

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 11.01.2019

PRONOUNCED ON: 29.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.266 of 2007

&

MP.Nos.1 of 2007 and 1 of 2009

N.Kuppusamy

... Appellant/defendant

Vs.

V. Manickam

... Respondent/plaintiff

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 26.12.2005 passed in A.S.No.92 of 2003 on the file of the Sub-Court, Dharmapuri confirming the judgment and decree dated 21.10.2003 passed in O.S.No.362 of 1997 on the file of the District Munsiff Court, Harur.

For Appellant : Mr.R.Asokan
For Respondent : M/s.V.Srimathi for
M/s.V.Raghavachari

J U D G M E N T

This Second Appeal has been filed by the defendant against the Judgment and decree dated 26.12.2005 passed in A.S.No.92 of 2003 on the file of the learned Subordinate Judge, Dharmapuri, confirming the judgment and decree dated 21.10.2003 passed in O.S.No.362 of 1997 on the file of the learned District Munsiff, Harur.

2. The respondent/plaintiff herein has filed a suit in O.S.No.362 of 1997 on the file of the learned District Munsif, Harur, to restrain the appellant/defendant herein from interfering with his peaceful possession and enjoyment of the property bearing S.F.No.19/5A1, Pappireddypatti Village, Harur Taluk, Dharmapuri District measuring about 35 feet North South and 15 feet East West in total 525 sq.feet. The learned District Munsif, Harur had tried the suit and passed the judgment and decree in favour of the plaintiff. Aggrieved over the finding arrived at by the learned Principal District Munsiff, Harur, the appellant/defendant herein filed an appeal before the learned Subordinate Judge, Darmapuri in AS.No.92 of 2003. After an elaborate enquiry, the learned Subordinate Judge, Dharmapuri confirmed the decree passed by the learned

District Munsiff, Harur. Feeling aggrieved by the above said concurrent judgment, the appellant/defendant herein has filed the present second appeal against the judgment and decree passed in A.S.No.92 of 2003 by the learned Subordinate Judge, Darmapuri.

3. For the sake of convenience, the parties are referred to as, as described before the trial Court.

4. The averments made in the plaint, in brief, are as follows:

The suit schedule property belongs to the plaintiff under a registered sale deed dated 15.04.1991. Ever since from the date of purchase, the plaintiff alone was in exclusive possession and enjoyment of the suit property. Except the plaintiff, non-less have got any manner of right, title, interest or possession over the suit property. In the year of 1992, one Pappaiyan had intervened with his possession and hence, the plaintiff filed a suit before the learned District Munsif, Harur in O.S.No.128 of 1992. The defendant in the above suit has engaged a counsel, and after 3 years, he remained ex-parte in the said suit. The decree was passed in favour of the plaintiff. The defendant, who was having house and a vacant site on the western side of the suit property, has been compelling him to part away with the suit property and for which, the plaintiff refused. Aggrieved over the same, the defendant alongwith his henchmen on 09.11.1997, has attempted to trespass into the suit property to take forceful possession of the same. With a great difficulty, the plaintiff prevented the illegal action of the defendant. Hence, the plaintiff filed the above said suit for the relief of permanent injunction.

5. The averments made in the written statement filed by the defendant, in brief, are as follows:

It is false to state that the plaintiff purchased the suit property on 15.04.1991, from one Raghupathi. The so-called vendor Raghupathi was not having any right, interest or title over the suit property. Hence, the sale deed alleged to have been executed in favour of the plaintiff cannot confer any title over the suit property. The suit property originally belonged to one Pappaiyan. On 06.12.1976, the said Raghupathi who was in possession of the suit property as an implied agent of the said Pappaiyan, entered into an agreement of sale with the defendant agreeing to sell the suit property to the defendant for a sum of Rs.575/-. He received an advance of Rs.250/- also from the defendant on that date itself. After a long gap, only on 15.07.1977, the said Raghupathi and Pappaiyan had received the balance sale consideration of Rs.325/- from the defendant and made an endorsement on the reverse of the sale agreement. Ever since from the said date, the defendant was inducted into

possession of the said suit property in part performance of the agreement of sale. In pursuant to the sale agreement, the said Pappaiyan and Raghupathi executed a registered Sale Deed dated 20.07.1992, in favour of the defendant. Subsequently, mutation was effected in the revenue records. Thereafter, the defendant was laid barbed wire fencing around the suit property for protection. These facts will clearly prove that the plaintiff was not at all in possession of the suit property. It is further submitted on the side of the defendant that the sale deed executed by one Raghupathi in favour of the plaintiff was cancelled on 20.07.1992. The cancellation has been done in the presence of the plaintiff, who knows all about the same. Since the defendant was in physical possession of the suit property, there was no need for him to trespass at all. Accordingly, the suit filed by the plaintiff is liable to be dismissed.

6. Based on the above said pleadings, the trial Court has framed the following issues:

- (i) Whether the plaintiff is having title, possession over the suit property?
- (ii) Whether the defendant is having title and possession over the suit property?
- (iii) Whether the four boundaries mentioned by the plaintiff in the plaint is correct or not?
- (iv) Whether the plaintiff is entitled to the relief of permanent injunction?
- (v) To what other reliefs, the plaintiff is entitled to?

