

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Coram:

The Hon'ble Mr.Justice N.SATHISHKUMAR

S.A.No.305 of 2012

Anbalagan ...Appellant/Respondent/Defendant

Versus

Jeenadas ...Respondent/Appellant/Plaintiff

Second Appeal filed under Section 100 C.P.C. against the Judgment and Decree of the Learned Principal Subordinate Judge, Tiruvannamalai made in A.S.No.18 of 2010 dated 02.01.2012 reversing the judgment and decree of the learned Principal District Munsif, Tiruvannamalai made in O.S.No.349 of 2007 dated 01.02.2010.

For Appellants : Mr.R. Parthasarathy
Senior Counsel
Mr.J.Ramakrishnan

For Respondent : Mr.V. Prakashbabu

JUDGMENT

This Second Appeal has been filed Respondent/Defendant against the findings of the First Appellate Court i.e., the Learned Principal Subordinate Court, Tiruvannamalai in A.S.No.No.18 of 2010 dated 02.01.2012 reversed the judgment and decree of the learned Principal District Munsif, Tiruvannamalai made in O.S.No.349 of 2007 dated 01.02.2010, dismissed the suit filed for permanent injunction.

2. The case of the respondent/plaintiff is as follows:-

2(a) It is the contention of the Plaintiff that the suit property is joint family properties. He and his brother were in joint possession of the property. One Poornachandran and his two brothers have mistakenly executed a registered sale deed in favour of one Ms.Kairoon Bi. However, the said sale deed is not acted upon. Thereafter Ms.Kairoon Bi received the amount back. When the Plaintiff is continuously in possession of the property, he filed a suit against few of the villagers in O.S.No.200/2003. The said suit was decreed and the appeal was also dismissed. It is the further contention of the Plaintiff that after the death of Ms.Kairoon Bi, a sale deed had been brought out by the legal heir of the said Ms.Kairoon Bi in

collusion with the wife of Mr.Poornachandran viz., Amsavathy on 06.07.2003 in favour of the Defendant. Based on the same, the defendant was trying to take possession of the suit property. Hence, the suit.

3. In the written statement, the defendant denied the averments in the plaint and stated that the property is not ancestral property and the plaintiff has no right in the suit property. It is the contention of the Defendant that the suit property originally belongs to Mr.Poornachandran; he has sold the property to Ms.Kairoon Bi on 05.09.1974. Till her life time she was in possession of the property. After her death, her sons have executed a joint power in favour of Ms. Amsavathi. She sold the property to the Defendant. Eversince from the date of purchase of the property the Defendant is in possession of the property. Hence, he prayed for dismissal of the suit.

4. Based on the above pleadings, the trial Court framed the following issues:-

"(i) Whether the suit property is in the possession of the Plaintiff? If so, whether the Plaintiff is eligible for Permanent Injunction?

(ii) To what relief the Plaintiff is entitled to?"

5. During the trial of the case, on the side of the plaintiff, as many as three witnesses were examined as P.Ws1 to 3, and as many as 11 documents were exhibited as Exs.A.1 to A.11. On the side of the defendant, two witnesses were examined as D.W.1 and D.W.2, as many as 6 documents were exhibited as Exs.B.1 to B.6. Having considered the oral and documentary evidence adduced, the trial Court has dismissed the suit. However, the First Appellate Court reversed the findings of the trial Court and granted decree in favour of the Plaintiff. Challenging the same, the defendant has come forward with the present second appeal.

6. While admitting the Second Appeal, this Court has framed the following substantial questions of law:-

"(i) Whether in law the suit for injunction - simplicitor in the absence of relief of declaration of plaintiff's title to the suit property, can be maintained in law, when the plaint averment itself raises cloud over the plaintiff's title to the suit property and when the defendant also denied the plaintiff's title?

(ii) When the plaintiff is not in possession of the suit property even as on the date of suit as evidenced from P.W.1 and

P.W.2's evidence, whether the learned Appellate Judge right in decreeing the suit?

7. Learned counsel for the Appellant/Defendant submitted that admittedly the Plaintiff has no right over the property. There is a cloud over the title. Therefore, the suit for bare injunction is not maintainable. The First Appellate Court has received additional documents viz., Revenue Records filed by the Plaintiff and reversed the findings of the trial Court without giving any opportunity. The evidence of P.W.2 itself clearly indicates the appellant is in the possession of the property. Therefore, the suit for bare injunction is not maintainable without establishing the title of the Plaintiff. Hence, prayed for allowing the appeal.

8. The learned counsel for the Respondent/Plaintiff would contend that the Defendant claiming his right through Mr. Poornachandran, who is not in possession of the suit property. The said Mr. Poornachandran is never in possession of the suit property nor any right over the property. The Sale Deed is of the year 1974 in favour of the plaintiff and the revenue records also in favour of the Plaintiff who have paid the taxes. Only before filing the suit, sale deed has been created in the name of the Defendant. Based on the evidence and documents the Plaintiff has established his possession in the suit property. Hence, submitted that the findings of the First Appellate Court does not require any interference.

