IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON :24.09.2018
PRONOUNCED ON:31.10.2018
CORAM:
THE HON'BLE MR.JUSTICE T.RAVINDRAN
S.A.No.367 of 2015
and
C.M.P.No.15038 of 2018
and
M.P.No.1 of 2015

P.S.Ulagaratchagan ... Appellant/Plaintiff

Vs.

1.Kanagavelpandi
2.M.Vasudevan
3.Saravanan
4.Arthanari
5.M.Raghupathy ... Respondents/Defendants

Prayer:
Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 16.12.2014 in A.S.No.134 of 2014 on the file of the XVII Additional Judge, City Civil Court at Chennai reversing the judgment and decree dated 30.09.2011 in O.S.No.5134 of 2008 on the file of the XVI Assistant Judge, City Civil Court at Chennai.

For Appellant : Mr.R.Thiagarajan, SC
for M/s.P.Seshadri

For RR1 : Mr.V.Chandrasekaran

RR2 to RR5 : Set exparte
Vide order dated 24.09.2018.

J U D G M E N T

Challenge in this Second Appeal is made to the judgment and decree dated 16.12.2014 passed in A.S.No.134 of 2014 on the file of the XVII Additional Judge, City Civil Court, Chennai reversing the judgment and decree dated 30.09.2011 in O.S.No.5134 of 2008 on the file of the XVI Assistant Judge, City Civil Court, Chennai.

2. The second appeal has been admitted on the following substantial questions of law.

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(i) Whether the Lower Appellate Court is right in reversing the well considered of the Trial Court without proper appreciation of several exhibits produced on the side of the 1st defendant/appellant?

(ii) Whether the suit for bare injunction is maintainable without a prayer for declaration of title especially when the appellant had disputed the title of the plaintiff?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. The suit has been laid by the plaintiff for the relief of permanent injunction. However, the plaintiff has claimed the relief of permanent injunction based on the footing that she has acquired a valid title to the suit property by way of a sale deed dated 09.01.2017 and it is the case of the plaintiff that the suit property forming part of the major extent of 1 acre 29 cents had been settled to one Thulukanathammal, wife of Veerasamy by her father Chinnamari @ Mari by way of a sale deed dated 13.03.1988 and after her demise and her husband's death, the same had been inherited by their son K.V.Godhandapani and it is stated that K.V.Godhandapani after settling the 12 ½ ground in favour of his son by way of a deed of settlement dated 13.08.2004 and selling a portion of 1200 sq.ft in plot No.1118 to one S. Megala, accordingly it is the case of the plaintiff that K.V.Godhandapani and his son Mohanraj had sold the suit property comprised in plot Nos.1118 and 1120 measuring a total of extent of 6000 sq.ft in the suit survey number in favour of the plaintiff by way of the sale deed 09.01.2007 and accordingly it is stated that the same is in the plaintiffs' possession and enjoyment and inasmuch as the defendants without any authority, attempted to interfere with her possession and enjoyment, according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs.

5. The abovesaid case of the plaintiff has been disputed by the first defendant in toto and on the other hand, the first defendant would put forth that the entire extent of 1 acre and 29 cents in old paimash Nos.542 and 543, new survey Nos.98/4 and 99/5 in the suit village belonged to Krishtappa Achari by way of the document dated 22.09.1934 and it is stated that Krishtappa Achari and Kuppachari sold the same in favour of Mrs.Egavalli Ammal by way of a sale deed dated 15.11.1954 and Mrs.Egavalli Ammal along with the members of her family had sold the same in favour of M/s.Pungka and Company by way of a sale deed dated

