

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.No.207 of 2013
and M.P.No.1 of 2013

Palanisamy

... Appellant/Plaintiff

Versus

1. T.P.Mani
2. S.Krishnan

... Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree dated 28.09.2012 made in A.S.No.16 of 2011 on the file of the Sub Court, Perundurai reversing of the Judgment and decree dated 29.06.2011 made in O.S.No.368 of 2004 on the file of the District Munsif cum Judicial Magistrate Perundurai (transferred O.S.No.191 of 2000 - Principal Sub Court, Erode).

For Appellant : Mr.N.Manokaran

For Respondents : No appearance

J U D G M E N T

Challenging the judgment and decree passed by the learned Sub Judge, Perundurai (First Appellate Court) in A.S.No.16 of 2011 dated 28.09.2012, this Second Appeal has been filed.

2. For the sake of convenience, the parties herein shall be referred to as per the rank assigned in the suit.

3. The averments set out in the plaint, in short is as follows:-

(i) The plaintiff filed the suit seeking for the relief of permanent injunction, restraining the defendants, their men, agents from interfering with his peaceful possession and enjoyment of the suit property, stating that the property mentioned in the schedule, viz., Powerlooms and its accessories

were purchased from the second defendant on 01.02.2000 for a sum of Rs.85,000/-. The plaintiff also filed the original receipt as proof in respect of the said purchase. The second defendant was running the said Powerlooms in the premises belonging to one Arjunan.

(ii). Earlier, the second defendant and the plaintiff filed a suit in O.S.No.127 of 1999 on the file of the District Munsif cum Judicial Magistrate, Perundurai seeking for permanent injunction restraining the first defendant and his wife from enjoying the suit property, wherein, an exparte decree was passed in favour of the second defendant. Subsequently, the said exparte decree was set aside and the suit was withdrawn by the second defendant. After the purchase of the said Powerlooms by the plaintiff, he was running the Powerlooms in the same premises and he was also paying rent to the owner of the building, i.e to Mr.Arjunan.

(iii). The plaintiff also stated that there was some dispute between himself and the first and the second defendants. Therefore, the first and second defendants joined together and tried to disturb the plaintiff from running the Powerlooms. In fact, the defendants along with their men attempted to tresspass into the suit property on 13.03.2000 and tried to remove the Powerlooms. The said unlawful act of the defendants was timely prevented by the plaintiff with the help of neighbours. Therefore, the plaintiff apprehended that the defendants may continue their unlawful act at any point of time. Hence, the plaintiff filed a suit in O.S.No.191 of 2000 on the file of the learned Principal Sub Court Judge, Erode, seeking permanent injunction restraining the defendants, their men, agents, assignees etc., from interfering with his peaceful possession and enjoyment of the suit property and the same was transferred to the file of the learned District Munsif cum Judicial Magistrate, Perunduari and renumbered as O.S.No.368 of 2004.

(iv). The first defendant filed a written statement denying all the averments made in the plaint. Further, he stated that at the time of filing the present suit, the second defendant herein already filed a suit O.S.No.127 of 1999 on the file of District Munsif-Cum-Judicial Magistrate Court, Perundurai for permanent injunction restraining the first defendant and his wife from enjoying the suit property and subsequently, the same was withdrawn by the second defendant.

(v) Further, it is averred that the first defendant never sold the suit property to the second defendant at any point of time, as alleged by the plaintiff and also the document dated 16.12.1997 i.e., the receipt stated to have been issued by the first defendant and his wife to the second defendant and the

document dated 30.06.1998 i.e., rental agreement said to have been entered into between the first and second defendant are not genuine and they have been created only to suit their purpose. The first defendant denied the signatures found in the documents dated 16.12.1997 and 30.06.1998 and denied its execution.

(vi). It is the claim of the first defendant that he borrowed a sum of Rs.25,000/- from the second defendant in the year 1996 and agreed to pay the interest at the rate of Rs.1.50 p.a. However, the second defendant demanded 36% interest. As the first defendant refused to pay the said interest, the second defendant threatened him to execute a mortgage deed dated 15.07.1998 and compelled him to pay the amount immediately.

