

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.10.2019

PRONOUNCED ON: 24.10.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A. No.1011 of 2007

and

M.P. No.1 of 2007

1. N.R. Shanmugham (Deceased)
 2. Chinnaponnu Ammal *
 3. S. Gopal
 4. S. Venkatesan
 5. Puppy
 6. Kannigakumari
 7. Chella
- ...Appellants/Respondent/Plaintiffs

*Appellants 2 to 7 brought on record
as Legal Representatives of the
deceased sole Appellant vide
order of Court, dated 02.09.2013
made in M.P. No.1 of 2013
in S.A. No.1011 of 2017

 V_S

1. Baskar
2. Rajendiran
3. Mohan
4. Amulu
5. Kokila Respondents/Appellants/Defendants

Second Appeal filed under Section 100 of the Code of Civil Procedure as against the Judgment and decree dated 20.01.2007 made in A.S. No.19 of 2005 on the file of Additional District Court (FTC No.V), Tiruvallur reversing the Judgment and Decree dated 27.02.2004 made in O.S. No.232 of 1990 on the file of District Munsif Court, Tiruttani.

For appellants : Mr.V.K. Rajagopalan

For respondents : Mr.N.Subbarayalu

JUDGMENT

This Second Appeal has been filed challenging the Judgment and decree dated 20.01.2007 passed in A.S. No.19 of 2005 on the file of Additional District Court (FTC No.V), Tiruvallur reversing the Judgment and Decree dated 27.02.2004 passed in O.S. No.232 of 1990 on the file of District Munsif Court, Tiruttani.

2. This Court, while admitting the Second Appeal on 27.09.2007 formulated the following substantial question of law for consideration :

Whether the lower appellate Court is right in holding that the suit for bare injunction is not maintainable in the absence of a prayer for declaration of title and whether the judgment of the lower appellate Court is contrary to the decision of the Apex Court in AIR 2007 SC 900?

3. The first appellant died during the pendency of this Second Appeal and his Legal Representatives were brought on record as Appellants 2 to 7. The first appellant who died during the pendency of this Second Appeal is the plaintiff in the suit. The respondents are the defendants 2 to 6 in the suit. Varnam Narayanasamy Reddy was the first defendant in the suit, who died during the pendency of the suit.

4. For the sake of convenience, the parties herein are referred to as per the ranking in the Trial Court.

5. The first appellant is the plaintiff in the suit O.S. No.232 of 1990 on the file of District Munsif Court, Tiruttani. He filed the suit against the defendants for a bare injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit schedule property. The suit schedule property which the plaintiff claims to be the owner measures 27 feet in the North to South and 51 feet in the East to West.

6. According to the plaintiff, he is the absolute owner of the suit schedule property. According to him, the defendants are attempting to trespass into the suit schedule property by putting up a hut in the Western side in the vacant site of the suit schedule property. The plaintiff claims title over the suit schedule property by virtue of a Memorandum of Partition, dated 12.05.1978 (Ex.A2). According to the plaintiff, the suit schedule property was originally owned by the plaintiff's father, he having purchased the same under a Sale deed dated 05.02.1936(Ex.A1). It is his case that he was allotted the suit

schedule property through a Memorandum of Partition, dated 12.05.1978 (Ex.A2) entered into with his brother.

7. The respondents, who are defendants in the suit have filed written statement denying the allegations in the plaint and it is their case that the plaintiff has got no title over the disputed portion in the Western side of the suit schedule property. It is also their case that the plaintiff was never in possession of the disputed site and the Well on the Western side is their absolute property. According to the defendants, the plaintiff is entitled to only to 46 feet in the East to West direction and 26 and $\frac{1}{2}$ feet in the North to South direction in the suit property. They have disputed the ownership of the plaintiff over the remaining portion in the suit property on the Western side, as it is their absolute property. As per the plaint schedule, the plaintiff has claimed that he is entitled to 27 feet in the North to South direction and 51 feet in the East to West direction.

8. Before the Trial Court, the plaintiff filed 7 documents, which were marked as Exs.A1 to A7. The documents included the Sale deed (Ex.A1), dated 05.02.1936 and the Memorandum of Partition (Ex.A2), dated 12.05.1978, by which the plaintiff claims ownership of the suit schedule property. On the side of the plaintiff, two witnesses were examined viz., the plaintiff himself (PW1) and Selvaraj, PW2. On the side of the defendants, three documents were filed, which were marked as Exs.B1 to B3. Ex. B1 is the Partition deed, dated 09.09.1946 between Namashivya Nayakkar and Nagarathinammal, the mother of the plaintiff N.R. Shanmugam. Ex.B2 is the settlement deed, dated 24.03.1950 executed by Thiruvengkadareddy in favour of Ranganayakiammal. Ex.B3 is the sale agreement, dated 22.04.1982. On the side of the defendants, two witnesses were examined viz., the 3rd defendant Rajendran (DW1) and Arunachalam (DW2).

