

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.01.2018

PRONOUNCED ON : 22.01.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.411 of 2003

Duraikannu

...Appellant/Plaintiff

Vs.

1.Sankar

2.Pandiaraj

...Respondents/Defendants

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree in A.S.No.39 of 2000, on the file of the Additional District & Sessions Judge, Tindivanam (Fast Track Court II, A.S.No.69 of 2002) dated 04.10.2002 in confirming the Judgment and Decree in O.S.No.50 of 1997 on the file of the District Munsif-cum-Magistrate, Vanur dated 07.08.2000.

For Appellant : Mrs.V.Srimathi

For Respondents: Mr.D.Ramalingam
for M/s.Sudha Ramalingam

J U D G M E N T

This second appeal is directed against the Judgment and Decree dated 04.10.2002 passed in A.S.No.39 of 2000 on the file of the Additional District & Sessions Court, Tindivanam confirming the judgment and decree dated 07.08.2000 passed in O.S.No.50 of 1997 on the file of the District Munsif cum Judicial Magistrate Court, Vanur.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for permanent injunction.

4.The case of the plaintiff in brief is that the suit property originally belonged to Subramaniyan pillai and he had sold the same in favour of Sanjeevirayan, by way of a

registered sale deed in the year 1975 and the said Sanjeevirayan possessed the same and alienated the suit property in favour of Vijayakumar under the registered sale deed during 1979 and Vijayakumar possessed the same and transfer the suit property in favour of the plaintiff, by way of a registered sale deed dated 31.03.1986 and pursuant there to, it is only the plaintiff, who has been in possession and enjoyment of the suit property by putting up thatched shed, leveling the land, erecting fence etc., and thus the plaintiff is in continuous possession of the suit property and while so, the first defendant, staking a claim of ownership to the suit property, attempted to dispossesses the plaintiff from the suit property forcibly and unlawfully to which, the first defendant is not entitled to and the second defendant put up construction work in plot number 7 adjacent to the suit property and attempted to bring in construction material into the suit property and therefore according to the plaintiff, he has been necessitated to lay the suit, for appropriate reliefs.

5.The case of the first defendant in brief is that the suit filed by the plaintiff is not maintainable either in law or on facts and it is admitted that the suit property originally belonged to Subramaniyan Pillai and the case of the plaintiff that the suit property had been sold by Subramaniyan Pillai to Sanjeevirayan and Sanjeevirayan alienating the suit property in favour of Vijayakumar and Vijayakumar transferring the suit property in favour of the plaintiff are all denied and not admitted and it is false to state that the plaintiff pursuant to his alleged purchase has been in possession and enjoyment of the suit property as claimed in the plaint and it is false to state that the first defendant, staking a claim to the suit property, forcibly and unlawfully attempted to interfere with the plaintiff's possession and enjoyment in respect of the suit property. On the other hand, according to the first defendant, the original owner Subramaniyan Pillai sold the suit property comprising plot number 6 along with the plot number 7 to one Michaleraaj, by way of a registered sale deed dated 01.05.1964 and Michaleraaj, after being in possession and enjoyment of the suit property and plot number 7, sold the suit property and the adjacent plot number 7 to one Andro Venkatrama Naiker through a registered sale deed dated 17.11.1971 and since then, it is only Andro Venkatrama Naiker , who is in exclusive possession and enjoyment of the suit property and he had executed the general power of attorney deed dated 22.11.1995 in respect of the above said properties, in favour of the first defendant and accordingly, the first defendant had, on the instructions of his principal sold the plot number 7 to the second defendant and handed over the possession of the same to the second defendant and the suit property is still under the possession and enjoyment of Andro Venkatrama Naiker through his power agent, the first defendant and the plaintiff has no manner of right,

possession and enjoyment of the suit property as claimed in the plaint and hence the plaintiff by way of the suit is attempting to grab the suit property unlawfully and the plaintiff's suit should fail for not adding the true owner of the suit property namely Andro Venkatrama Naiker, who is a necessary party, as a party to the suit proceedings and hence the suit is liable to be dismissed.

