

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2019

PRONOUNCED ON : 26.03.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S.A.No.1204 of 2005

Mangal

...Appellant

Vs.

1.Adheenakartha

2.Sri Subramaniaswami

Attached to the Mayuranatha
Swami Temple.

Rep. by its superintendent
Mayiladuthurai Town.

...Respondents

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S.No.75 of 2002 dated 27.02.2003 on the file of the Court of Principal Subordinate Judge, Mayiladuthurai in confirming the judgment and decree made in O.S.No.348 of 1992 on the file of the Principal District Munsif, Mayiladuthurai dated 25.06.2002.

For Appellant : Mr.A.Muthukumar

For Respondents : Mr.S.Sounthar

JUDGMENT

In this second appeal, Challenge is made to the judgment and decree dated 27.02.2003 passed in A.S.No.75 of 2002 on the file of the Principal Subordinate Court, Mayiladuthurai confirming the judgment and decree dated 25.06.2002 passed in O.S.No.348 of 1992 on the file of the Principal District Munsif Court, Mayiladuthurai.

2. The Parties are referred to as per their rankings in the trial Court for the sake of convenience.

3. Suit for Permanent Injunction.

4. The case of the plaintiff, in brief, is that the suit property belongs to the plaintiff and the same was purchased by her on 01.05.1990 from Subramaniya Pillai and his brothers for a valid consideration and his vendors were in the possession of the suit property in their own right from the year 1945 including the ground site and the plaintiff has been

conveyed not only the ground site, but also the super structure standing thereon and following the abovesaid sale deed, the plaintiff made arrangements to demolish the existing building and put up the new construction on the site and while so, the second defendant under the control of the first defendant, on 15.06.1992, insisted the plaintiff that he should not put up any construction on the footing that the ground site belongs to the defendants and also directed the plaintiff to take the permission from the defendants and execute a paguthi deed in their favour and only then to put up the construction thereon. The ground site is classified as natham jari and the same belongs to plaintiff's vendors and in such view of the matter, inasmuch as the ground site has been in the possession and enjoyment of the plaintiff and her vendors openly, continuously and uninterruptedly, over a long period of time and even if the defendants have any semblance of right to the same, they have lost it and the defendants are not entitled to challenge or question the construction put up by her in the suit property and on account of the abovesaid acts of the defendants preventing the plaintiff from enjoying the suit property, according to the plaintiff, she has been necessitated to lay the suit.

5. The defendants resisted the plaintiff's case and after denying the claim of title to the suit property on the part of the plaintiff as put forth in the plaint, contended that the suit property belongs to the defendants' devasthanam and the same was given to the plaintiff's vendor as oozhiyam manai for doing nathaswaram service in the temple and in lieu of such services in the temple, they were permitted to occupy the suit property and so long as they continue to do oozhiyam, they can occupy the manai. They have no absolute right in any manner to the same much less any right to transfer or assign the same to third parties. In the demand collection books of the defendants' devasthanam, the suit property has been described as oozhiyam paguthi manai and the allegation put forth by the plaintiff that the plaintiff and her vendors had been in the possession and enjoyment of the suit property continuously and uninterruptedly over a long period of time as the absolute owners thereof is false. The plaintiff has not come forward under which document her vendors had obtained the title to the suit property. Merely because the vendors had not paid paguthi to the defendants, that cannot be the factor for enabling the plaintiff to claim title to the suit property through her vendors. The suit property has been shown as belonging to the temple in the municipal records also and the defendants are not aware of the alleged purchase of the suit property by the plaintiff and the plaintiff is not entitled to put up any construction in the suit property, as a matter of right, on the footing that she is the lawful owner of the same. The plaintiff, as an aggressor, is not entitled to the equitable relief of permanent injunction in respect of the suit property as the same belongs to the defendants and hence the plaintiff's suit is liable to be dismissed.

6. Based on the above pleas, the parties went on trial and in support of the plaintiff's case P.W.1 was examined and Exs.A1 to A12 were marked. On the side of the defendants D.Ws.1 and 2 were examined and Ex.B1 to B11 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the courts below were pleased to dismiss the plaintiff's suit. Aggrieved over the same, the plaintiff has come forward with the second appeal.

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

"1. In the absence of any proof such as patta under Minor Inam Abolition Act or house tax receipts, whether the lower appellate court erred in law in holding that the suit property belongs to the defendants?

2. When the plaintiff admittedly purchased the suit property with superstructure and his predecessor in interest were in possession for over 50 years and mortgaged the same whether the lower appellate court erred in law in rejecting the plaintiff's title?

3. When the suit property is admittedly reclassified as Natham Aeri and the plaintiff and his predecessor in interest enjoyed the same with superstructure whether the plaintiff and his predecessor in interest have become the absolute owner of the same?"

