

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.No.716 of 2008  
and M.P.No.1 of 2008

R.Nandan ..Appellant/Plaintiff  
Vs.

1.Kamalammal  
2.Edward  
3.Shanthi ..Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 10.07.2007 made in A.S.No.70 of 2006 on the file of the Principal Sub Court, Chengalpattu, reversing the judgment and decree dated 31.01.2005 made in O.S.No.68 of 2000 on the file of the District Munsif Court, Tambaram.

For Appellant : Mr.M.S.Subramanian  
For Respondents: Mr.V.Raghavachari

JUDGMENT

This second appeal is preferred by the plaintiff in a suit for bare injunction in which the plaintiff, who obtained a decree before the trial court, had tasted a reversal before the first Appellate Court.

2. The case of the plaintiff in brief is that the suit property with a larger extent of 56 cents originally belonged to Kothandaraman, from whom it was purchased by one Kanniappan, who then formed a layout and sold an extent of 1,525 sq.ft. to a certain Baskaran. Thereafter, the plaintiff has purchased the property from Baskaran on 15.07.1999 vide Ext.A-2. The property is in Survey No.211/3 of Vengaivasal Village. It is a vacant house plot. However, the defendants with no right whatsoever in the property, are attempting to trespass into the suit property.

3. In the written statement, the defendants have pleaded that the suit property originally belonged to a certain Sami Naidu

and Krishnasamy Naidu and Vide sale deed dated 13.05.1982, Krishnasamy Naidu's son Kothandaraman had sold the entire 56 cents to Kanniappan. Two days later, on 15.05.1982, Kanniappan had sold the entire 56 cents to 12 persons, of whom plaintiff's vendor, Baskaran was one. Soon thereafter, all the 12 purchasers from Kanniappan had executed a sale deed dated 27-08-1982 in favour of one Elumalai, who in turn had re-arranged the entire plots and sold 2,006 sq.ft to 1<sup>st</sup> defendant, Kamalammal vide a sale deed dated 27.11.1985. In short, the case of the defendants is that the plaintiff's vendor did not have any subsisting right in the suit property on the day he sold it to the plaintiff.

4.1 Before the Trial Court, the plaintiff examined himself as P.W.1 and had produced 10 documents which were marked as Exts.A-1 to A-10. On the side of the defendants, 1<sup>st</sup> defendant examined herself as D.W.1 and marked three documents as Exts.B-1 to B-3. One document was marked as Court exhibit, Ext.C-1.

4.2 On appreciating the evidence before it, the trial Court decreed the suit on the ground that the plaintiff is in possession of the property. On an appeal preferred by the defendants, the first Appellate Court reversed the decree of the trial court on the ground that the house tax receipts and property tax receipts which the appellant had produced are all post suit.

5. Challenging the decree of the first Appellate Court, the plaintiff has come forward with this appeal. On admission, the following Substantial Questions of Law are made:

1. Whether the lower appellate Court's judgment is vitiated by taking into consideration of matters not pleaded in evidence?

2. Whether the lower appellate Court was justified in reversing the findings of the trial Court on the ground that the suit for permanent injunction will not lie when there is dispute as to the title?

6. The learned counsel for the appellant submitted that in a suit for possession, title is only incidentally tested and inasmuch as the plaintiff has produced Ext.A-6 series and Ext.A7 (tax receipts) all of which are documents evidencing possession, the trial Court has rightly decreed the suit, since the suit

itself is only for bare injunction. This is an aspect the first Appellate Court has overlooked, and given the scope of the litigation, it need not have travelled into an investigation on the title to the property.

7. Per contra, Mr.V.Raghavachari, learned counsel for the respondents would submit that it is not a case founded purely possessory right, that even according to the pleadings of the plaintiff, such possession he claims is traced to a title founded on a sale deed. Therefore, the Court decides on the validity or the quality of the legal possession of the plaintiff and the finding on the title of the plaintiff cannot be set aside. Further, since the defendants are the owners of the property, no injunction can lie against the true owner.