6.The case of the second defendant in brief is that, it is false to state that the second defendant attempted to interfere with the possession and enjoyment of the plaintiff in respect of the suit property. The second defendant is only concerned with plot number 7 and not connected with the suit property in any manner and further, the second defendant is not a proper and necessary party to the suit proceedings and the plaintiff instead of filing the suit claiming the relief of declaration in respect of the suit property, had laid the suit only for the relief of permanent injunction, which is not maintainable and the true owner of the suit property Andro Venkatrama Naiker is a necessary party to the proceedings and hence the suit is liable to be dismissed.

7.In support of the plaintiff's case, P.W.1 has been examined. Exs.A1 to A6 were marked. On the side of the defendants' D.Ws.1 and 2 were examined. Exs.B1 to B3 were marked.

8.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the suit. The plaintiff preferred the first appeal and in the first appellate court, additional documents have come to be marked by the plaintiff, in support of his case, as Exs.A7 to A11. The first appellate court, on a consideration of the materials placed on record was pleased to dismiss the appeal preferred by the plaintiff by confirming the judgment and decree of the trial court. Assailing the same, the present second appeal has been laid.

9.At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.

(1)Whether the Courts below are right in investigating into the issue of title in a suit for bare injunction?

(2)When the plaintiff had proved title to the property and established possession for over a statutory period, whether the Courts below are right in dismissing the suit?

10.It is not in dispute that the suit property is a vacant house site comprised in plot number 6. It is not in dispute that the suit property originally belonged to Subramaniyan pillai. According to the plaintiff, Subramaniyan pillai, sold the suit property to Sanjeevirayan by way of a registered sale deed dated 01.02.1975 marked as Ex.A7 and Sanjeevirayan had sold the same in favour of Vijaya Kumar, by way of a registered sale deed dated 21.02.1979 marked as Ex.A1 and in turn Vijaya Kumar had transferred the suit property in favour of the plaintiff, by way of a registered sale deed dated 31.03.1986 marked as Ex.A2 and thus according to the plaintiff, pursuant to Ex.A2, it is only he, who has been in possession and enjoyment of the suit property as the lawful owner by erecting thatched house, fencing, leveling the land etc., and further according to him, inasmuch as the first defendant, staking a claim of ownership to the suit property, attempted to interfere with his possession and enjoyment of the suit property unlawfully and forcibly, hence, he has been necessitated to lay the suit for the relief of permanent injunction.

11.The first defendant has resisted the plaintiff's suit denying the source of title claimed by the plaintiff, in respect of the suit property through Exs.A7, A1 and A2 and also denied that the plaintiff is in physical possession and enjoyment of the suit property pursuant to Ex.A2 as claimed in the plaint and hence according to the first defendant, the plaintiff is not entitled to obtain the relief sought for. Further, according to the first defendant, Subramaniyan pillai had sold the suit property to one Michael Raj, by way of a registered sale deed dated 01.05.1964, marked as Ex.B1 along with plot number 7 and in turn, Michael Raj had sold the suit property and plot number 7 in favour of Andro Venkatrama Naiker, by way of a registered sale deed dated 17.11.1971, marked as Ex.B2 and further according to the first defendant, Andro Venkatrama Naiker executed a general power of attorney deed, in his favour dated 02.11.1995 marked as Ex.B2 and thus according to the first defendant, as his power agent, he had alienated plot number 7 in favour of the second defendant and it is his further case that Andro Venkatrama Naiker is still retaining the ownership, possession and enjoyment of the suit property and therefore, according to him, the plaintiff without being in lawful possession and enjoyment of the suit property, cannot be allowed to seek and obtain the relief of permanent injunction as against the true owner of the suit property (i.e) Andro Venkatrama Naiker and hence the suit is liable to be dismissed.

12.The second defendant had resisted the plaintiff's action on the footing that he is not at all concerned with the suit property and never attempted to interfere with the possession and enjoyment of the plaintiff in respect of the suit property and according to the second defendant, he is only concerned with the

plot number 7, therefore, according to him, he is not a necessary party to the suit proceedings and further accordingly to him, the suit laid by the plaintiff without seeking the relief of declaration, in respect of the suit property particularly, considering the plaint averments is not maintainable, and hence the suit is liable to be dismissed.