7. Before the trial Court, on the side of the plaintiff, the plaintiff himself examined as PW1. He also examined two more witnesses as Pws.2 & 3 and three documents were marked as Exs.A1 to 3 on his behalf. On the side of the defendant, three witnesses were examined as DW1 to 3 and 9 documents were marked as Exs.B1 to B9. Apart from that, a report and plan submitted by the Advocate Commissioner were marked as Exs.C1 & C2.

8. The learned District Munsif, Harur after having considered all the materials placed before him found that Ex.A3, which was the decree in O.S.No.128 of 1992, establishes the possession of the plaintiff and observed that the document submitted by the plaintiff proves that the plaintiff was having better title than that of the defendant. Finally, learned District Munsif, Harur allowed the suit and decreed in favour of the plaintiff. Aggrieved over the same, the plaintiff has filed an appeal in A.S.No.92 of 2003, before the learned Subordinate Judge, Dharmapuri. The learned Subordinate Judge, Dharmapuri by the Judgment and decree dated 26.12.2005, confirmed the findings arrived at by the learned District

Munsiff, Harur and dismissed the said appeal.

9. This Court, at the time of admitting the second appeal has formulated the following substantial questions of law for consideration in this second appeal.-

- i. When the Plaintiff has failed to prove his possession of the Suit property prior to the filing of the Suit or on the date of the plaint whether the Courts below were right in decreeing the Suit for permanent injunction?
- ii. When the vendor of the Plaintiff had no title to the suit property to convey to the Plaintiff whether the Courts below were right in holding that the Plaintiff is the owner of the Suit property?
- iii. Whether the ex parte decree for permanent injunction passed, after the sale of the Suit property in favour of the defendant, in the earlier suit as against the Vendor of the defendant binds the defendant?
- iv. Whether the ex-parte Injunction decree passed in the earlier suit filed against the vendor of the defendant treating him as a trespasser would bind the Vendor when he was the actual owner of the Suit property and the defendant who purchased the same?

10. Substantial questions of law 1 & 2:

Mr.R.Asokan, the learned counsel appearing for the appellant/defendant would contend that as per the case of the plaintiff, the suit schedule mentioned property was purchased by the plaintiff on 15.04.1991 from one Raghupathi. Infact, the said suit property belongs to one Pappaiyan, who was none other than the maternal uncle of the defendant. In the written statement itself, the defendant denied the title of the plaintiff as the vendor of the plaintiff was not having any right and title to sell the suit property. More over, in order to prove the possession of the said suit property, the document dated either before the filing of the suit or subsequent to the date of filing of the suit, were not produced on the side of the plaintiff.

11. Whereas, it is the contention of the learned counsel for the plaintiff that in the earlier suit filed by the plaintiff against the said Pappaiyan in OS.No.128 of 1992 was decreed in favour of the plaintiff and against the judgment and decree passed, no appeal was preferred by the said Pappaiyan. Further, it is the contention of the respondent/plaintiff,

since the suit property was the vacant site, no document was available with the plaintiff to prove his possession. Since the title follows the possession, there was no necessity for the plaintiff to produce a specific document for showing his possession.

12. Now, it is true that in the written statement itself the appellant/defendant denied the title of the plaintiff in respect to the possession. During the time of giving evidence as PW1, the plaintiff admitted that the defendant had put up a barbed wire fencing around the suit property. Further, he admits that the patta issued by the revenue authorities in respect to the suit property stands in the name of the defendant. Apart from that, the plaintiff himself stated that no appeal was preferred against the order passed by the revenue authorities in respect to the change of patta, which stands in the name of the defendant. On a whole reading of the evidence given by PW1, it is seen that he produced a sale deed dated 15.04.1991 as Ex.A1, which stands in his name and the Encumbrance certificate dated 23.5.1991 as Ex.A2 and the decree passed in O.S.No.128 of 1992 by the learned District Munsiff, Harur dated 21.02.1995 as Ex.A3. The above documents did not show the possession of the plaintiff. In the said circumstances, before the trial Court the plaintiff has filed a suit only for simplicitor injunction. So also for the relief of injunction, it is necessary to prove his possession.

13. The defendant had disputed the claim of the plaintiff as he was having title to the suit property stoutly. Despite the same, the plaintiff has not endeavored to seek the relief of declaration of title in respect to the suit property. Once the defendant had repudiated the claim for title of the plaintiff in respect to the suit property, insofar as the present case is concerned, he had to prove his title over the suit property, by projecting that he had purchased the suit property from the original owner by way of a registered sale deed.

14. In the said circumstances, it is useful and relevant to refer the judgment of our Hon'ble Apex Court reported in 2009-2-L.W.546 in the case of Ananthula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. & Others in C.A.No.6191 of 2001 dated 25.03.2008, wherein, it was held that.-

'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''.