9. The suit has been laid by the plaintiff simplicitor for the relief of permanent injunction. On a reading of the plaint, it is seen that the plaintiff claims title to the suit property based on the sale deed dated 01.05.1990 alleged to have been executed in her favour by Subramaniya Pillai and his brothers and further according to the plaintiff, her vendors owned the suit property including the ground site and enjoying the same, accordingly they had the entitlement to convey the suit property to her and based on the same, according to the plaintiff, when she had attempted to put up the new construction in the suit property as the lawful owner, the defendants objected to the same contending that the suit property belongs to the defendants and that the plaintiff has no right whatsoever to put up any super structure in the suit property and further according to the plaintiff, even if the defendants had any semblance of right to the suit property, the same had been lost by them on account of the long, continuous and uninterrupted possession and enjoyment of the suit property by the plaintiff's vendors and the plaintiff over a considerable period of time and accordingly contended that the defendants are not entitled to question the right of

the plaintiff to demolish the existing building and put up the new structure on the same and hence according to the plaintiff, she has been necessitated to levy the suit for the relief of permanent injunction.

10. In the light of the abovesaid pleas set out in the plaint, it is evident that she has levied the suit only on the footing that she has acquired a valid title to the suit property from her vendors. She has also narrated that her title had been seriously impugned by the defendants and in fact, the defendants questioned her right to put up the new construction in the suit property by asserting title on themselves. Furthermore, according to the plaintiff, as averred in the plaint, she would also state that even assuming that the defendants had any semblance of right to the suit property, it has been pleaded by her that the same had been lost by the defendants on account of her and her vendors' long, continuous and uninterrupted possession and enjoyment of the same and thus it is found that though the plaintiff has not clearly projected the abovesaid right, it is evident that she seeks to assert her adverse title to the suit property on the abovesaid lines, accordingly, contended that the defendants are not entitled to obstruct her right to put up the new construction in the suit property by setting up a rival claim of title and hence it is put forth by the plaintiff that she has been necessitated to levy the suit for obtaining the relief of permanent injunction. It is thus evident that the plaintiff is fully aware of the fact that her title to the suit property has been seriously impugned by the defendants one way or the other even prior to the institution of the suit and not only that, the plaintiff is also wholly aware that the defendants are asserting title upon themselves in respect of the suit property accordingly, it has been pleaded by the plaintiff that even if the defendants had any semblance of right to the suit property they had lost it on account of adverse possession set up by the plaintiff in respect of the suit property.

11. In the light of the abovesaid factual matrix, as could be seen from the averments contained in the plaint, when the plaintiff is fully conscious of the fact that her title is being questioned by the defendants in toto, much prior to the institution of the suit and by asserting her claim of title to the suit property, the plaintiff is putting forth the claim that she is entitled to put up the new construction in the suit property and the same cannot be prevented by the defendants by setting up a rival claim of title, in such view of the matter, as rightly pointed out by the courts below and also as rightly contended by the defendants, the plaintiff should have laid the suit seeking for the relief of declaration of title to the suit property for asserting her claim of title to the suit property as put forth by her. Despite the abovesaid factual position, the endeavour of the plaintiff in not seeking the declaration of title to the suit property and on the other hand her inclination to lay the suit only simpliciter for the relief of permanent injunction, would

go to show that inasmuch as the plaintiff is not sure about her title to the suit property, she has cleverly chosen not to seek the relief of declaration of title to the suit property as required by law. When the plaintiff's title to the suit property has been seriously challenged by the defendants anterior to the suit and on that plea only or on that cause of action only the plaintiff has come forward with the suit, when the defendants had raised a cloud over the title of the plaintiff, as per law, in the light of the principles of law outlined in the decisions of the Apex Court reported in AIR 2008 SCC 2033 (Ananthula Sudhakar vs. P.Buchi Reddy (dead) by Lrs and others) and the latest decision rendered by it dated 09.10.2018 in Civil Appeal No.8241 of 2009 (Jharkhand State Housing Board vs. Didar Singh and another), it is found that the plaintiff should have come forward with the suit seeking the relief of declaration of title to the suit property and on the other hand, the plaintiff having laid the suit simplicitor for the relief of permanent injunction, accordingly her suit is found to be legally not sustainable.

12. The defendants after entering appearance in the matter have filed the written statement and in the written statement also they have wholly disputed the claim of title to the suit property put forth by the plaintiff on the alleged purchase of the same by her from Subramania Pillai and his brothers and according to the defendants, the suit property belongs to the defendants devasthanam and temple and the plaintiff has no right, whatsoever, to the suit property and according to the defendants, for the services rendered by the plaintiff's vendors, the suit property has been entrusted to them as oozhiyam manai and they could enjoy the suit property as long as they render the said service and that apart, they are not entitled to claim any right over the same, much less absolute right over the same, entitling them to convey the suit property to third parties and in such view of the matter, according to the defendants, on the basis of an invalid sale deed from the persons who have no title to the suit property, the plaintiff cannot claim any right over the suit property and accordingly, it is stated that the defendants are the owners of the suit property and the plaintiff being the aggressor and not entitled to the suit property in any manner, accordingly contended that she is not entitled to seek and obtain the discretionary and equitable relief of permanent injunction.

