

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.06.2019

CORAM: The Hon'ble Mr. Justice N. Seshasayee

S.A.No.1114 of 2004

Jayaraman

...Appellant/Respondent/Plaintiff

Vs

1.Kasinathan

2.Chandira Ammal

...Respondents/Appellants/Defendants

Prayer:- Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree in A.S.No.14 of 2002 dated 21.03.2003 on the file of the Subordinate Judge, Chidambaram reversing the judgment and decree in O.S.No.300 of 1996 dated 20.12.2001 on the file of the District Munsif, Chidambaram.

For Appellant : Mr.R.Ramachandran for
Mr.S.Krishnasamy

For Respondents : Mr.Srinath Sridevan for R1

JUDGMENT

The plaintiff who was successful before the trial Court in a suit for bare injunction, having lost the appeal filed by the defendants before the first appellate Court, has now preferred the second appeal. The parties would be referred to by their ranks before the trial court.

2.The facts necessary to resolve the ongoing appeal can be briefly stated :

(a) The dispute is about a fractional area in Survey No.91/9B. According to the plaintiff, the property originally belonged to one Rathnavelu Nadar, and that he purchased 8 cents under Ext.A1, sale deed dated 04.12.1975 from Rathnavelu Nadar, son of Sammanda Nadar. When he faced interference to his peaceful possession from the defendants, he laid the suit.

(b) The case of the defendants is that :

- The suit property originally belonged to one Virudhambal, who had laid a suit in O.S.No.61/1968 against plaintiff's vendor, Rathnavelu Nadar and others for recovery of possession of about 33 cents of land comprised in Survey

No.91/9, alleging that Rathnavel Nadar & other defendants in that suit had trespassed into the said property. This suit came to be decreed. Ext.B1 is the plaint in O.S.No.61/1968 and Ext.B2 is the suit register. Ext.B2 further discloses that Vridhambal had laid E.P.No.327/1972 for delivery of property and that the property came to be delivered on 06.6.1972.

- Subsequently, S.No:91/9 was sub-divided into 91/9A, 9B and 9C. So far as the present plaintiff is concerned, he has purchased a plot of 5.5 cents from Rathnavelu Nadar on 04-12-1975, long after Vridhambal had taken delivery in O.S.61/1968. The present suit therefore, is barred by res judicata.
- Be that as it may, on 11-07-1978, under Ext.B-3 sale deed, Vridhambal had sold the entire 33 cents in S.No:91/9 to the second defendant. This included the 5.5 cents wrongly transacted by Rathnavelu in favour of the plaintiff. Ever since the purchase in his favour, this defendant is in possession and enjoyment of the entire 33 cents.

3.1 During trial, the plaintiff introduced another suit in O.S.354/1977 about which he had not pleaded anything in his plaint. Ext.A-4 is the copy of the plaint in O.S.354/1977 and Ext.B-5 is the copy of the suit register. This is another suit laid by Vridhambal against one Muthu Pillai, Kasinathan (the present first defendant), Jayaraman, the plaintiff in the present suit besides Rathnavel Nadar whose name finds frequent reference in earlier paragraphs. This suit is instituted for declaration of title and for recovery of possession over the same 33 cents in Survey No.91/9. The allegation was that the defendants 1 to 3 in O.S.No.354/1977, have trespassed in the suit property in May, 1976. To be precise, it is alleged that the first defendant herein (arrayed as second defendant in O.S.No.354/1977) is stated to have purchased 5½ cents from Rathnavel Nadar. It is further alleged in the plaint that Rathnavel Nadar had sold 7 cents to Muthu Pillai, 5.8 cents to the present plaintiff and 8 cents to the present second defendant.

3.2 Rathnavel Nadar chose to remain exparte, and the suit in O.S.No.354/1977 itself came to be decreed exparte on 05.07.1978. Chronologically, Ext.B-3 sale deed in favour of the present second defendant Kasinathan came to be executed within a week from the date of exparte decree.

3.3 But the second defendant's comfort was only short lived, since the exparte decree earlier passed was set aside on

26.07.1978. Subsequently, the suit itself came to be dismissed for default on 18.09.1979.

4.1 The trial Court decreed the suit. The trial Court has reasoned that if physical delivery had been taken pursuant to the decree in O.S.No.61/68, then there would not have been any need for Vridhambal to institute another suit for declaration of title and for recovery of possession in O.S.No.354/1977. This would imply that the defendants thereto, who, as already indicated included the parties herein, had come into possession after Vridhambal had taken possession of the property, pursuant to the decree in O.S.No.61/68, and hence Vridhambal had helped herself with a fresh cause of action of trespass, for laying O.S.354/1977, but chose not to prosecute it. To stretch it to the logical end, it would now mean that inasmuch as Vridhambal had conceded plaintiff's possession, and since she has chosen not to prosecute her subsequent suit in O.S.No.354/77 and since the present defendants are only the pendente lite purchasers under Vridhambal, they cannot resist the suit for injunction and accordingly granted a decree in favour of the plaintiff.