9. According to the defendants, as seen from the evidence of DW1(third defendant), Namashivya Nayakkar and Natesa Nayakkar are brothers. DW1 has deposed that the disputed portion on the Western side of the suit schedule property belongs to the defendants by virtue of partition deed, dated 09.09.1946 (Ex.B1) and the settlement deed, dated 24.03.1950 (Ex.B2).

10. The Trial Court after considering the evidence available on record has come to the conclusion that 243 sq. ft. is a disputed portion, which lies in the Western side of the suit schedule property. However, contrary to the said conclusion, the Trial Court based on an unregistered Memorandum of Partition, dated 12.05.1978 (Ex. A2) between the plaintiff

N.R.Shanmugam and his brother N.R.Ramalingam has given a finding that the plaintiff is the owner of the suit schedule property measuring 27 feet in the North to South direction and 51 feet in the East to West direction, whereas, the defendants have categorically pleaded in their written statement as well as deposed in their oral evidence that the plaintiff is entitled only to 46 feet in the East to West direction and 26 and $\frac{1}{2}$ feet in the North to South direction in the suit property and not 27 feet in the North to South direction and 51 feet in the East to West direction, as claimed by the plaintiff. After the death of the plaintiff's father Natesa Nayakkar, his wife Nagarathinammal has entered into a registered partition deed, dated 09.09.1946 (Ex.B1) with the plaintiff's uncle Namashivya Nayakkar. It is the case of the defendants that the portion of the land in the Western side along with the Well fell to the share of Namashivya Nayakkar under the partition deed, dated 09.09.1946 (Ex.B1). Thereafter, in 1950, a settlement Deed Ex.B2 was executed by Thiruvenkada Reddy in favour of Ranganayakiammal. As per Ex.B2, Ranganaykiammal, shall enjoy the property till her lifetime and thereafter, the first defendant's father shall become the absolute owner. As per Ex.B2 on the side of Sandhu Street, East West measurement is 56 feet, North to South is 30 feet in which the tiled house, on the East of which is the yard of East West is 36 feet and North South is 42 feet and as Ex.B2 and accordingly the East West 22 feet and North South 42 feet, along with the yard is said to have been sold to the plaintiff's brother Ramalingam, and the same was purchased by his father towards which property the sale agreement Ex.B3 was entered into. Ex.B3 has been signed by plaintiff's father in which the Well is mentioned. According to the defendants as per Ex.B1, B2 and B3, the plaintiff is entitled only to the extent of 46 feet

in the East West direction and 26 feet in the North South direction in the suit schedule property.

11. As seen from Exs.B1, B2 and B3, there is a genuine dispute as regards the extent of property owned by the plaintiff and the defendants respectively. It is also to be seen that the plaintiff and the defendants are relatives and derive their respective title over the disputed portion from the same ancestor.

12. Having come to the conclusion that there is a cloud over the title of the appellant with regard to 243 sq. ft. in the Western side of the suit schedule property, the Trial Court ought not to have decreed the suit in favour of the plaintiff, by judgment and decree, dated 27.02.2004 passed in O.S. No.232 of 1990, when no relief of declaration of title was sought for by the plaintiff.

13. Aggrieved by the judgment and decree, dated 27.02.2004, the defendants preferred an appeal before the Additional District Court, Fast Track Court -V, Tiruvallur in A.S. No.19 of 2005. The lower Appellate Court allowed the appeal based on the evidence let in by the defendants / respondents through DW1 and DW2. The lower Appellate Court has considered Exs. B1, and B2, which are registered documents as well as Ex.B3 and has come to the conclusion that there is a dispute with regard to the title of the plaintiff in the Western side of the suit schedule property. The lower Appellate Court has rightly held that the only remedy available to the plaintiff is to seek the relief of declaration of title in respect of the disputed portion and without seeking a relief of declaration, injunction cannot be granted. Accordingly, the lower Appellate Court allowed the appeal filed by the defendants by judgment and decree, dated 20.01.2007 passed in A.S. No.19 of 2005.

14. Aggrieved by the reversal of findings of the Trial Court, by the lower Appellate Court, this Second Appeal has been filed by the plaintiff in the suit.

15. Heard Mr.V.K. Rajagopalan, learned counsel for the appellants and Mr.N. Subbarayulu, learned counsel for the respondents.

16. The learned counsel for the appellants drew the attention of this Court to the judgment and decree, dated 27.02.2004 passed in O.S. No.232 of 1990 as well as the judgment and decree, dated 20.01.2007 passed by the lower Appellate Court in A.S. No.19 of 2005 and submitted that in the Memorandum of Partition Ex.A2, the plaintiff's father is a witness to the said document. Hence, according to him, when the plaintiff's father is the predecessor in title by virtue of the Sale deed, dated 05.02.1936(Ex. A1), the Trial Court has rightly accepted the document viz., Memorandum of partition (Ex. A2) and held that the plaintiff is the absolute owner of the entire suit schedule property including the Western portion, which is the subject matter of the dispute.

