



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 10.08.2017

DELIVERED ON : 23.08.2017

CORAM

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
SECOND APPEAL (MD) No.95 of 2014
and
M.P. (MD) .No.1 of 2014

Vasudevan ... Appellant /
Respondent No.1 / Plaintiff
Vs.
Dhanalakshmi (died) ... 1st defendant (died)
1.Thiyagaraja ... 1st respondent /
2nd appellant / 2nd defendant
2.Seenivasan
3.Govindaraj
4.Janaki
5.Loganayaki
6.Yogalakshmi ... Respondents 2 to 6/
Appellants 3 to 7 /
LRs 1st defendant
7.Akilandeswari ... 7th respondent /
2nd respondent / 3rd defendant

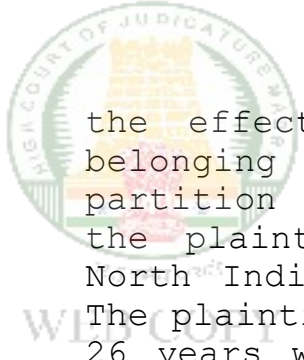
PRAYER: Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 19.04.2013, made in A.S.No.146 of 2009 by the learned the Subordinate Judge, Tiruchirapalli at Thuraiyur Camp, reversing the judgment and decree, dated 05.08.2009, made in O.S.No.223 of 2000 by the learned District Munsif, Thuraiyur.

For appellant ... Mr.V.Singan

For respondents Mr.R.Thangapandian

JUDGMENT

The unsuccessful plaintiff in a suit for bare injunction has preferred the above second appeal. The plaintiff had filed the suit against the defendants, based on the averments *inter alia* to



the effect that the suit property was an ancestral property belonging to the plaintiff's father family. There was an oral partition in which the suit property was allotted to the share of the plaintiff's father. The plaintiff's brother was living in North India and he visited the suit property only occasionally. The plaintiff had been residing in the suit property for more than 26 years without any interruption from anybody. As he had been living there for more than the required statutory period, he had also claimed perfected title by adverse possession. While so, the first defendant had objected to the issuance of patta in favour of the plaintiff. Hence, the suit has been filed.

2. The suit was resisted by the first defendant contending that the suit property originally belonged to one Nadu Nayakkar, who had executed a Will on 03.10.1960. The said Nadu Nayakkar had four sons. As per the Will, 'A' schedule was allotted to Duraisamy; 'B' Schedule was allotted to Radhakrishnan; 'C' schedule was allotted to the plaintiff's father; and 'D' schedule was allotted in favour of one Ramajeyam. The 'B' schedule allottee Radhakrishnan died when he was in Sri Lanka. He had left a Will bequeathing the property in favour of the first defendant and one Kannammal. Kannammal is also living in Sri Lanka. Therefore, she gave away her right in the suit property in favour of the first defendant. The plaintiff's father had requested the defendants to stay in the suit property till such time they construct a new house in the property allotted to their share. Accordingly, the defendants permitted the plaintiff to be in the suit property. Taking advantage of the same, the plaintiff is claiming right and title to the suit property and also claims right by adverse possession which is mutually contradictory. Hence, she sought for dismissal of the suit.

3. Before the trial Court, on the side of the plaintiff, the plaintiff himself was examined as PW1 and the other witnesses were examined as PWs.2 and 3 and Exs.A1 to A12 were marked. On the side of the defendants, the first defendant herself was examined as DW1 and Exs.B1 to B3 were marked. The trial Court, on the above facts and evidences, decreed the suit. However, on appeal by the defendants, the suit was dismissed.

4. At the time of admission, the following questions of law were framed for consideration:

"1. Whether the appreciation of the evidence by the first appellate Court is legally correct and tenable?

2. Whether the first appellate Court is legally justified in setting up a new case for the defendants not originally pleaded by them in the written statement?



3. Whether the first appellate Court is correct in setting aside the judgment and decree of the trial Court in the context of the defendants omitting to prove the date of entrustment of the property to the plaintiff?

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4. Whether the first appellate Court has ignored the principle that entrustment pleaded but not proved and in such context possession *per se* by a party is not adverse to the other party setting up a rival title?"

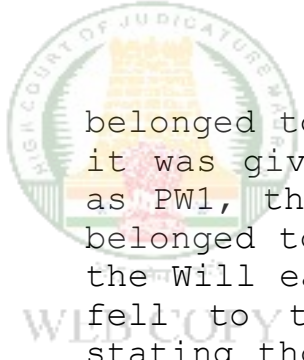
5. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

6. As per the case of the plaintiff, the suit property was allotted to the share of the plaintiff's father and the brother of the plaintiff is residing in North India and hence, the plaintiff has been in occupation of the entire property. It is his further case that the defendants have got no right or title over the suit property.

