



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL (MD) No.704 of 2014

and

M.P(MD)No.1 of 2014

WEB COPY

Iruthayaraj (died)

1.Nirmalarajan

2.Enigo Sahaya Rexi

3.Vimalan Joseph Rajkumar

4.Kethirn Jenitto

5.Pirith Nisha Mary

... Appellants/Appellants 2 to 6/
Defendants 2 to 6

Vs.

Anthony Raj

... Respondent/Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree, dated 06.12.2013 made in A.S.No.21 of 2013 on the file of the Sub-Court, Uthamapalayam, confirming the Judgment and Decree, dated 16.04.2013 made in O.S.No.194 of 2007, on the file of the District Munsif, Uthamapalayam.

For Appellants

: Mr.S.Kadarkarai

For Respondent

: Mr.A.Arumugam

for M/s.Ajmal Associates

JUDGMENT

The above Second Appeal arises against the Judgment and Decree, dated 06.12.2013 passed in A.S.No.21 of 2013, on the file of the Sub-Court, Uthamapalayam, confirming the Judgment and Decree, dated 16.04.2013 passed in O.S.No.194 of 2007, on the file of the District Munsif, Uthamapalayam.

2.The defendants 1 to 5, who are the legal heirs of the original defendant-Iruthayaraj are the appellants, have preferred the above Second Appeal in a suit for permanent injunction. The suit property relates to a lane.

3.The question that arise for consideration is whether it is a common lane or not?

4.According to the plaintiff, it was purchased by him and his brother on 19.01.1978 and there was a partition deed on 20.02.1987 between the plaintiff, his mother-Kitheriammal and brothers and sisters, in which, the suit property was allotted to the share of the plaintiff and it is shown as 'B' schedule property. From that date onwards, it is in exclusive possession and enjoyment of the plaintiff. On the South of the suit property, there is a lane



which the plaintiff has been using for parking his two-wheelers and for storing agricultural produce. According to him, he is keeping the said lane under lock and key by putting up a gate. He has also drawn electricity connection through the said lane. As the defendant had attempted to cause interference with the peaceful possession of the plaintiff, the suit has been filed for injunction.

5.The defendant has contended that it is only a common lane and it could not be the exclusive property of the plaintiff. It is pleaded that even in the document filed by the plaintiff in support of his contention, the suit property has been shown as a common pathway. The defendant has purchased the property through Court auction on 30.03.2007 and he has been in possession of the same. The suit pathway is claimed to be the exclusive pathway of the defendant and hence, prayed for dismissal of the suit.

6.On the side of the plaintiff, two witnesses have been examined as P.W.1 and P.W.2 and Exs.A.1 to A.12 were marked and on the side of the defendant, one witness has been examined as D.W.1 and Exs.B.1 to B.4 were marked and Exs.C.1 to C.7 were marked.

7.At the time of admission, notice was ordered. The parties were put on notice on the following questions of law, of which, arguments were advanced on the following substantial questions of law:-

"a) Whether the Courts below are correct in decreeing the suit when the plaintiff filed a suit for bare injunction without prayer for declaration especially the plaintiff/respondent claimed title to the suit second schedule property as if he is the absolute owner of the said property?

b) Whether the Courts below are correct in decreeing the suit when the appellants/respondents established their case by way of producing necessary documents under Exs.B.2 to B.4 which established that the suit lane is a common lane to the appellants and the respondents herein?"

8.Heard the learned counsel for the appellants and the learned counsel for the respondent.

9.The learned counsel appearing for the appellants/defendants contended that the suit property is a common lane as mentioned in Ex.B.4. If the suit lane is a common lane, then the plaintiff is not entitled to even maintain a suit for bare injunction against the co-owner.

<https://hcservices.ecourts.gov.in/hcservices/>

10.On the other hand, the learned counsel appearing for the respondent/plaintiff has contended that the lane portion is an



exclusive property of the plaintiff and he has been using the same for storing the agricultural produce and also to park his two-wheeler. It is also further stated that there was a lane on the West of the suit property, which had an entrance with a door. The plaintiff has locked the same and keeping the key in his custody.

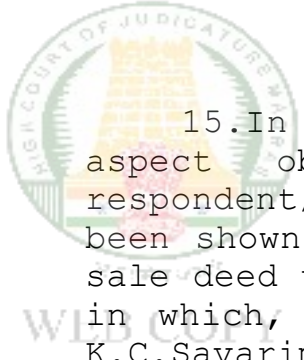
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11.As there is a dispute in title to the suit property, it is necessary to advert to exhibits filed by the parties. Ex.A.1 is the document relied on by the plaintiff which is dated 19.01.1978. As per Ex.A.1, the Southern boundary of the property is shown as a common pathway. Hence it is argued that the defendant cannot have any claim over the same. On the contrary, the defendant has produced Ex.B.4, which is dated 11.07.1977 prior in point of time to the plaintiff's document and it also refers to the common lane.

