



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.10.2018

DELIVERED ON : 09.10.2018

WEB COPY

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A. (MD) No.346 of 2018

and

C.M.P. (MD) No.9792 of 2018

- 1) R.Renuka
- 2) R.Komala
- 3) A.Ramesh
- 4) A.V.Hari
- 5) Mrs.Jayasree
- 6) A.Madhu

..Appellants/ Appellants/
Plaintiffs

** Appellants 1 to 5 are represented by their
power agent 6th Appellant Mr.A.Madhu,
S/o A.C.Varadharajulu,
No.179/36A,Lakshmi Sundar Nagar, Salem.*

Vs.

- 1) N.Krishnakumari
- 2) V.R.Narendra Raj

..Respondents/
Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 Civil Procedure Code against the judgment and decree dated 23.12.2016 in A.S.No.51 of 2014 on the file of the II Additional District Judge, Tiruchirappalli confirming the judgment and decree dated 07.04.2014 made in O.S.No.437 of 2010 on the file of the I Additional Subordinate Judge, Tiruchirappalli.

For Appellants/ Plaintiffs : M/r.Shankar Murali

J U D G E M E N T

The appellants herein, are the plaintiffs in O.S.No.437 of 2010. Appeal is against the dismissal of the suit filed for bare injunction against the respondents by the trial Court in OS.No.437 of 2010 and confirmed by the Appellate Court in A.S.No.51 of 2014 against which the present Second Appeal is preferred.

2. Before the Additional Sub Court, Tiruchirappalli, appellants herein have preferred O.S.No.437 of 2010 against the respondents Krishnakumari and Narendraraj. Whereas, the second respondent herein, Narendraraj has preferred the suit O.S.No.158



of 2008 against the appellants 2 to 6. Both the suits are for the relief of injunction in respect of suit schedule property which was purchased by Sundararaj through Court auction.

3. The property being a joint family property which devolved upon Veerasamy, who is the grand father of the plaintiff in O.S.No.158 of 2008. The property has been bequeath to the plaintiff in O.S.No.158 of 2008 through the will dated 13.10.1983 executed by Veerasamy Naidu. After death of Veerasamy, the entire suit property is in possession and enjoyment of the plaintiffs. Both the appellants herein and the respondents have filed the suit and counter suit for permanent injunction claiming possession and enjoyment in respect of the same property and relied upon the earlier proceedings between the parties before revenue authorities and other 3rd parties regarding rent control proceedings. The trial Court has considered the devolution of the property from the Court auction purchased by Sundararaj vide Ex.B1 and the will of Veerasamy Naidu marked as Ex.B.20. the parties are seeking relief.

4. The trial Court has held that Veerasamy Naidu had absolute right to bequeath the property through will and therefore, the property has devolved upon the plaintiff in O.S.No.158 of 2008 and he being in enjoyment of the property, and let out the property to third parties, he is entitled for permanent injunction, whereas the relief of permanent injunction sought by the plaintiffs in O.S.No.437 of 2010 not maintainable.

5. Thus, the trial Court dismissed the suit filed in O.S.No.437 of 2010 filed by the appellants herein and allowed the suit in O.S.No.158 of 2008 filed by the respondents.

6. Aggrieved by the common judgment passed by the trial Court, the appellants herein have filed A.S.No.50 of 2014 against the decree passed in O.S.No.158 of 2008 and A.S.No.51 of 2014 against the dismissal of their suit in O.S.No.437 of 2010. The First Appellate Court, considering the facts and law adduced by the respective parties, had tested the judgment of the trial Court in the light of the Supreme Court judgement in **Anathula Sudhakar vs. P.Buchiruddi** reported in 2008 (4) SCC 594 pointing the guidelines given in the said judgment, allowed A.S.No.50 of 2014 and dismissed A.S.No.51 of 2014.

7. In this case, there is a dispute regarding the title and there is a cloud over the title of the suit property. The lower Court has wrongly entered into the question of validity of the will in the suit for permanent injunction. Therefore, reversed the finding of the trial Court in respect of the decree and judgment passed under O.S.No.158 of 2008, Appellate Court allowed A.S.No.50 of 2014; resulting dismissal of O.S.No.158 of 2008 filed by the respondents herein. On the same analogy, the first Appellate Court has also dismissed A.S.No.51 of 2014 filed by the appellants herein filed against the dismissal of suit in O.S.No.437 of 2010.



As a result, both the suits in O.S.No.437 of 2010 filed by the appellants herein and O.S.No.158 of 2008 filed by the second respondent herein were dismissed, since it is a suit for bare injunction while the title itself is under cloud.

8. The reasoning of the Appellate Court judgment is the following guideline of the Supreme Court.

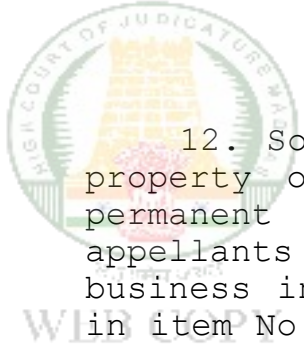
"In a suit for injunction if the matter involves complicated question of fact and law relating to title the Court will relegate the parties to the remedy by way of comprehensive suit for declaration of title".