7. On the contrary, the defendants have pleaded that the property originally belonged to Nadu Nayakkar and he had bequeathed the same on his four sons and one of the sons is the plaintiff's father. As per the Will, the plaintiff's father was entitled to only 'C' schedule property. Whereas, the suit property is 'B' schedule which fell to the share of Radhakrishnan. The above details were not stated by the plaintiff in the plaint. After the demise of the said Radhakrishnan 'B' schedule property had devolved on the first defendant and her sister Kannammal. As the said Kannammal also continued to live in Sri Lanka, she had given up her right in the property in favour of the defendants.

8. When a dispute with respect to the title is raised in the written statement, the plaintiff ought to have pleaded for declaration of title also. But, the plaintiff has not done so. However, the plaintiff has pleaded right and title by adverse possession claiming that he has been in possession for more than the required statutory period. The plaintiff setting up title himself sought for injunction, suppressing many of the facts. But, he has also claimed title by adverse possession. If a person claims title by adverse possession, he has to give up his title or set up the ownership on the person against whom he is claiming title. The plaintiff cannot claim title by mutually contradictory pleadings. Therefore, on the said ground itself, the plaintiff's case is not sustainable.

<https://hcservices.courts.gov.in/hcservices/> dated 03.10.1960, is a Will executed by Nadu Nayakkar, which has been categorically admitted by the plaintiff. When the plaintiff has claimed right stating that the property



belonged to his father in a partition, he suppressed the fact that it was given to him under a Will. Further, in the oral evidence as PW1, the plaintiff himself has admitted that the suit property belonged to Radhakrishnan as per Ex.B1 - Will and he has also read the Will earlier. While so, knowing pretty well that the property fell to the share of Radhakrishnan as per the Will, without stating those facts, the plaintiff has simply approached the Court for the relief of bare injunction. When the plaintiff admitted that fact that the property belonged to Radhakrishnan as per Ex.B1 and thereafter, it was devolved on the defendants and one Kannammal, without stating the above facts, the plaintiff ought not to have knocked the door of the Court with unclean hands.

10. Even assuming for a moment that the plaintiff has been in possession for a required statutory period without any interruption, the plaintiff ought to have pleaded the period from which he has been in possession of the property hostile to the title of the original owner and that too, to the knowledge of the owner. When the *animus* to hold the property adverse to the title of the owner is not clear, the plaintiff cannot seek any indulgence from the Court.

11. As the plaintiff has filed the suit only for bare injunction, the next question that arises for consideration is whether the plaintiff has proved his possession. The plaintiff has claimed that he has been in possession of the property for more than 26 years without any disturbance from the defendants. However, such possession must be to the knowledge of the owner or without any attempt at concealment by the trespasser, which contains an element of *animum possidendi*. As discussed above, the plaintiff has not first of all pleaded that the defendants are the owners of the property and that he is holding possession adverse to their title. In the absence of the said pleadings, the question of settled possession as claimed by the plaintiff does not arise. Even if the plaintiff had failed in proving his title, he may be entitled for the relief of injunction, if he had established his settled possession of the suit property. But, in the present case, the plaintiff has admitted the existence of Exs.B1 and B2 and willfully suppressed same in the pleadings. However, the defendants have specifically stated in the written statement that the plaintiff has obtained patta for the suit property without the knowledge of the defendants taking advantage of their absence. With respect to the same, already an appeal has been preferred to the Revenue Divisional Officer for change of patta in the name of the plaintiff.

12. It is the definite case of the defendants that only after the defendants questioned the issuance of patta in the name of the plaintiff, the plaintiff had filed the present suit with false allegation. The defendants also had specifically stated that the plaintiff was allowed to be in occupation only



on permission. Merely because the plaintiff is in possession of the suit property, he will not be able to get a decree for injunction as against the defendants. The admission by the plaintiff on Exs.B1 and B2 substantiates the title of the defendants. Therefore, the defendants are the true owner of the property. A person can ask for an injunction against anybody but not against the true owner.

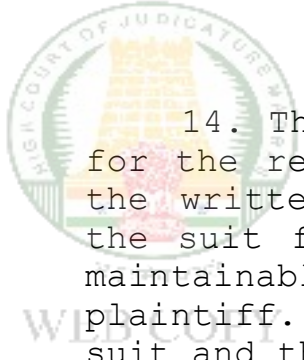
13. In a decision in **Anathula Sudhakar Vs,. Buchi Reddy (dead) by LRS**, reported in **2008 (6) CTC 237**, the Hon'ble Supreme Court has held in paragraph No.11 as follows;

"11. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

11.1) Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

11.2) Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

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."



14. Thus, it is clear that the plaintiff ought to have sought for the relief of declaration also, since his title is denied in the written statement. Without filing the suit for declaration, the suit filed by the plaintiff only for bare injunction is not maintainable. Thus, the questions of law are answered against the plaintiff. The first appellate Court has rightly dismissed the suit and the same does not warrant any interference of this Court.

15. In the result, this second appeal fails and the same is, accordingly, dismissed, confirming the judgment and decree passed by the first appellate Court. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge,
Tiruchirapalli at Thuraiyur Camp.
2. The District Munsif, Thuraiyur.

Copy to

The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.Thangapandian, Advocate Sr.No.74009

GCG

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23.08.2017