13.It is not in dispute, as above stated, that the suit property originally belonged to Subramaniyan pillai. The plaintiff claims that the suit property had been alienated by Subramaniyan pillai in favour of Sanjeevirayan, under Ex.A7 sale deed. Per contra, the first defendant claims that Subramaniyan pillai had alienated the suit property in favour of Michael Raj, by way of Ex.B1 sale transaction. It is found that even prior to Ex.A7, sale transaction, the original owner Subramaniyan pillai had alienated the suit property in favour of Michael Raj, by way of Ex.B1 sale transaction. Such being the position, when it has not been established by the plaintiff that Subramaniyan pillai had the legal competency to convey the suit property in favour of Sanjeevirayan, by way of Ex.A7 sale transaction, at the relevant point of time, it is found that the plaintiff's case that Sanjeevirayan had secured the valid ownership of the suit property, by way of Ex.A7 sale transaction, as such, cannot be accepted in any manner. Accordingly, it is found that, when Sanjeevirayan is found to have not obtained the valid title to the suit property under Ex.A7 sale transaction, it is seen that his claim of transfer of the suit property to one Vijaya Kumar by way of Ex.A1 sale transaction is also found to be invalid and equally it is further found that the alleged sale of the suit property by Vijayakumar in favour of the plaintiff by way of Ex.A2 sale transaction is found to be invalid. On the other hand, it is found that the original owner Subramaniyan pillai having sold the suit property in favour of Michael Raj by way of Ex.B1 as early as on 01.05.1964, the case of the first defendant that Michael Raj had alienated the suit property by way of Ex.B2, sale transaction on 17.11.1971 in favour of Andro Venkatrama Naiker would go to show that it is only Andro Venkatrama Naiker, who has obtained a valid title to the suit property and enjoying the same, pursuant thereto.

14.The plaintiff claims to be in possession and enjoyment of the suit property, by way of the sale transactions as pleaded in the plaint. Thus according to the plaintiff, he claims to be in lawful possession and enjoyment of the suit property by way of the sale transactions projected by him. However, when in the light of Exs.B1 and B2, it is found that the sale transactions projected by the plaintiff by way of Ex.A7, Exs.A1 and A2 are found to be not valid, the claim of the plaintiff that he has in lawful possession and enjoyment of the suit property pursuant to the above said sale transactions, as such, cannot be countenanced in any manner.

15.As rightly found by the Courts below, when it is seen that the suit property is only a house site, on the principle that possession follows title, when the original owner Subramaniam Pillai is found to have transferred the ownership of the suit property to Michael Raj under Ex.B1 and Michael Raj is found to have transferred the ownership of the suit property under Ex.B2 in favour of Andro Venkatrama Naiker, the claim of the plaintiff seeking the source of title to obtain the ownership of the suit property through Sanjeevirayan, who is said to have acquired title to the suit property in the year 1975, by way of Ex.A7 and when it is further seen that at that relevant point of time, Subramaniam Pillai had no legal competency to transfer the ownership of the suit property in favour of Sanjeevirayan, it is evident that further transactions effected starting from Sanjeevirayan, ending with the plaintiff marked as Exs.A1 and A2, cannot be given any weightage and legal credence and it is seen that the plaintiff cannot lay any claim of lawful ownership and possession and enjoyment of the suit property as put forth by him.

16. It is contended by the plaintiff's counsel that in a suit for bare injunction, the question of title does not assume much importance and as only the possession in respect of the suit property alone matters and in such view of the matter, according to her, the Courts below had erred in going into the question of title in respect of the suit property and on the said ground alone, the judgment and decree of the Courts below should fail. Further, according to her, as far as the suit for permanent injunction is concerned, the plaintiff is not required to prove the title and it is sufficient if the plaintiff had established her possession and enjoyment of the suit property and as according to her, the plaintiff has established his possession and enjoyment of the suit property, the Courts below should have granted the relief sought for by the plaintiff against the defendants. In support of her contentions, strong reliance is placed upon the decisions reported in 2000 (1) CTC 719 [G.Kannan and another Vs. Kulikambai alias Saroja and 2 others]and 200 (2) TLNJ 6 [Sundarambal Vs. Ramaiya Pillai].