17. However, the learned counsel for the respondents drew the attention of this Court to Exs.B1 and B2 and submitted that ever since 1946, the predecessors in title of the defendants and presently the defendants are in possession of the disputed portion in the Western side claimed by the plaintiff. Further, he contends that the plaintiff's father Natesa Nayakkar and Namashivya Nayakkar are brothers and after the death of Natesa Nayakkar, the mother of the plaintiff partitioned the property with Namashivya Nayakkar and the disputed portion in the Western side fell to the share of predecessors in title of the

defendants. He also drew the attention of this Court to the written statement filed in the suit in O.S. No.232 of 1990 and submitted that the defendants have taken a categorical stand that the portion which the plaintiff claims ownership in the Western side of the suit schedule property belongs to them and if at all the plaintiff wants to seek any right over the same, then the only remedy available to the plaintiff is to file a suit for declaration of title. According to him, when there is a dispute with regard to the title, an injunction suit simpliciter is not maintainable.

18. The learned counsel for the respondents drew the attention of this Court to the following decisions of this Court

1) Arasappan Karayalar & another v. Subramania
Karayalar reported in 2001- 1 LW 724

2) T.R. Thangappan versus Chitra reported in
2011 5 MLJ

and submitted that when there is a dispute between the parties with regard to the title over a specific extent of property, the only remedy available to the plaintiff is to file a suit for declaration and to seek for recovery of possession and a suit for bare injunction without seeking relief of declaration is not maintainable.

19. It is well settled by the Judgment of the Hon'ble Supreme Court in the case of Anathula Sudhakar vs. P. Buchi Reddy and Others reported in (2008) 4 SCC 594 that where the defendant asserts title and there is a threat of dispossession by the defendant, the only remedy available to the plaintiff is to file a suit for declaration of title and a suit for injunction simpliciter is not maintainable.

20. The Hon'ble Supreme Court has laid down general principles in Anathula Sudhakar's case referred to supra as to when a mere suit for permanent injunction will lie and as to when it is necessary to file a suit for declaration, possession and for injunction as a consequential relief which is reproduced hereunder:

11.1 - When a Plaintiff is in lawful or peaceful possession of a property and such possession is disturbed or threatened by the defendant, a suit for injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

11.2 - Where the title of the Plaintiff is not disputed, but he is not in possession his remedy is to file a suit for possession and seek in addition, if necessary an injunction. A person out of his possession cannot seek the relief of injunction simpliciter, without claiming the relief for possession.

11.3 Where the Plaintiff is in possession but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also threat of dispossession from the defendant, the Plaintiff will have to sue for declaration of title and consequential relief of injunction. Where the title of the Plaintiffs is under cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

21. In the case on hand, as seen from the above findings, it is very clear that there is a dispute between the parties and the defendants have also asserted their title over the disputed portion in the Western side of the suit schedule property. The case of the plaintiff will unambiguously fall under the category mentioned in Paragraph 11.3 in Anathula Sudharkar's case, referred to supra. This being the case, the lower Appellate Court has rightly allowed the appeal filed by the defendants in the suit based on the materials and evidence available on record. The judgments cited by the learned counsel for the respondents referred to supra also supports the case of the defendants.

22. Under Section 101 of the Indian Evidence Act, 1972, also a person who desires any Court to give judgment in his favour as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. But in the case on hand, from the evidence available on record, the plaintiff has not established that he is the owner of the portion in the suit schedule property, which has been disputed by the defendants.

23. The finding of the lower Appellate Court is that there is a dispute between the parties as regards the portion in the Western side of the suit schedule property and the only remedy available to the appellant is to file a suit for declaration does not suffer from any illegality or perversity. It is also settled law as laid down by the Hon'ble Supreme Court in Anathula Sudharkar's case referred to supra that when there is a dispute and the defendant asserts a title, the only remedy for the plaintiff is to file a suit for declaration seeking for a declaration of title in respect of the disputed portion, a suit for injunction simpliciter is not maintainable. In view of the settled law, there is no substantial question of law involved in this appeal. Therefore, the substantial question of law formulated by this Court at the time of admission of this Second Appeal is answered against the appellant. Accordingly, the Second Appeal is dismissed by confirming the judgment and decree dated 20.01.2007 passed in

A.S. No.19 of 2005 on the file of the Additional District Court
(Fast Track Court No.v), Tiruvallur. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

vsi2

To

1.The Additional District Judge,
Fast Track Court - V), Tiruvallur.

2. The District Munsif, Tiruttani.

3. The Section Officer,
VR Section, High Court, Madras-104

+1cc to Mr.V.K. Rajagopalan, Advocate SR.No.89015

S.A. No.1011 of 2007

NRL(CO)
GMY(21/05/2020)