9. Learned counsel appearing for the appellants who are aggrieved by the dismissal of the suit in O.S.No.437 of 2010 both by the trial Court and the First Appellate Court would contend that the first Appellate Court has erroneously held that the appellants ought to have filed the suit for declaration of their title when Ex.B1, Ex.B3 to Ex.B15, Ex.B25 to Ex.B29, Ex.B51 prove the title and possession of the appellants. Without any discussion, the First Appellate Court has imagined that there is a dispute regarding the title and therefore, dismissed the bare injunction suit. It is also contended by the learned counsel that the documents relied upon by the respondents herein to show as if they were in constructive possession of the property and collecting rent from the tenants are all fabricated and concocted documents and being self serving documents, the Courts should not have relied upon it.

10. The learned counsel appearing for the appellants would strongly contend that the first Appellate Court has misconstrued and misunderstood the dictum of the Hon'ble Supreme Court laid in **Anathula Sudhakar Vs. P.Buchiruddi** judgment. Due to the wrong understanding of the principle laid down in the **Anathula Sudhakar Vs. P.Buchiruddi** Judgment, the Appellate Court has dismissed the suit for injunction filed by the appellants.

Finding:

11. The parties are related to each other. The suit property was purchased through Court auction by Sundaraj and through him, the parties claim title and possession. Veerasamy Naidu had purchased the property under Ex.B2. The contention of the respondents herein is that he is the grandson of Veerasamy Naidu, through his son Rajendran, whereas the appellants are the linear descendants of Veerasamy Naidu, brother of Rangasamy Naidu. Whereas, the case of the appellant is that Veerasamy Naidu had no wherewithal for purchasing the property and it was their grand father Rangasamy Naidu, who is brother of Sundaraj has paid the sale consideration for purchase of item No.1 of the suit property by Court auction and other items of the suit property.



12. So they contend that the suit property being an absolute property of the appellants herein, they are not entitled for permanent injunction. However, in the pleading itself, the appellants have admitted that the plaintiffs are carrying on business in the name of Ranga Villas Bankers and Vijay Jewellers in item No.4 of the suit property for and on behalf of defendants 2 to 6. The dispute between the parties touching upon the title could be clearly seen from various litigations initiated by them against the tenants and against the revenue authorities for issuance of patta. In the said circumstances, the Appellate Court has gone through the nature of the dispute and had rightly held that when the title itself is under cloud, the suit for bare injunction cannot be filed.

13. The Hon'ble Supreme Court in **Anathula Sudhakar Vs. P. Buchiruddi** case has summarized the position, in regard to the suits for prohibitory injunction relating to immovable property. Admittedly, the title of the suit property originally vested with Veerasamy Naidu, now being claimed by the rival parties. While the respondents herein rely upon the will of Veerasamy Naidu, marked as Ex.A.12, the same is disputed by the appellants herein. While so, it cannot be contended by the appellants that the suit is only regarding possession and enjoyment and not regarding title and therefore, the suit for injunction simplicitor is maintainable.

14. As far as the suit property which is the subject matter of O.S.No.437 of 2010 filed by the appellant herein is admitted by both the parties and that it was purchased by Sundaraj through Court auction and he died on 29.10.1971. It is the contention of the respondents that Sundaraj is only a name lender to Veerasamy Naidu. The property was purchased in the name of Sundaraj, who is none else than the son of his brother Rangasamy Naidu. They claimed their right through the will executed by Veerasamy Naidu dated 13.10.1983. In the said circumstances, when the source of the title to the property is substantially agitated by the parties, the suit for bare injunction simplicitor cannot be entertained.

15. The Hon'ble Supreme Court, as one of its guidelines in **Anathula Sudhakar Vs. P. Buchiruddi** judgment has observed the following:-

"(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 the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case. "

16. The facts of this case is not that some third party or meddlers making vexatious or wrongful claim. It is a dispute among the siblings. In such case, when parties have pleaded possession through title documents and already dispute between them regarding title, issue of patta, collection of rents have cropped up, it cannot be presumed that the appellants have clear title and sufficient to seek for prohibitory injunction alone.

17. In the said circumstances, this Court finds no question of law involved in the Second Appeal. Hence, Second Appeal is dismissed. The apprehensions raised by the learned counsel for the appellants that by dismissal of this Second Appeal, the respondents herein will take advantage and try to dispose of the appellants herein, is unfound, since the first Appellate Court has also set aside the injunction decree passed in favour of the respondent by the trial Court in O.S.No.158 of 2008 by allowing A.S.No.50 of 2014.

18. In the result, the Second Appeal dismissed. The judgment dated 07.04.2014 made in O.S.No.437 of 2010 on the file of the I Additional Subordinate Judge, Tiruchirappalli as confirmed by the judgment and decree dated 23.12.2016 in A.S.No.51 of 2014 on the file of the II Additional District Judge, Tiruchirappalli is upheld. However, there shall be no order as to costs. Consequently, connected miscellaneous petition C.M.P.(MD) No.9792 of 2018 is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS-I)

To

1) The II Additional District Court,
Tiruchirappalli.

2) The I Additional Subordinate Court,
Tiruchirappalli.



3) The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

WEB COPY +1 CC To MR.SHANGAR MURALI, Advocate SR. NO. 89507

Judgment in
S.A. (MD) No. 346 of 2018
09.10.2018

STS
TR/SKN/SAR-I (19.11.2018) 6P 6C