

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 35 of 2014

and

M.P.No. 1 of 2014

1.Venkatesh

2.Ravi

...Defendants/Respondents Appellants

Vs.

1.A.Govindan

2.Subramani

3.Mallika

4.Venkatachalam

... Plaintiff/Appellant/Respondent

...Defendants/Respondents/Respondents

Prayer: Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the decree and judgment made in A.S.No.42 of 2012 dated 24.09.2012 passed by the II-Additional Sub-Ordinate Court, Salem by reversing the decree and judgment in O.S.No. 801 of 2010 dated 20.01.2012 passed by the Principal District Munsif Court, Salem.

For Appellants : Mr. A.Nagarathinam

For Respondents : Mr.S.Kalyanaraman for R1
R2 to R4 None appears

J U D G M E N T

This appeal is by the defendants in O.S.No. 801 of 2010, who were successful in getting the suit for injunction dismissed by the Trial Court which was reversed on appeal in A.S.No. 42 of 2012.

2. The suit in O.S.No. 801 of 2010 was filed by the plaintiff seeking a decree for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of two items of the property measuring 99 cents each in Survey No.21/4 of Koottumutal Village.

3. According to the plaintiff, he had purchased the "A" schedule property under a registered sale deed dated 03.03.2006 from one Venkatachalam and others and the "B" schedule property

from one Arunachalam and others under a registered sale deed dated 15.03.2006. The plaintiff would claim that upon his purchase mutation was effected in the revenue records like Patta, Chitta, Adangal, which stand in the name of the plaintiff in respect of the land in Survey No.21/4 and seek an injunction restraining the defendants, who are the adjacent owners from interfering with his possession.

4. The suit was resisted by the defendants contending that the plaintiff's Vendors had no title over the property in Survey No.21/4 and as such the sale deeds dated 03.03.2006 and 15.03.2006 would not confer any right or title in favour of the plaintiff. It is also contended that the plaintiff was never in possession of the property and therefore he is not entitled to decree for injunction.

5. At trial, the plaintiff had produced the sale deeds in his favour dated 03.03.2006 and 15.03.2006 as Exs.A1 and A2. The Village A register, produced as Ex.A3 while the Adangal extract was produced as Ex.A4. Patta was produced as Ex.A5 while the kist receipts were produced as Exs.A6 and A7. The plaintiff has been examined as P.W.1. One Murugesan has been examined as P.W.2. Though the defendants 1 and 3 were examined as D.W.1 and D.W.2, no documents were produced. One Manickam, who figured as Vendor in Ex.A1 (Sale Deed) was examined as D.W.3.

6. The learned Trial judge, on the appreciation of the evidence concluded that the plaintiff has not proved his exclusive possession of suit Items 1 and 2. On coming to the conclusion, the learned Trial Judge rejected the evidence in the form of Ex.A4 (Adangal Extracts) on the ground that the same has been issued pursuant to Exs.A1 and A2 and the evidence of D.W.3 would throw considerable suspicion on Exs.A1 and A2. Based on the Patta(Ex.A5), the learned Trial Judge concluded that the plaintiff has not established his exclusive possession, since the names of the defendants also figured as owners of the land in Survey No.21/4. On the above conclusions, the learned Trial Judge dismissed the suit. Aggrieved, the plaintiff filed an appeal in A.S.No.42 of 2012.

7. The lower Appellate Court on a re-appreciation of the evidence on record concluded that the plaintiff has established prima facie title to the suit properties by virtue of the sale deeds, which have been marked as Exs.A1 and A2. The claim of the defendants that the Vendors of the plaintiff did not have title to the suit properties was disbelieved by the Appellate Court in as much as D.W.3, who is a party to Ex.A1(Sale deed) had admitted the execution of the sale deed but he had claimed that he had conveyed a lesser extent. D.W.3 would also admit that he had not taken steps to have the sale deed set aside.

The lower Appellate Court faulted the Trial Court for relying upon the evidence of D.W.2 with regard to the validity of Ex.A1 (Sale deed). The lower Appellate Court also pointed out that oral evidence of D.W.3 would be barred by Section 92 of the Evidence Act, which prohibits oral evidence contrary to the recitals in the written registered instrument. The lower Appellate Court also found that the Ex.A4 (Adangal Extract) would show that the plaintiff is in possession of the property purchased by him under Exs.A1 and A2(Sale deeds). The lower Appellate Court had also accepted Ex.A3 (copy of the Village 'A' register), which showed that the Vendors of the plaintiff were owners of the land in Survey No.21/4. On the above findings, the lower Appellate Court concluded that the plaintiff had made out prima facie title and he has proved that he was in possession of the property on the date of the suit. On the said findings, the lower Appellate granted a decree for permanent injunction in favour of the plaintiff. Aggrieved the defendants have come forward with this appeal. The following questions of law were framed at the time of the admission:-

i) Whether the finding of the lower Appellate Court that the title need not be gone into detail in a suit for permanent injunction is correct ?

ii) Whether the lower Appellate Court was right in concluding that the plaintiff in a suit for permanent injunction has to prove prima facie title and possession and enjoyment over the suit property ?