(vii). As on the date of filing of the suit, only the first defendant was in possession and enjoyment of schedule mentioned property, viz., six Powerlooms and running business there. In fact, the second defendant unlawfully removed one Powerloom from the factory, which was worth about Rs.30,000/-. At the time of removing the said Powerloom, the first defendant had adjusted the amount borrowed for a sum of Rs.25,000/- and there was no due to the second defendant. In this regard, the first defendant preferred a Police complaint against the second defendant and the second defendant categorically admitted before the Police that he had adjusted the amount borrowed by the first defendant by taking the Powerlooms and there was no amount due from the first defendant.

(Viii) Therefore, the first defendant averred that the plaintiff herein was neither in possession and enjoyment of the suit property as alleged in the plaint. Hence, the plea of the plaintiff seeking the relief of permanent injunction without declaratory relief cannot be sustained. Therefore the suit is liable to be dismissed.

(ix) Similarly, the second defendant also filed a written statement stating that he sold the Powerlooms to the plaintiff. However, he denied all other averments set out in the plaint. The second defendant had also filed an additional written statement, stating that the second defendant purchased the Powerloom from the first defendant and his wife for a sum of Rs.85,000/-. Further, the second defendant stated that on 30.06.1998 the first and second defendants entered into a rental agreement for a period of 10 months. Based upon the said agreement, the Powerloom was handed over to the first defendant for rental purpose and the first defendant paid rent regularly for few months. But, from 30.01.1999 onwards, the first defendant failed to pay the rent. Since he has not paid the rent, the second defendant requested the first defendant to hand over the schedule mentioned property to him. So accordingly, the

first defendant on 30.04.1999 handed over the schedule mentioned property to the second defendant and in regard to which, the second defendant issued a receipt. Since the first defendant disturbed his peaceful running of the business, the second defendant filed the suit O.S.No.127 of 1999 and obtained ex parte decree. However the suit was subsequently withdrawn. The schedule mentioned property was sold by the second defendant to the plaintiff for a sum of Rs.85,000/-. Therefore, the plaintiff was the absolute owner of the property and he supported the claim of the plaintiff as mentioned in the written statement.

4. The trial Court, on appreciation of both oral and documentary evidence has come to the conclusion that the plaintiff is the owner of the property. Therefore, decreed the suit as prayed for without costs, vide judgment dated 29.06.2011. Against which, an appeal was filed by the first defendant before the First Appellate Court, in A.S.No.16 of 2011.

5. The First Appellate Court, after considering all the facts, came to the conclusion that there were disputes regarding the ownership of the schedule mentioned property and the first defendant categorically denied the signatures found in the receipt as also in the rental agreement. Further, the first defendant categorically mentioned that he is the owner of the property and he is in possession of the Powerlooms and running the same. In fact, he gave a complaint before the police station in regard to the trespass by the second defendant for taking one Powerloom and the said Powerloom was worth Rs.30,000/- and the amount payable towards the take over of the Powerloom was adjusted against the amount, which the first defendant was liable to pay to the second defendant and the said Powerloom was worth Rs.25,000/- and to that extent, the second defendant also made a statement before the police station. Therefore, there is a serious dispute with regard to the ownership of the schedule mentioned property. Hence, the first Appellate Court held that when the title over the suit property is in dispute, the plaintiff ought to have sought for declaratory relief proving his possession and in the absence of such relief, the suit filed for permanent injunction is not maintainable and thus, by arriving at such conclusion, Court allowed the appeal filed by the first defendant. Against which, the plaintiff preferred the present Second Appeal.

6. It could be seen from the docket sheet annexed to this Appeal that notice was ordered as early as on 12.03.2013 and though the defendants have been served, none appeared on their behalf. Under this circumstances, this Court heard the plaintiff's case and framed the following substantial questions of law:-

a) Whether the First Appellate Court is right in dismissing the suit for permanent injunction on the ground that the plaintiff has not prayed for declaratory relief, even though, the First Appellate Court is empowered to adjudicate the title incidentally in the same suit?

b) Whether the suit for bare injunction is maintainable in law, when there is serious dispute regarding the title over the property, especially, when the defendants have not challenged the admissibility of Ex.A.1, Ex.A.4, Ex.A5 and Ex.B.1?