17.Per contra, it is contended by the defendants' counsel that when the first defendant has established that he is the power of attorney agent of the real owner of the suit property i.e., Andro Venkatrama Naiker through Exs.B1 to B3 and when the plaintiff has not established his lawful possession and enjoyment of the suit property, it is contended that the plaintiff cannot be allowed to seek and obtain the relief of permanent injunction as against the true owner and in this connection, the decisions reported in 1999(III)CTC 304 [Kammavar Sangam through its Secretary R.Krishnasamy Vs. Mani Ranagarajan], 1994 SCC(5) [547] [Premji Ratansey Vs. Union of

India] are relied upon. A perusal of the above decisions would go to show that the relief of permanent injunction sought for by a person claiming on the basis of possessory title cannot be maintained against the person having a better title and and it is seen that injunction could not be issued against the true owner. In the light of the above position of law, when it is found that the plaintiff has miserably failed to establish that he is in lawful possession and enjoyment of the suit property or for the matter, even assuming for the sake of arguments, he is in possession and enjoyment of the suit property, as such, as a trespasser, as the case may be, when it is seen that it is only Andro Venkatrama Naiker is the true owner of the suit property, exercising full ownership, possession and enjoyment of the suit property through his power agent namely the first defendant, it is seen that the suit laid by the plaintiff against the true owner of the suit property as such is not maintainable and evidently it is found that the relief of permanent injunction sought for by the plaintiff cannot be granted against the true owner i.e., the first defendant, who is the power agent of the true owner namely Andro Venkatrama Naiker.

18.As far as the second defendant is concerned, there is no valid material projected by the plaintiff that he had attempted to interfere with his alleged possession and enjoyment of the suit property and when it is noted that the second defendant is not at all concerned with the suit property and his claim is pertaining only to the adjacent plot (i.e)Plot number 7, it is seen that the plaintiff has no cause of action against the second defendant, as such and hence the suit laid by the plaintiff as against the second defendant is found to be not maintainable.

19.The Apex Court in the decision reported in 2008(4)SCC 594 [Anathula Sudhakar Vs. P.Buchi Ready (dead) By Lrs and others] has held that where a cloud has been raised over the plaintiff's title and the plaintiff's claims to be in possession of the suit property only on the basis of the said title, the suit for declaration with or without consequential relief is the remedy available to the plaintiff and in cases where de jure position has to be established on the basis of title to the suit property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding there on, it will not be possible to decide the issue of possession. Whether the plaintiff claims to be in possession and his title to the suit property is disputed or under a cloud or where the defendants asserts title thereto and there is also a threat of dispossession from the defendants as in this case, the plaintiff will have to go for declaration of title and consequential injunction and when the title of the plaintiff is in cloud or in dispute and he does not have possession and not able to establish the possession, necessarily

the plaintiff will have to file a suit for declaration and possession with or without consequential injunction. Thus in the light of the above Apex Court decision, it is found that the prayer for declaration is necessary if there is denial of title by the defendants or the defendants challenge the plaintiff's title to the suit property and in such a situation the action for declaration is the only remedy to remove the cloud on the title of the suit property in issue.

20. In view of the abovesaid principles of law enunciated by the abovesaid decision of the Apex Court, it is found that when the plaintiffs' claim of title to the suit property and the consequential possession and enjoyment of the same is challenged by the defendants, as above adumbrated by the Apex Court, the plaintiff should have included the relief of declaration also for sustaining his suit legally and the plaintiff having failed to seek the relief of declaration in respect of the suit property, it is found that his bare suit for permanent injunction is not maintainable legally.

21. That apart, when even according to the plaintiff, as seen from the plaintiff averments, the first defendant, staking a claim of ownership to the suit property attempted to interfere with his possession and enjoyment forcibly and unlawfully and when according to the plaintiff, the first defendant does not have any better title to the suit property than his claim of title and when the first defendant has asserted title of the suit property in favour of his principal namely Andro Venkatrama Naiker and also thrown a challenge to the claim of title to the suit property by the plaintiff and also challenged the claim of the possession and enjoyment of the plaintiff in respect of the suit property, as such, considering the above pleadings projected by the respective parties, it is seen that a reading of the plaint as a whole in the context of relief claimed thereunder, would go to show that the issue of title is not wholly alien to the controversy and it is relevant to determine the same while considering the relief of permanent injunction sought for. This could also be seen from the decision of the Apex Court reported in 2017 (5) Law Weekly Page No.490 [Velayuthan & Others Vs. Mahamed Kutty and others.

22. In the light of the above position, the contention put forth by the plaintiff's counsel that the Courts below have erred in going into the question of title of the suit property in detail and thereby over stepped their jurisdiction, as such, cannot at all to be accepted in any manner considering the above said principles of law defined by the Apex Court.