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26.05.1965 and thereafter M/s Pungka and Company formed a lay out in respect of the abovesaid property and other properties owned by them and obtained sanction and it is stated that M/s.Pungka and Company sold the plot No.1118 to one C.Arthanari Naidu by way of a sale deed dated 08.07.1965 and C.Arthanari Naidu sold the same in favour of K.R.Chandra by way of a sale deed dated 30.04.1982 and thereby K.R.Chandra entered into an agreement of sale in respect of the abovesaid property with the first defendant on 10.02.1994 and executed the power of attorney in favour of the first defendant's nominee and after receiving the sale transaction, executed the sale deed in favour of the first defendant vide document No.1364 and 1365 and further it is also stated that in respect of the plot No.1120, M/s.Punkga and Company had sold the same in favour of K.V.Venugopal vide sale deed dated 08.07.1965 and on his death, his wife entered into an agreement of sale with the first defendant in respect of the property on 10.02.1994 and after receiving the sale consideration, she had executed the power of attorney in favour of the nominee of the defendant and handed over the possession and enjoyment of the property and accordingly thereby the first defendant had acquired the claim of title, possession and enjoyment of the property and accordingly thereby the first defendant had disputed the claim of title, possession and enjoyment of the plaintiff's in respect of the suit property. Therefore the first defendant in the written statement has taken the plea that neither the plaintiff nor her predecessors in interest has any claim, right, title and interest in respect of the suit property and they had never been in the possession and enjoyment of the suit property at any point of time and the suit for bare injunction without seeking the relief of declaration is not maintainable and the plaintiff cannot be allowed to maintain the suit on the basis of fictitious documents and accordingly contended that the suit as framed by the plaintiff without the prayer for declaration is misconceived and not in accordance with law.

6. It is thus found that the first defendant has in toto challenged the claim of title, right and interest of the plaintiff and her predecessors in interest in respect of the suit property in entirety and on the other hand, set up a rival claim of title to the suit property on him as detailed in the written statement. Despite the above defence raised by the first defendant, the plaintiff had not chosen to amend the plaint for including the relief of declaration in respect of the suit property and had proceeded to continue the suit only for the relief of permanent injunction.

7. As abovenoted, the plaintiff has claimed title to the suit property based on the sale deed dated 09.01.2007 said to have been executed by the power agent Muneeshwaran of

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Godhandapani and Mohanraj, the power of attorney executed in favour of Muneeswaran by Gondhandapani and Mohanraj dated 25.02.2005 had been marked as Ex.A7 and the sale deed executed by power agent in favour of the plaintiff dated 09.01.2007 has been marked as Ex.A8. On a perusal of the recitals contained in Ex.A7, it is seen that there are clear recitals contained therein that the entire extent of 1 acre and 29 cents in the suit survey number of which the suit property forms part had been plotted by M/s.Punkga and Company by obtaining necessary sanction from the Government and it is also recited therein that only in respect of the plot remained unsold by M/s.Punkga and Company, the power of attorney had come to the executed in favour of Muneeswaran of an extent of 6000 sq.ft and in Ex.A8, there is also a reference about the formation of the layout in the entire extent of 1 acre and 29 cents by M/s.Punkga and Company and it is recited as if, the document had been executed in respect of the remaining extent of 6000 sq.ft in plot Nos.1118 and 1120. Therefore, when even as per the recitals contained in Exs.A7 and A8, it is seen that in respect of the entire extent of 1 acre and 29 cents, it is only M/s.Punkga and company which had formed the layout, it does not stand to reason as to how thereafter Godhandapani and his son would be entitled to convey the suit property in favour of the plaintiff through their power agent by way of Ex.A8 sale deed. As abovenoted, the first defendant has set up separate claim of title to the suit property through M/s.Punkga and Company as could be seen from the various documents projected by them.

8. In the light of the above scenario,when the plaintiff has projected claim of title, right and interest over the suit property under one set of documents and totally challenging the same and denying the truth and validity of the said documents, the first defendant is found to have set up rival claim of title, right and interest in respect of the suit property projected by various documents, in such view of the matter, as rightly contended by the first defendant's counsel, the plaintiffs should have endeavored to amend the suit for the relief of declaration of title and on the other hand, the continuation of the suit by the plaintiff only for the relief of permanent injunction simplicitor, it is seen that on the above ground itself, the plaintiff's suit is liable to the dismissed as not maintainable.