7. The learned counsel for the appellant advanced his arguments stating that the suit was rightly allowed by the trial Court, recognising the plaintiff as the owner of the schedule mentioned property. The trial Court considered the sale of the property by the first defendant to the second defendant and the rental agreement entered into between first and second defendants and thereafter, the receipt issued by the second defendant at the time of receiving the schedule property due to the non payment of rents by the first defendant. Due to the continuous disturbance by the first defendant, the second defendant also filed a suit in O.S.No.127 of 1999. The said suit was decreed set exparte, however, the same decree was set aside and subsequently, the second defendant withdrew the suit. It is an admitted fact that when the suit is pending, the plaintiff filed the present suit in O.S.No.191 of 2000 for the relief of permanent injunction not to disturb his peaceful possession and enjoyment of the schedule mentioned property.

8. Further the learned counsel stated that the first defendant has not even raised any objection for marking of exhibits viz., Ex.A4, Ex.A5 and Ex.A6 and therefore, the genuineness of these documents cannot be questioned. These documents have been marked to prove the ownership of the plaintiff in respect of the schedule mentioned property. In spite of all the documents produced to prove the ownership of the plaintiff and the second defendant, the First Appellate Court came to the wrong finding that the plaintiff have not produced any document proving their ownership over the schedule mentioned property and Powerlooms run in the premises, where, the first defendant is also running his business. However, it has come to the conclusion that the suit for permanent injunction is not maintainable without seeking for the relief of declaration as there is dispute with regard to title of the suit property. Thus, when the execution of the sale receipt itself, is disputed, and there is denial of the title by the defendants,

in such circumstances, the plaintiff ought to have amended the plaint for relief of declaration and without the prayer for declaration the suit for bare injunction is not maintainable.

9. Further, learned counsel submitted that the First Appellate Court, without considering the documents filed by the plaintiff observed that, when a suit for bare injunction is filed by a party, the First Appellate Court need not look into the dispute with regard to the title of the suit property. Point for consideration in a suit for bare injunction is only with regard to possession and enjoyment of the property by the plaintiff. In fact, in the present suit, the sale receipt said to have issued by the second defendant is marked as Ex.A1 and the judgment and decree passed in O.S.No.127 of 1999 is marked as Exs.A2 & A3. In spite of producing those documents, the First Appellate Court held that no other documents were marked to prove that the plaintiff is in possession and enjoyment of the suit property and by arriving at such wrong conclusion, the First Appellate Court allowed the appeal by setting aside the judgment and decree passed by the trial Court in O.S.No.368 of 2004, dated 29.06.2011. Hence the order passed by the First Appellate Court in A.S.No.16 of 2011 is liable to be set aside.

10. I am unable to accept the contentions of the learned counsel for the appellant with the following reason. The First Appellate Court found that there was dispute with regard to the title over the suit property. Admittedly, the plaintiff has not filed any documents pertaining to the ownership of the schedule mentioned property and also not established his case with regard to the running of the Powerloom business at the premises, where, the first defendant is running his business, except, the documents, related to the issuance of receipt by the second defendant to the plaintiff and an exparte order passed in O.S.No.127 of 1999, and the withdrawal of the same, no other documents were filed to establish the ownership of the subject property.

11. In the case on hand, there is no doubt that, the ownership with regard to the schedule mentioned property is in dispute. When the ownership is in dispute, it is necessary for the plaintiff to amend the plaint and seek for relief of declaration of his title over the property and thereafter seek for permanent injunction. Whereas, the suit was filed for permanent injunction, as if, he is having undisputed title over the property as on the date of filing the suit.

12. The reliance placed by the learned counsel appearing for the plaintiff on a judgment of the Hon'ble Supreme Court reported in 2008 (6) CTC 237 Anathula Sudhakar Vs P.Buchi Reddy & others is of no assistance, as, in the said

case, it is held that the plaintiff has to establish that he was in lawful possession of the suit property and the defendants tried to interfere with the lawful possession. Whereas, in the case on hand, the plaintiff has not proved his title to the schedule mentioned property and thus the title of the property is in serious dispute.