13. It is thus evident that the defendants in the written statement also, have challenged the claim of the title to the suit property. Atleast after the pleas put forth by the defendants in the written statement, when the plaintiff is put on notice black and white that her claim of title to the suit property is being challenged by the defendants completely and the defendants have also challenged the claim of right of the plaintiff's vendors to the suit property and they have also challenged the competency of the plaintiff's vendors to alienate the suit property to her, in such circumstances, as per law, the plaintiff should have endeavoured to seek the

relief of declaration of title to the suit property as outlined by the Apex Court in the above referred decisions. Even thereafter, the endeavour of the plaintiff to continue the suit only for the bare relief of permanent injunction would go to show that the plaintiff is not interested to establish her claim of title to the suit property and on the other hand, one way or the other, in the guise of the suit laid by her for the relief of permanent injunction, she seeks to enforce her claim of title to the suit property indirectly, which cannot be legally accorded and it is thus found that inasmuch as the plaintiff has failed to amend the suit by seeking the relief of declaration of title to the suit property even after the filing of written statement by the defendants, it is evident that on that score alone, the plaintiff's suit has to be thrown out as not maintainable. In my considered opinion, no further issues need to be gone into in this matter as the plaintiff's suit is found to be legally not sustainable on account of the failure of the plaintiff in seeking the relief of declaration of title to the suit for the reasons aforestated.

14. That apart, even in the second appeal, the only point urged by the plaintiff is to ascertain and declare her right of title by challenging the title put forth by the defendants to the suit property and thereby endeavoured to seek and fortify her claim of title to the suit property. As put forth, when in a suit for permanent injunction the plaintiff is not entitled to assert her claim of title to the suit property particularly not endeavouring to include the relief of declaration of title to the suit property even after the written pleas put forth by the defendants denying her title, in my considered opinion, the courts below should not have endeavoured to go into the question of title put forth by the rival parties in the matter and on the other hand, the courts below are found to have gone into the question of title in extenso as if it is the suit for title and thereby endeavoured to determine the title of the respective parties one way or the other. No doubt, in a suit for bare injunction, the question of title can be gone into incidentally only to ascertain whether prima facie the possession of the suit property claimed by the suitor / plaintiff is legally sustainable. Ignoring the abovesaid principle in toto, it is seen that the courts below had gone into the question of title, as if the suit is based on title and the abovesaid approach of the courts below, in my considered opinion, does not merit legal acceptance.

15. In the light of the abovesaid position, it has to be seen whether the plaintiff has established her legal possession of the suit property as put forth in the plaint. The only basis, on which the plaintiff has laid the suit for claiming the legal possession to the suit property is the sale deed dated 01.05.1990 marked as Ex.A3 said to have been executed in her favour by Subramaniya Pillai and his brothers in respect of the suit property. Ex.A3 sale deed is found to be a xerox copy. The original sale deed has not been

produced. In such view of the matter, it does not stand to reason as to how come the plaintiff would be entitled to claim a valid title to the suit property based on the xerox copy projected by her and also not giving any plausible explanation as to why she had not marked the original of the same or the certified copy of the same if the original is unable to be marked for a valid reason one way or the other and on the other hand, the claim of the plaintiff that she has acquired a valid title to the suit property by way of Ex.A3 xerox copy and thence from she has been in the legal possession and enjoyment of the same, as such, cannot be given any legal credence to and on that score alone, the plaintiff's suit is liable to be rejected. In addition to that the plaintiff has also not averred in the plaint as to how her vendors had acquired valid possession to the suit property and enjoying the same. Even in Ex.A3 sale deed, on a perusal of the same, nothing has been averred therein that her vendors had the legal competency to convey the suit property in favour of the plaintiff. However, to evidence that her vendors had the legal competency to execute Ex.A3 sale deed, the sale deeds dated 23.05.1945 and 19.04.1947 have been projected by the plaintiff as Exs.A4 and A5. Even the abovesaid documents do not disclose that her vendors had acquired a valid title and thereby legal possession to the suit property. On a reading of the averments contained in the sale deeds, as put forth by the defendants, the said documents only read that they had been given only the enjoyment right as such and not any valid title, conferring them absolute ownership over the property comprised in the said documents. In such view of the matter, on the basis of the enjoyment right or occupation right, it does not stand to reason as to how the plaintiff could claim that her vendors had the legal competency to convey the suit property in her favour and on that basis she had acquired a valid possession of the suit property. In such view of the matter, when the competency of the plaintiff's alleged vendors to occupy or enjoy the suit property lawfully and their entitlement to convey the suit property to the plaintiff by way of Ex.A3 title, have not been established by the plaintiff when the defendants have not admitted the claim of the legal possession and enjoyment of the suit property on the part of the plaintiff in any manner and on the other hand, the defendants, as above noted, seek to set up title on themselves on the basis of the documents projected by them on the whole and when the other documents projected by the plaintiff are not shown to be relating to the suit property as such and validly issued in her favour and the house tax receipts projected by the plaintiff seem to have been obtained based on Ex.A3 xerox copy, however, when the plaintiff has not explained as to how come the abovesaid houstax receipts had been acquired by her based on the xerox copy of the sale deed marked as Ex.A3, in all, it is seen that the plaintiff has miserably failed to establish her claim of legal possession and enjoyment of the suit property.

