property only on 05.11.1998, it is very clear that the suit property is purchased pending the above litigation. Therefore, the suit is barred by the Doctrine of lis pendens. It is also admitted by the appellant / defendant that the earlier suit was filed by the plaintiff against his predecessor-in-title. Though the Second Appeal was preferred by the said Elumalai, the same was dismissed as abated, as the sole appellant died pending the suit. The appellant in the earlier suit, who is a predecessor-in-title of the defendant herein, had sold the property pending 'lis'. As the 'lis' ended in favour of the plaintiff, the title of the plaintiff is confirmed.

10. Learned counsel appearing for the appellant placed his reliance on the report of the Advocate Commissioner contending that the same confirmed the stand of the appellant-Company that it had established huge granite cutting machines and other cutting machines for stones, granite polishing and design machines, granites, etc., which were permanently set up within the factory. He contended further that the Courts below had ignored the report of the Advocate Commissioner which stated that the defendant was enjoying the entire extent as one portion by establishing a factory unit covered by compound wall.

11. Learned counsel for the appellant further contended that the plaintiff could not have done cultivation in the suit land, as admittedly, there is no source of irrigation to the suit property and there are no Revenue Records to substantiate the contention of the plaintiff. A perusal of the plaint would go to show that in paragraph 3, the plaintiff has specifically stated that though the suit property is an agricultural land, it could not have been cultivated for the reason that the adjoining lands are all used for industrial purpose. Therefore, the contention of the learned counsel for the appellant, cannot be accepted. It is also admitted by the learned counsel for the appellant that the appellant / defendant is a lis pendens transferee and had been in possession from the year 1998 and he had also developed the property suitable for his factory site. As stated earlier, when the predecessor-in-title of the defendant was a party to the earlier litigation, the appellant as alienee, acquired the right in the immovable property during the litigation and he is bound by the application of Doctrine of lis-pendens. As the transferee pending lis, the appellant has to take the consequences of a decree, which his vendor who made

the transfer to him, would take as a party to the suit. The principle of 'lis pendens' being a public policy, the question of good faith or bona-fides, will not arise. Hence, the claim of any title or interest adverse to any of the rights and interest acquired by the appellant, will not affect the decree holder. In other words, the principle of 'lis pendens' prevents anything done by the transferee from operating adversely to the interest declared by the decree. Learned counsel for the appellant contended that being a suit for injunction based on possession, the plaintiff has not produced any documents to substantiate his title, excepting the judgment rendered in the previous litigations. As admittedly, the suit property is a vacant site, de-jure possession has to be established on the basis of the title to the property. As already the title of the plaintiff has been established in the previous suit, in which, the predecessor-in-title of the defendant is a party, the same is binding on the appellant. The Commissioner's report relied on by the appellant was also categorically considered by the trial Court and a finding has been given to the effect that the suit property, namely, Survey No.186/3B is independent of other survey numbers and there is no structure found in the said survey number. On the basis of the above also, the contention of the learned counsel for the appellant has to be rejected. Accordingly, the question of law is answered against the appellant.

12. In the result, the Second Appeal is dismissed, confirming the judgment and decree of the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CO)  
//True Copy//

Sub Assistant Registrar

To

1. The Sub Judge, Poonamallee,
  2. The District Munsif, Poonamallee
  3. The Section Officer, VR Section, High Court, Madras.
- + 1 cc to M/s. V. Manohar, Advocate SR.90250

S.A. No.944 of 2015  
and M.P.No.1 of 2015

RSK (CO)  
EU (30/01/2018)