12.A perusal of Ex.A.1 goes to show that the Southern boundary is described as "கித்தேரியம் மாள் மனைக்கும் இம்மனைக்கு வரும் 39-1/2 X 7-1/2 உள்ள பொதுநடைபாதை."

13.From the above, it is clear that the plaintiff's property is bounded on the Southern side only by a common lane. Now, this Court had a look at the sale deed produced by the defendants/appellants, marked as Ex.B.4, which is prior to the purchase of the plaintiff. The said Ex.B.4 clearly and categorically describes the northern boundary of the defendant as "பொது நடைபாதை." When both the plaintiff and the defendant documents go to show that the suit property is only common lane, whether the plaintiff can claim exclusive right over the same. The defendant has also produced Exs.B.1 and B.2. Ex.B.2 is a sale deed, dated 26.06.1950 executed by Savarimuthu Udayar in favour of Anthonymuthu Udayar. Prior to the said sale deed, Ex.B.1-settlement deed executed in favour of Kulanthai Ammal and another. This is dated 29.10.1945. Even in the said document, the lane has been mentioned as "வடபுறம் வழியாக நடக்கும் பாதையுமும்." Thus, as per Ex.B.4 and also the other anterior documents, namely Exs.B.2 and B.3, the defendant has proved that the Northern boundary to his property is a common lane used by the adjacent owners. When the plaintiff has come to the Court claiming exclusive right over the common lane and seeking injunction against the defendant, the burden is on him to establish the exclusive possession and usage of the lane. But as stated earlier, in Ex.A.1, which is subsequent to the purchase of Ex.B.4, it is shown only as a common lane, but the plaintiff is taking advantage of the fact that this property was originally owned by his mother.

14.It is also pointed out that the plaintiff himself has admitted in the cross-examination that there is a common lane measuring about 39-1/2 x 7-1/2 and further he has deposed that the southern boundary is described as a pathway leading to Kithariammal's site and there is a common lane measuring about 39-1/2 x 7-1/2 leading to Kithariammal's site.



15. In fact, the Appellate Court while getting over the said aspect observed as follows "Whereas, according to the respondent/plaintiff, he had argued that Ex.B.4 common pathway has been shown by mistaken and the said mistake has been rectified by sale deed under Ex.A.1 in favour of the plaintiff and his brother, in which, the vendor of the plaintiff and other legal heirs of K.C.Savarimuthu Udayar, who have executed Ex.B.4, have attested the sale deed under Ex.A.1."

16. By no stretch of imagination, a mistake crept in one sale deed can be corrected in another sale deed. The fact that the vendor of the defendant had attested the said document will not absolve the liability of the plaintiff to prove their title. If the suit property is a common lane to the adjacent owners, it can be used only as a lane and it cannot be used for storage.

17. The Courts below have been thoroughly misdirected by the reports of the Commissioner appointed in a bare injunction suit. Thus, it is found that the plaintiff has claimed to be in possession of the suit lane without any right or title to the same.

18. The second question that arises for consideration is whether the suit filed as such is maintainable only for the relief of bare injunction without a prayer for declaration when the title of the plaintiff has been specifically denied by the defendant.

19. The learned counsel appearing for the respondent/plaintiff contended that even though it is a suit for injunction, the Courts can certainly go into the question of title also. However, the said argument cannot be countenanced in view of the decision in **Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by Lrs and others** reported in **2009 (2) LW 546**, in which, the Honourable Supreme Court has held in paragraph No.11.3 which reads as follows:-

"11.3) 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."

20. The denial of title by the defendant or challenge to the plaintiff's title raised a cloud on the title of the plaintiff's property and without asking for relief of declaration in the suit filed for bare injunction, is not maintainable.



21. In this case, though the suit lane is shown as common lane in both the description of the property of the plaintiff as well as the defendants title, the plaintiff is claiming exclusive right.

22. The Courts below without considering this aspect have held that the defendants are wrongfully claiming right without title and decreed the suit in favour of the plaintiff. When the defendant has discussed the details of his right and title claimed by him by virtue of Exs.B.1 and B.4, a cloud is cast over the plaintiff's title and there is a need for the plaintiff to amend the plaint and convert the suit into one for declaration. Having failed to do so, the suit filed by the plaintiff itself is not maintainable, much less, he is not entitled to a decree for injunction. Thus, the questions of law are answered in favour of the appellants/defendants.

23. In fine, the Judgment and Decree of the Courts below are set aside and the Second Appeal is allowed and the suit is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Sub-Court,
Uthamapalayam.

2. The District Munsif,
Uthamapalayam.

3. The Record Keeper,
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.Kadarkarai, Advocate Sr.No.75264

+1cc to M/s.Ajmal Associates, Sr.No.75490

PS

VB/MR/KKR/SAR4/03/10/2017/5P/6C

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