16. On the other hand, on a perusal of the documents projected by the defendants, in toto, it is found that the suit property has been described as oozhiyam manai vested with the defendants' devasthanam in the demand collection registers projected by the defendants marked as Exs.B1 to B9 and as could be seen from the survey field register extract marked as Ex.B10 and the adangal extract marked as Ex.B11, in toto, pointing to the possession and enjoyment of the suit property only by the defendants' devasthanam and accordingly the defendants' devasthanam's name had been recorded as the owner of the suit property in the abovesaid records and when the abovesaid records have come into existence much prior to the lis emanating between the parties, in such view of the matter, prima facie, it is seen that, it is only the defendants who is entitled to the legal possession and enjoyment of the suit property as such.

17. In the light of the above discussions, when the plaintiff's suit is found to be not legally sustainable and the plaintiff has failed to establish her claim of legal possession and enjoyment of the suit property and as abovenoted, the plaintiff has also miserably failed to establish the legal competency of her alleged vendors to convey the suit property to her under Ex.A3 and Ex.A3 being only a xerox copy and no reason has been offered by the plaintiff as to why she had not endeavoured to place the original sale deed for consideration and when the houestax receipts projected by the plaintiff are found to have emanated based on the xerox copy of the sale deed marked as Ex.A3 and accordingly, the same cannot be given any legal credence as such and on the other hand, from the documents projected by the defendants prima facie, the defendants are found to be in the legal possession and enjoyment of the suit property as such, the plaintiff cannot be allowed to assert her right over the suit property based on unreliable and unacceptable documents projected on her part as abovenoted and particularly, the relief of permanent injunction, being the discretionary and equitable relief, not to be granted to an undeserving party and the same should be exercised only in favour of the person who is having a legal title to the subject matter and the lawful possession thereof and in such view of the matter, the courts below are found to be, in my considered opinion, wholly justified in not granting the relief of permanent injunction in favour of the plaintiff and particularly, when the plaintiff's suit is totally legally not maintainable.

18. As regards the question of determination of title to the suit property as put forth by the rival parties one way of the other, the counsel for the plaintiff placed reliance upon the following decisions:

1. 1979 (1) MLJ 443 (K.Somasundaram Pillai and others)

2. 1980 TLNJ 522 (K.Vellappa Gounder and Sons by partner K.Vellappa Gounder and others vs.

K.S.Thirugnanasambam Chettiar & others)

3. 1996 (1) LW 19 (SC) (K.S.Thirugnanasambam Chettiar (dead) by Lrs, etc. vs. The settlement Thesildar, Coimbatre 18 & ors).

4. 1997 1 L.W. 442 (Yadhavan and another vs. Md.

Dayanudin & 2 others) and the

Counsel for the defendants placed reliable upon the decision reported in 1995(3) SCR 217 (R.Manicka Naicker etc., vs. E.Elumalai Naicker etc.). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

19. In the light of the above position, when the suit laid by the plaintiff is found to be not legally sustainable and the question of title cannot be gone into in such a suit, the substantial questions of law formulated are centering only on the question of title put up by the rival parties one way or the other, which cannot be adjudicated in a suit for permanent injunction simplicitor and even the courts below have also determined that the plaintiff's suit is not maintainable for want of the relief of declaration of title to the suit property as per law, in my considered opinion, the substantial questions of law formulated in this second appeal are not required to be answered as such, particularly, in the context, when the suit laid by the plaintiff itself is found to be not legally maintainable.

20. For the reasons abovestated, the second appeal is found to be totally devoid of merits and accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

bga

1.The Judge, Principal Subordinate Court, Mayiladuthurai

2. The Judge, Principal District Munsif, Mayiladuthurai.

Copy to

The Section Officer, V.R.Section, High Court, Madras.

+lcc to Mr.A.Muthukumar , Advocate SR.No. 28297

+lcc to Mr.S.Sounthar , Advocate SR.No. 29413

S.A.No.1204 of 2005

A.SK(07.04.2021)