8. I have heard Mr.A.Nagarathinam, learned counsel appearing for the appellants and Mr.S.Kalayanaraman, learned counsel appearing for the 1st respondent.

9. Mr.A.Nagarathinam, learned counsel appearing for the appellants while elaborating on the first question of law would submit that the lower Appellate Court erred casting the burden of proving that the defendants have some interest in the suit property in a suit for bare injunction filed by the plaintiff. It is his further contention that once Ex.A5(Patta) reflects the name of the defendants, it should have been presumed that the defendants were also in joint possession with the plaintiff and therefore the plaintiff is not entitled to a decree for permanent injunction. The learned counsel would also contend that the lower Appellate Court erred in basing its conclusion of prima facie title. On the second question of law, Mr.A.Nagarathinam would submit that the mere proof of prima facie on title was not sufficient for grant of injunction and there should be a proof of actual physical possession on the date of the suit.

10. Contending contra, Mr.S.Kalayanaraman, learned

counsel appearing for the respondents / plaintiff would submit that the lower Appellate Court was right in concluding that in a suit for bare injunction, Court need not make an in depth analysis of the title. He would also point out that there is lack of evidence on the side of the defendants with reference to the title set up by them. On the second question of law, Mr.S.Kalayanaraman would submit that Exs.A1 and A2, being registered instruments, which have not been challenged in the manner known to law would definitely confer title on the plaintiff. He would also pointed out that the names of the Vendors of the plaintiff were found in the revenue records namely, Exs.A5 and A3. Therefore, according to him, prima facie, the plaintiff had established his title and his possession has been proved by Ex.A4 (Adangal Extracts) and Ex.A5(Patta). While conceding the Ex.A5 (Patta), Mr.S.Kalyanaraman would point out that the Ex.A5(Patta) relates nearly 1.61.0 hectares, which is equivalent to 4 acres whereas, the plaintiff claims title only in respect of 1 Acre 98 Cents under the two sale deeds.

11. No doubt true, it is a settled law that in a suit for bare injunction, the Court need not examine the title of the parties however, when the defendants chose to deny the title of the plaintiff, it is for the plaintiff to establish at least prima facie title. The Hon'ble Supreme Court in Anathula Sudhakar Vs. P.Buchi Reddy & Others reported in 2008(4) SCC 594 had held that unless there is a serious dispute regarding the title raised by the defendants, the plaintiff need not be driven to seek a relief of declaration of his title, he can maintain a suit for bare injunction. While doing so, the Hon'ble Supreme Court had pointed out that in a suit for bare injunction, it is sufficient that if the Court

finds that the plaintiff has made out a prima facie title. Of course there should be evidence of factual possession. In the case on hand, the plaintiff has made out a prima facie title by producing Exs.A1, A2 (Sale deeds) and A5 Patta, Exs.A3 and A4 support the case of the plaintiff's possession. Ex.A4 is an Adangal extract issued by the Village Administrative Officer clearly states that the plaintiff is in possession pursuant to Exs.A1 and A2(Sale deeds). The reason adopted by the Trial Court by disbelieving Exs.A1 and A2 namely, the evidence of D.W.3 cannot be accepted, since the same is opposed to the law relating to letting in oral evidence which goes against the recitals in written registered instrument.

12. In view of the above, 1st question of law are answered to the effect that the first Appellate Court is justified in basing its conclusion on the prima facie title established by the plaintiff particularly, in the absence of any evidence regarding title of the defendants.

13. The second question of law answered to effect that the Appellate Court that the right in concluding that the plaintiff had made out his possession on the basis of Ex.A3, A4, A5 and A6 and A7, which are the revenue records which would demonstrate possession. In view of the same, the appeal fails and therefore dismissed. Consequently, connected Miscellaneous Petition is closed. Considering the relationship between the parties, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Kkn

To

- 1.The II Additional Subordinate Judge,
Salem.
- 2.The Principal District Munsif,
Salem.
- 3.The Section Officer,
VR Section, High Court,
Madras.

+lcc to Mr.A.Nagarathinam, Advocate, S.R.No. 82194

+lcc to Mr.S.Kalayanaraman, Advocate, S.R.No. 81787

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and

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PVS (CO)
GN(17/12/2020)

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