4.2 In an appeal preferred by the defendants, the issue before the first appellate Court appears to be that whether possession at all was taken pursuant to the decree in O.S.No.61/68, and relying on Ext.B-2 suit register, the first appellate Court came to the conclusion that the delivery of the property had indeed taken place, and chose to dismiss the suit.

5. Aggrieved by the decree of the first appellate Court, the plaintiff is before this Court in the second appeal. The second appeal was admittedly on the following substantial question of law:

"Whether the judgments and decrees of the Courts below are sustainable in law, as the entire evidence which is relevant to decide the issue and the relevant question of fact applicable to the facts of the case were not taken into consideration."

6. The learned counsel for the appellant submitted that based on the cause of action in O.S.No.354 of 1977, Vridambal has conceded that the appellant is in possession of the suit property, and the respondents herein are the pendente lite purchasers of Vridambal, and she laid O.S.No.354 of 1977 only to see it go for default. This stands established Vide Ex.A.5, copy of the suit register in the said suit. There is no contra evidence to indicate that the plaintiff has been lawfully dispossessed.

7. Per contra, the learned counsel for the respondents would argue that since losing possession of the property in O.S.No.61 of 1968 on 06.06.1972, the plaintiff ought to have come into lawful

possession of the suit property, but, he has only concealed the facts that led upto the purchase of his property under Ext.A-1. Unless the plaintiff pleads and proves that he has come into lawful possession of the property that he had purchased, he is not entitled to a decree for injunction.

8. On evaluating the evidence, this Court finds the submissions made by the counsel for the respondents appears not logical. As has been explained in the earlier paragraphs Vridhambal had laid two suits. The first is in O.S.No.61 of 1968 and according to Ext.B.2 suit register, that suit was decreed and possession was taken. To the defendants' credit, the plaintiff herein does not plead that the delivery recorded in Ext.B.2 was merely a paper delivery. Subsequently, Virudambal has laid a suit in O.S.No.354 of 1977, for declaration of title and recovery of possession. Admittedly, the present first respondent Kasinathan is a defendant in that suit. That suit was first decreed exparte but, the said decree was later set aside and the suit was again revived. It is in the interregnum between the date of exparte decree and subsequent restoration of status quo ante, Kasinathan's wife Chandrammal had purchased the property from Vridhambal. Essentially it is a case where Chandrammal ought to have stepped into the shoes of Vridhambal, and should have prosecuted the suit. But that did not happen, notwithstanding the fact that Kasinathan was a party to the suit.

9. When O.S.354/1977 was dismissed for default, the implications are: Possession of 5.5 cents that plaintiff Jayaraman had purchased under Ext.A-1 sale deed continued with him. The submissions of the respondent counsel is now taken care of by Section 114 Illustration (d) of the Evidence Act, according to which, where a state of affairs is shown to be in existence, it is presumed that it continues to be in existence till the contrary is proved. Here, Vridhambal herself has admitted even as early as in 1977 that Jayaraman is in possession, that Vridhambal had sold 5.5 cents to Chandrammal, which includes the 33 cents, the subject matter of O.S.No.354 of 1977. Now, inasmuch as the defendant has not produced any contra evidence to rebut the presumption under Illustration (d) of Section 114 of the Evidence Act, this Court holds that the plaintiff has established his continuous possession of the suit property and justly, he is entitled to a decree of prohibitory injunction over 5.5 cents covered by Ext.A-1 sale deed. To this extent this Court is not in agreement with the reasoning of the first appellate Court, as it ignored the presumption available under Sec.114 of the Evidence Act.

10.The second appeal is accordingly allowed and the Judgment and Decree in A.S.No.14 of 2002, dated 21.03.2003, on the file of the Sub Ordinate Judge, Chidambaram reversing the judgment and decree in O.S.No.300 of 1996, dated 20.12.2001, on the file of the District Munsif, Chidambaram, is set aside. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsg

To:

- 1.The Sub Ordinate Judge,
Chidambaram.
- 2.The District Munsif,
Chidambaram.

Copy to

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

+lcc to Mr.S.Krishnasamy, Advocate Sr.48918

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srg 23/11/2020

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