So, it is a settled proposition of law, by our Hon'ble Apex Court as without any finding in respect to the title to the suit property, it cannot be possible to decide the possession is with the plaintiff.

15. In the present case, before the trial Court on the side of the defendant it is deposed that the defendant was only an absolute owner of the suit schedule property and he purchased the suit property under Ex.B6, which was a Sale deed dated 20.07.1992 executed in favour of the defendant by one Raghupathi and Pappiah. Subsequently, the defendant produced Ex.B7, which was a Patta issued in favour of him in respect to the suit property.

16. In the said circumstances, the stand taken by the defendant does not amount to raise mere cloud over the title of the plaintiff. Since the defendant raised a serious dispute over the plaintiff's title, then there is a need for the plaintiff to amend the plaint and convert the suit into one for declaration. At least, he may withdraw the suit for bare injunction with a mere permission of the Court to file a comprehensive suit for the relief of declaration and injunction. But without showing the said circumstances, the Courts below decreed the suit and granted the relief of permanent injunction in favour of the plaintiff, which is not in accordance with law.

17. Substantial question of law No:2:-

The contention of the plaintiff was that he purchased the property from one Raghupathi vide Sale deed dated 15.04.1991, whereas, it is contended on the side of the defendant that the suit property was belongs to one Pappaiyan. Further, the sale deed executed by one Raghupathi and Pappaiyan, which stands in the name of the defendant was marked as Ex.B6. Further, it is stated that the suit schedule property was purchased on 03.03.1975 by one Pappaiyan, who was the vendor of the defendant. Accordingly, on the side of the defendant, the title of the suit property was proved by way of filing the sale deeds. In respect to the above said sale deeds, the plaintiff has not raised any objection. So also mere filing of the suit for the relief of bare injunction against the vendor of the defendant is not sufficient and it is not amount to set aside the sale completed in respect to the said property in favour of the defendant. Accordingly, the defendant was having better title to that of the plaintiff. So also those are elicited trial categorically by the defendant. There was no pleading either by the plaintiff or by the defendant that the vendor of the plaintiff namely Raghupathi was having the title in respect to

the suit property. Even after knowing the said situation, the Courts below held that the plaintiff was the absolute owner of the suit property. It is absolutely a false one.

18. Substantial questions of law 3 & 4:-

It is an admitted fact that the plaintiff filed a suit for injunction simplicitor against the vendor of the defendant. The suit is decreed in favour of the plaintiff. It is to be noted that in the said suit, the plaintiff has not prayed for the relief of declaration. Even after knowing the contents of the plaint and judgment, he has not produced a copy of the plaint as an exhibit. Even though, the said decree was in favour of the plaintiff, it does not shown the title of the said Pappaiyan. Hence, mere filing of the suit for bare injunction is not amount to challenge the title of the party. More than that in the above said suit, since the defendant was not a party, a decree passed by the trial Court is not binding on the defendant.

19. In the said circumstances, it is useful and relevant to refer the judgment of our Hon'ble Apex Court reported in (2017) 7 SCC 342 in the case of T.Ravi and Another Vs. B. Chinna Narasimha and Others dated 21.03.2017, wherein, it was held that.-

'It is well settled that the doctrine of lis pendens is a doctrine based on the ground that it is necessary for the administration of justice that the decision of a court in a suit should be binding not only on the litigating parties but on those who derive title pendente lite. The provision of this section does not indeed annul the conveyance or the transfer otherwise, but to render it subservient to the rights of the parties to a litigation'.

20. So also by applying the principle of our Hon'ble Apex Court to the present case, it is seen that since the decree stands in favour of the plaintiff, was not in respect to the title, the conveyance made by the vendor of the defendant was no way affected the title inherited from the said Pappaiyan.

21. More than that on going through the entire pleadings and evidence recorded on either side, the plaintiff was attempted to prove his case by pointing out the weakness found in the case of the defendant. Being the plaintiff filed a suit for the relief of injunction he has to prove his case and not rest on the shoulder of the defendant, since it is the settled principle only if the plaintiff has to prove his case.

22. In the light of the above discussions, since the plaintiff had failed to establish his title to the suit property

by placing an acceptable and reliable title deeds in respect to the same, this Court conclude that the first Appellate Court having failed to go into the question whether the suit laid by the plaintiff is sustainable in law or not and thereby committed a serious error in confirming the judgment of the trial Court.

23. In the light of the above discussions, this Second Appeal is allowed and the Judgment and decree dated 26.12.2005 passed in A.S.No.92 of 2003 on the file of the learned Subordinate Judge, Dharmapuri confirming the judgment and decree dated 21.10.2003 passed in O.S.No.362 of 1997 on the file of the learned District Munsiff, Harur is set aside. Consequently, the entire suit in O.S.No. 362 of 1997 stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

- 1.The Subordinate Judge, Dharmapuri
- 2.The District Munsiff, Harur

copy to
The Section Officer
VR Section
High Court Madras

+1 cc to M/s.V.Raghavachari Advocate sr6789
+1 cc to M/s.R.Ashokan Advocate sr7409

S.A.No.266 of 2007

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