9. The suit has been filed for Permanent Injunction as against the Defendant. The main contention of the Plaintiff is that the suit property is ancestral property, they are in continuous possession of the suit property. Though the defendant contended that the suit property was sold as early as 05.09.1974 by one Mr. Poornachandran, the documents filed by both sides indicate that from 1974 till 2007 the purchaser of the sale deed viz., Ms. Kairoon Bi has not produced her revenue records. Whereas the kist receipts and patta stand in the name of the Plaintiff till 2007. Only after the purchase of the property in the year 2007 by the Defendant Ex.D.4 was issued in his name. Though no revenue records were produced before the trial court to show that the property is ancestral property, exclusively belonging to the family of the Plaintiff, before the Appellate Court additional document viz patta pass book in the name of one Mr. Ayya Durai, the father of the Plaintiff issued in the year 1974, was filed; that apart a chitta also indicates the fasli year 1355 i.e., in the year 1946 itself the property shown as property belonging to plaintiff's family.

10. It is curious to note that the First Appellate Court having admitted the appeal has not given any opportunity to the parties to prove the documents. Merely relied upon those

documents to reverse the finding of the trial Court. Such approach of the First Appellate Court is not according to law. The First Appellate Court ought to have given opportunity to the parties to adduce further evidence in this regard. It is further to be noted that it is the Defendants case that they have purchased the property, they are the title holders. Whereas the counsel for the Plaintiff contended that they are all along in possession of the property. The vendor in the sale deed has no right or title to deal with the property. When cloud over the right or title was raised by the Defendant, the First Appellate Court despite the fact that the Plaintiff has filed an application to amend the plaint seeking a declaration has dismissed such application by saying such application is not necessary at present. However, on the contrary the First Appellate Court has proceeded to grant Permanent Injunction in favour of the Plaintiff. It is to be noted that before the trial Court the additional document have not filed; no opportunity was given to the parties to refer those revenue records. Without given a opportunity, mere relying those documents and arriving a finding is against the fundamental principle of law.

11. It is to be noted that though the Plaintiff claims to be in possession of the property on the basis of the revenue record such possession also to be proved on the legal evidence. Though the additional documents indicate that the property stands in the name of the Plaintiff's family members, such fact has not been proved in the manner known to law. If those documents have been properly proved, then the finding of the First Appellate Court granting permanent injunction will be well founded. On the other hand without doing so given finding is not maintainable in law. Admittedly, the Defendant has claimed title over the property based on the sale deed. The plaintiff himself pleaded those facts in the plaint. The Plaintiff is aware of the fact that there is a cloud over the title of the property. When the cloud over the property set up by the Defendant, the Plaintiff ought to have filed suit to establish his title by seeking a relief. No doubt, the revenue records available. Prima facie indicates that the property originally stands in the name of fore-father of the Plaintiff, without establishing those documents in a manner known to law, it is highly difficult to presume that the Plaintiff is in possession of the property. Such presumption also fortified by the plaintiff side witness. P.W.2 in his cross examination admitted that the Defendant has cultivated maize crops in the property. Therefore, considering all these facts this Court is of the view that the findings of the First Appellate Court is liable to be interfered. When the cloud over the title is created and the Plaintiff is also aware of the sale deed in respect of the suit property he ought to have filed suit for declaration to establish his title. But he has not done so. Therefore, mere suit for bare injunction is

not at all maintainable. Accordingly, the finding of the First Appellate court is hereby set aside and the findings of the trial Court is restored.

12. Since the Defendant claimed his right on the basis of the title deed, the conduct of his predecessor's right over the property from 1974 till the date purchase by the defendant assumes significance. No efforts whatsoever have been taken to produce the records in their favour. Further, the revenue records produced are in favour of the Plaintiff also prima facie indicates the names of the Plaintiff's father and fore fathers. In view of all these facts, this Court is inclined to grant liberty to the Plaintiff to file comprehensive suit for declaration to establish his title deeds. This liberty is granted taking into consideration of the prima facie materials available on record. The defendant is at liberty to take his defence to establish his title on the basis of the sale deed in his favour. The substantive questions of law are answered against the plaintiff.

13. With the above observation, the Second Appeal is allowed. There is no order as to costs.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

ggs.

To

1. The Principal Subordinate Judge
Thiruvannamalai.

2. The Principal District Munsif
Thiruvannamalai.

+1 CC to Mr.J.Ramakrishnan, Advocate sr 85015.

+1 CC to Mr.V. Prakashbabu, Advocate sr 85258.

S.A.No.305 of 2012

KJ(CO)
SP(12/02/2019)