9. In the decision reported in 2008 (6) CTC 237 [Anathula Sudhakar Vs. P.Buchi Reddy (Dead) By Lrs and Others], the principles of law pertaining to the same has been summarized as follows:

> 17. To summarize, the position in regard to Suits for prohibitory injunction relating to immovable property, is as under:

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(a) Where a cloud is raised over plaintiff's title and he does not have possession, a Suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a Suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de-jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

© But a finding on title cannot be recorded in a Suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the Court will not investigate or examine or render a finding on a question of title, in a Suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the Court will relegate the parties to the remedy by way of comprehensive Suit for declaration of title, instead of deciding the issue in a Suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the Court may decide upon the issue regarding title, even in a Suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in Suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a Suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The Court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory Suit, depending upon the facts of the case.

10. In the light of the above position of law, when it is seen that the plaintiff's claim of title to the suit property is in dispute and under cloud and when the plaintiff's alleged

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possession and enjoyment of the suit property has not been established to be lawful and when the defendants have set up rival title to the suit property, also based on the documents with reference to the same, in such view of the matter, it is seen that the plaintiff should have amended the suit for seeking the declaration of title to the suit property. Thus it is seen that the plaintiff's suit has to be held not legally instituted and hence not maintainable and accordingly the suit laid by the plaintiff is liable to be dismissed. As rightly put forth by the defendant's counsel, based on the revenue records simplicitor, we cannot safely conclude that the plaintiff's alleged possession and enjoyment of the suit property is lawful, particularly when the defendants have also placed proof of possession and enjoyment of the property in dispute and in such view of the matter, the suit laid by the plaintiff for bare injunction without seeking the relief of declaration of title is held to be not maintainable as per law and the second substantial question of law formulated in the Second Appeal is accordingly answered against the plaintiff.

11. In the light of the determination of the second substantial question of law against the plaintiff, it is unnecessary to discuss the rival claims of title to the suit property as projected in the matter in the suit laid by the plaintiff simplicitor for the relief of bare injunction and accordingly the first substantial question of law is left unanswered as such.

12. The principles of law outlined in the decision reported in 2005 (10) SCC 30 [Yamuna Nagar Improvement Trust Vs. Khariati Lal] and 2014 (2) SCC 269 [Union of India and Others Vs. Vasavi Cooperative Housing Society Limited and Others] relied by the first defendant's counsel are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

C.M.P.No.15038 of 2018

The application has been laid by the first defendant for the reception of additional documents projected in the petition. However inasmuch as the suit laid by the plaintiff is not legally sustainable for want of the relief of declaration of title as above discussed, it is seen that the petition laid by the first defendant for the reception of additional documents need not be considered. Furthermore, the first defendant having failed to establish as to why the said documents had not been endeavored to be produced before the first appellate court, in such view of the matter, the application not satisfying the parameters governing Order 41 Rule 27 C.P.C, on that ground also the petition for reception of additional documents deserves no

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acceptance. Accordingly, the Civil Miscellaneous Petition No.15038 of 2018 is dismissed.

13. For the reasons aforestated, the judgment and decree dated 16.12.2014 passed in A.S.o.134 of 2014 on the file of the XVII Additional Judge, City Civil Court, Chennai are set aside and the judgment and decree dated 30.09.2011 passed in O.S.No.5134 of 2008 on the file of the XVI Assistant Judge, City Civil Court, Chennai are confirmed. Accordingly, the second appeal is allowed with costs. The Civil Miscellaneous Petition No.15038 of 2018 is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The XVII Additional Judge,
   City Civil Court at Chennai.

2.The XVI Assistant Judge,
  City Civil Court at Chennai.

Copy to

   The Section Officer,
   VR Section, High Court,
   Chennai.

+1cc to Mr. V.Chandrasekaran, Advocate, S.R.No. 74912
+1cc to Mr. P.Seshadri, Advocate, S.R.No. 74720

S.A.No.367 of 2015
and
C.M.P.No.15038 of 2018
and
M.P.No.1 of 2015

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