8. On perusing the materials available before this Court, it becomes evidently clear that the suit property is part of a larger extent of 56 cents in Survey No.211/3, came to be owned by a certain Sami naidu and Krishnasamy Naidu as per Ext.A-9, and that Vide Ext.A-8 sale deed 13-05-1982, Krishnasamy Naidu's son Kothandaraman had sold it one Kanniappan. Kanniappan had plotted the property and wasting no time, he sold the properties to 12 persons under separate sale deeds of which Plot No.2 was sold to appellant's vendor, Baskaran under Ex.A-1 dated 15.05.1982. However, the evidence on record further indicates that Baskaran along with owners of other plots had joined to execute a sale deed dated 27.08.1982 under Ext.B-2 to a certain Elumalai. This would imply that on the date when Baskaran had sold the property under Ext.A-2, he had no title to convey to the plaintiff. Necessarily, 1<sup>st</sup> defendant who has obtained a Sale deed dated 27.11.1985 (Ext.B-1) to an extent of 2,006 sq.ft has a better title over the appellant and that title cannot be impeached. It is also available on record that the plaintiff has put up a new structure pendente lite and all the documents of possession have come into existence only post suit.

9.1 Taking into account the entire materials before this Court, this Court does not find any questions of law, much less substantial questions of law is involved for this Court to investigate, and consequently this Court finds no merit in this appeal.

9.2 Accordingly, this appeal is dismissed and the judgment and decree dated 10.07.2007 made in A.S.No.70 of 2006 on the file of the Principal Sub Court, Chengalpattu, reversing the judgment

and decree dated 31.01.2005 made in O.S.No.68 of 2000 on the file of the District Munsif Court, Tambaram is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge,  
Chengalpattu.

2.The District Munsif,  
Tambaram.

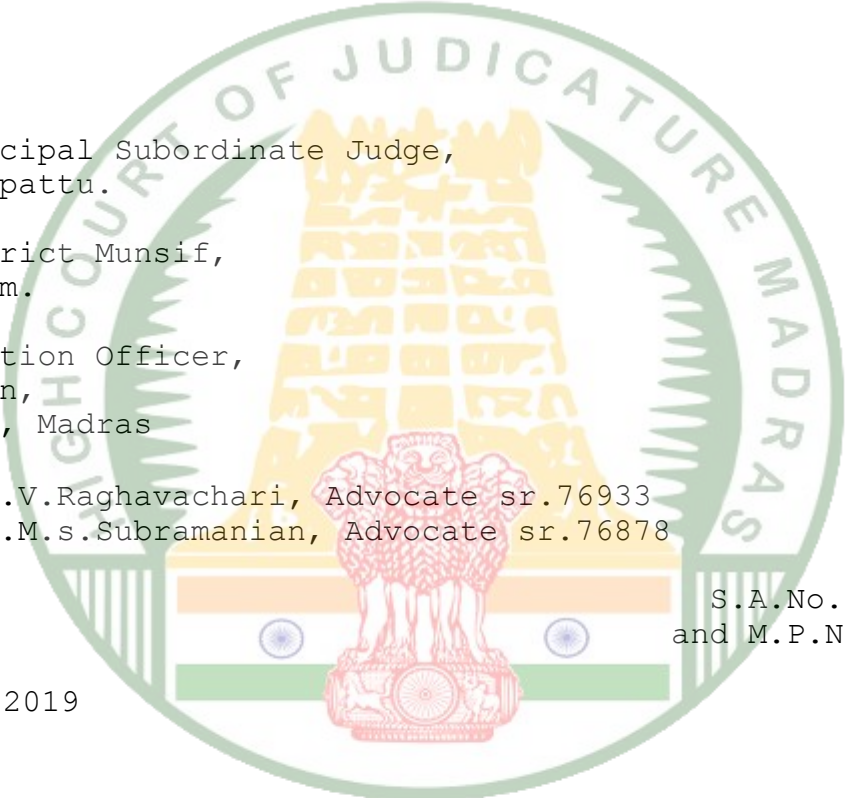
3. The Section Officer,  
V.R Section,  
High Court, Madras

+1cc to Mr.V.Raghavachari, Advocate sr.76933

+1cc to Mr.M.s.Subramanian, Advocate sr.76878

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