13. This Court also taken into consideration the judgment of the Hon'ble Supreme Court dated 09.10.2018 passed in Civil Appeal No.8242 of 2009, wherein, it was held that, 'when there is a dispute with regard to the title over the property, the suit for injunction alone is not maintainable without seeking for declaratory relief. So, the principles laid down by the Hon'ble Supreme Court in the aforesaid case will be of much help only to the first defendant and not to the plaintiff's case. Similarly, in an yet another judgment in the case of Jharkhand State Housing Board Vs Anirudh Kumar Sahu and others, relied on by the learned counsel for the plaintiff, it was clearly held that, the title of the plaintiff must be proved along with the lawful possession of the suit property.

14. Therefore, in the present case, onus is cast upon the plaintiff to prove his title over the suit property. Thus, as rightly held by the First Appellate Court, the plaintiff has neither his ownership over the property nor the plaintiff is holding the possession of the property. Accordingly, the substantial questions of law framed herein above are answered against the appellant/plaintiff.

15. Therefore, this Court finds that there is no infirmity in the judgment and decree passed by the First Appellate Court.

16. In the result, the Second Appeal is dismissed, thereby, confirming the judgment and decree of the First Appellate Court. No costs. Connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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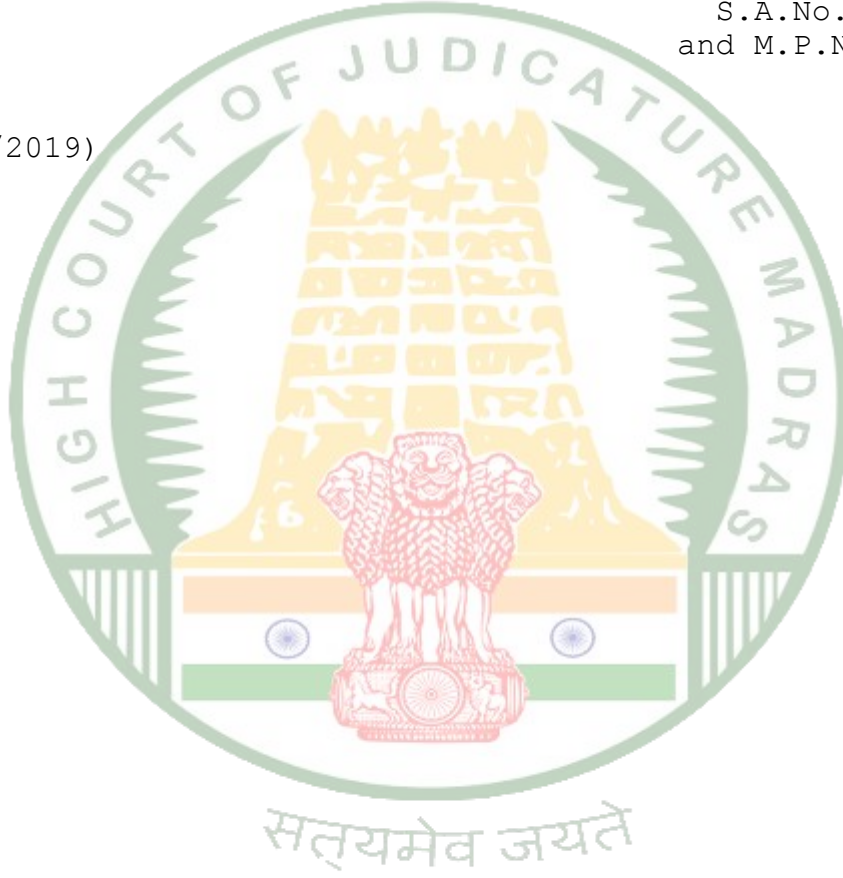
To

1. The Sub Court, Perundurai.
2. The District Munsif cum Judicial Magistrate Court,
Perundurai.

Copy To : The Principal Subordinate Judge, Erode.

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