23. In the light of the above discussions, the first substantial question of law formulated in the second appeal is answered against the plaintiff and in favour of the defendants.

24.The plaintiff has also claimed to be in possession and enjoyment of the suit property for more than the statutory period and therefore according to the plaintiff, the Courts below had erred in not considering the above claim of the plaintiff and dismissing the suit. However, it is found that as regards the plea of adverse possession projected by the plaintiff on account of long and continuous enjoyment of the suit property for more than the statutory period openly and uninterruptedly, from the documents marked on the side of the plaintiff namely the patta marked as Ex.A4 dated 22.11.1995, the Kist receipts marked as Exs.A5 and A6 dated 09.01.1996 and 05.03.1997 and when it is seen that the suit has come to be laid by the plaintiff on 02.07.1997 only, from the above said three documents, per se, it cannot be stated and concluded that the plaintiff has been in possession and enjoyment of the suit property openly and continuously exercising absolute and hostile ownership to the knowledge of one and all including the true owner of the suit property namely Andro Venkatrama Naiker beyond the statutory period and in such view of the matter, it is found that the claim of the plaintiff that he had also perfected his title to the suit property by way of adverse possession, as such, cannot be sustained in the eyes of law. Accordingly, the second substantial question of law formulated in the second appeal is answered against the plaintiff.

25. In conclusion, the second appeal fails and accordingly is dismissed with costs. Connected miscellaneous petition, if any, is closed.

Sd/-

Asst.Registrar (CO)

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Sub Asst. Registrar

To

1.The Additional District & Sessions Judge, Tindivanam.
(Fast Track Court II)

2.The District Munsif-cum-Magistrate, Vanur.

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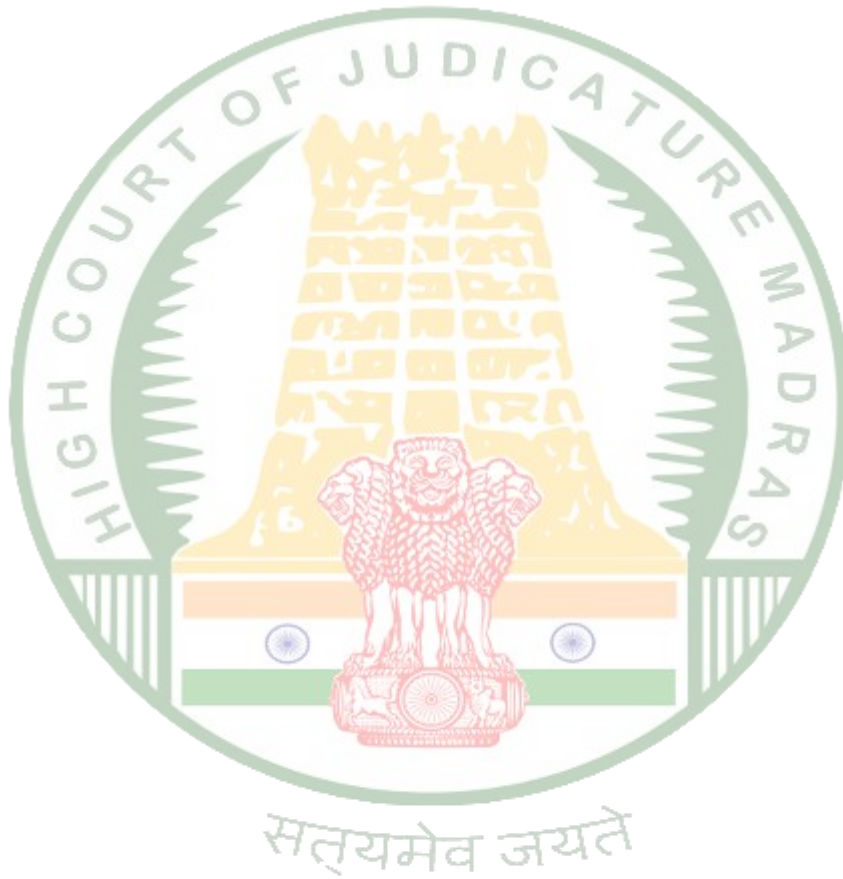
The Section Officer,VR Section,
High Court, Madras.

+ 3 cc to M/s.Sudha Ramalingam Advocate,SR.5051

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