

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.8.2017
Pronounced on:16.08.2017

Coram

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.1084 of 2001

Chinnappan .. Appellant/Appellants/
Defendant

/versus/

Ramaswamy .. Respondent/Respondent/
Plaintiff

Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree of the learned Second Additional District Judge at Erode District at Erode in A.S.No.191 of 2000 dated 04.01.2001 preferred against the judgment and decree of the learned Principal District Munsif of Erode in O.S.No.473 of 1999, dated 31.07.2000.

For Appellant :Mr.S.Kaithamalai Kumaran

For Respondent :Ms.P.T.Ramadevi

J U D G M E N T

The suit for injunction filed by the respondent herein was allowed by the trial Court and the same was confirmed by the lower appellate Court. Hence, the second appeal has been filed by the defendant.

2. At the time of admission, this Court has formulated the following Substantial Questions of Law for consideration:

1.Are the Courts below justified in decreeing the suit for bare injunction, when the title of the defendant to the suit property is established and the title of the plaintiff is disputed by the defendant without a prayer for declaration of title?

2.Are the Courts below justified in holding that the title to the suit property which vested with the defendant's father originally, was relinquished in favour of the plaintiff's father in a panchayat about 20 years ago, and hence the suit for bare injunction without a prayer for declaration of title is maintainable?

3. On perusal of the pleadings, evidence both oral and documents and the reasoning given by the trial Court as well as the lower appellate Court for accepting the case of the plaintiff, this Court finds no reason to interfere with the concurrent finding of the Courts below and the Substantial Questions of law are not sustainable for the following reasons:

4. According to the plaintiff, the suit property is a Natham Poromboke, which is assigned to the father of the plaintiff. The suit property is in new S.No.228/17 extending 998 sq.ft.. The plaintiff's father has put up construction on the south east corner of the site and he was using the open space on the northern as well as western side. The defendant was assigned the land falling on the southern side of the property bearing S.No.228/21. Since the boundary between S.Nos.228/17 and 228/21 was not on the straight line, to make a perfect boundary for convenient enjoyment, 20 years before filing the suit, the father of the plaintiff and father of the defendant through Mediators agreed to straight the boundary by putting up stone foundation on east west direction. Accordingly, both of them jointly put up the stone foundation on the east west line. The property laying on the south of the construction is being enjoyed by the defendant and the property on the north of the stone construction is being enjoyed by the plaintiff. While so, when the plaintiff tried to put up construction on the northern extreme of his land, the defendant was obstructing the same and also attempting to remove the east west stone construction. This pleading was contested by the defendant on the ground that there was no Mediation to straighten the east west line as alleged in the plaint land in S.No.228/21 owned by the defendant, wherein the plaintiff tries to encroach upon it under the false pretext that mediation after common stone foundation was put up jointly by the defendant's father and the plaintiff's father. The suit property, which is now sought to be in possession and enjoyment of the plaintiff, falls within the S.No.228/21 for which the plaintiff has no title and without pleading of declaration of title, the suit for injunction is not maintainable.

5. The Courts below, on appreciating the evidence of PW1 and PW2, have accepted the plaintiff evidence and have categorically stated about the area of enjoyment by the respective parties. The reasons for putting up stone construction in between their properties 20 years back and the panchayat held 20 years back for straightening the east west common boundary, were found to be true by the Courts below.

6. The case of the plaintiff has also been fortified by the report of the Advocate Commissioner. The learned counsel for the appellant relying upon the judgment of the Hon'ble

Supreme Court reported in AIR 2008 SC 2033 [Anathula Sudhakar v. P.Buchi Reddy(Dead) by L.Rs. and Ors., contended that when the title over the property is under cloud, mere suit for permanent injunction without declaration is not maintainable. The very same plea was canvassed before the trial Court wherein, the trial Court, after considering the provision of Sections 34 and 38 of the Specific Relief Act, 1963 has held that in a suit for injunction, the primary question to be considered is who was in possession on the date of filing of the suit, wherein the question of title can be gone into incidentally. Interference to the settled possession can be resisted against all other persons, other than the person, who has better title than him.

7. Incidentally, the trial Court has also referred the judgment of Andhra Pradesh High Court of the very same case, later, decided by the Hon'ble Supreme Court in AIR 2008 SC 2033 [Anathula Sudhakar v. P.Buchi Reddy(Dead) by L.Rs. and Ors]. The general principle laid down by the Hon'ble Supreme Court in the above said judgment is that "where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction."

8. The Hon'ble Supreme Court has also clarified in the said said judgment that the prayer for declaration will be necessary, only if the denial of the title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. Mere denial of the plaintiff's title does not amount to raising the cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration, a suit for injunction may be sufficient.

9. In para 13 of the judgment in AIR 2008 SC 2033 [Anathula Sudhakar v. P.Buchi Reddy(Dead) by L.Rs. and Ors., the Hon'ble Supreme Court has observed as follows:

"13. In a suit for permanent injunction to restrain the defendant from interfering with plaintiff's possession, the plaintiff will have to establish that as on the date of the suit he was in lawful possession of the suit property and defendant tried to interfere or disturb such lawful possession. Where the property is a building or building with appurtenant land, there may not be much difficulty in establishing possession. The plaintiff may prove physical or lawful

possession, either of himself or by him through his family members or agents or lessees/licensees. Even in respect of a land without structures, as for example an agricultural land, possession may be established with reference to the actual use and cultivation. The question of title is not in issue in such a suit, though it may arise incidentally or collaterally."

10. In this case, though there is a claim by the defendant that the suit property, for which injunction is sought for by the plaintiff, falls under S.No.228/21, the plaintiff has established his case why he seek injunction for that portion of the property. The understanding with the neighbour land owner 20 years back has lead to the construction of stone structure as boundary. The existence of stone wall boundary establish the fact that the land on the north of the stone construction is in possession and enjoyment of the plaintiff.

11. Therefore, in the light of the discussion made in Anathula Sudhakar case by the Hon'ble Supreme Court and considering the facts and circumstances of the case, this Court is of the opinion that mere prayer of injunction is sufficient and there is no need for amend the prayer or to seek the relief of declaration in this case. Hence, the Second Appeal is liable to be dismissed.

12. Accordingly, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional District Judge, Erode.
2. The Principal District Munsif, Erode.
3. The Section Officer,
VR Section, High Court, Madras.

+ 1 cc to M/s. A.K. Kumarasamy, Advocate Sr.59005

+ 1 cc to M/s. P.T. Ramadevi, Advocate SR.58778

S.A.No.1084 of 2001

RSK(CO)

EU (21/09/2017)

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