

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.601 of 2014

Jothi Ramalingam : Appellant/Appellant/Respondent

Vs.

A.K.Palani : Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.21 of 2011 dated 18.12.2013 on the file of the Subordinate Judge, Ranipettai confirming the judgment and decree in OS. No.147 of 2008 dated 13.12.2010 on the file of the District Munsif, Arcot.

For Appellant : Mr. R.Sankarappan
For Respondent : Mr. K.V.Ananthakrushnan

J U D G M E N T

The defendant in OS No.147 of 2008 having suffered a decree for permanent injunction before the Trial Court upon its affirmation by the Lower Appellate Court has come up with this Second Appeal.

2. The plaintiff/respondent filed the suit seeking a decree for permanent injunction contending that the suit properties originally belonged to one G.M.Nataraja Chettiar. The plaintiff's father Kuppusamy Naicker purchased the property from Nataraja Chettiar, under a Sale Deed dated 04.08.1966 and he has been in possession and enjoyment of the same right from the date of the purchase. Contending that the defendant who has got no manner of right a title over the suit property attempted to interfere with his possession, the plaintiff had come up with the suit for bare injunction.

3. The suit was resisted by the defendant contending that the vendor of the plaintiff's father namely, G.M.Nataraja Chettiar is not the owner of the property. It was claimed that the Sale Deed dated 04.02.1966, will not convey any title in favour of the plaintiff. It was further claimed that there was litigations between the legal heirs of Nataraja Chettiar with

reference to the suit property and other properties. On the said above contentions, the defendant sought for dismissal of the suit.

4. At trial, the plaintiff was examined as P.W.1 and he produced the Sale Deed dated 04.08.1966 as Ex.A1, Kisth receipt as Ex.A2 and notice issued by the Survey Department as Ex.A3. The defendant examined himself as D.W.1 and examined another witness as D.W.2. The Judgment of this Court in SA No.191 of 2003 and the decree were filed as Ex.D1 and D2.

5. The main contention of the defendant was that the Will said to have been executed by Thirunanasampatha Mudaliar in favour of Balammal @ Balagujammal dated 19.04.1926 is not valid and the same has been found to be an invalid instrument in Second Appeal No.191 of 2003. The Courts below upon a consideration of evidence on record found that the title traced by G.M.Nataraja Chettiar, in the Sale Deed 04.08.1966, executed by him in favour of the plaintiff has been accepted by this Court in SA No.191 of 2003 marked as Ex.D1.

6. The Courts below found that the contention of the defendant that the Will dated 19.04.1926 has been held to be invalid by this Court in SA No.191 of 2003 is incorrect. The Courts below have pointed out that this Court had in fact found that the Will dated 19.04.1926 is valid and the Court of Competent jurisdiction has issued Probate to the same, under the Will dated 19.04.1926, Thirunanasampatha Mudaliar had bequeathed the property on Balammal @ Balagujammal. The said Balammal @ Balagujammal, died leaving behind a son and her husband G.M.Nataraja Chettiar. The son died in 1956 thereby, G.M.Nataraja Chettiar became the absolute owner of the property as the Class I heir of the son. This title that was traced by G.M.Nataraja Chettiar, in the Sale Deed dated 04.08.1966 executed by him in favour of the plaintiff's father was upheld by the Courts below. The Courts below also found that the defendant though had set up title in his grandmother, has not produced any evidence to establish the said title. On the above said findings, the Courts below decreed the suit granting permanent injunction as prayed for. Aggrieved the defendant is on appeal.

7. The following questions of law were framed for adjudication in the appeal.

1. Whether the suit based on title for injunction is maintainable without seeking declaration of title when the plaintiff's title is disputed?
2. Are the Courts below correct and justified in upholding the plaintiff's title in respect of items 1, 2 and 5 in a suit for bar injunction,

especially when title is disputed and whether title can be decided in a suit for bare injunction?

8. The first question of law is no longer res integra. In *Anathula Sudhakar v. P.Buchi Reddy (Dead) by Lrs & Ors.* reported in 2008 (6) CTC 237, the Hon'ble Supreme Court has considered the scope of an injunction suit and the requirement of seeking a declaration of title. While doing so, the Hon'ble Supreme Court has laid down the principles in suits relating to prohibitory injunction regarding immovable property as follows:

"21. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) 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.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in *Annaimuthu Thevar (supra)*]. Where the averments regarding title are absent in a plaint and where there is no issue relating

to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

9. A reading of the above guidelines laid down by the Hon'ble Supreme Court would show that it is not always necessary for a plaintiff to seek a declaration of title, once there is a denial of title in the written statement in a suit for injunction, unless the denial is specific and it would have the effect of raising a cloud on the title of the plaintiff, the prayer for declaration has been held to be unnecessary.

10. In the written statement filed in the present suit, the defendant did not even set up title on himself. He was content with denial of title of the plaintiff in very vague terms. Of Course in the evidence there was a mild improvement where the defendant set up title is his grandmother and not a scrap of paper was produced in proof of said claim of title. Therefore, I do not think that the Courts below were wrong in granting a decree for permanent injunction without a prayer for declaration. Hence, the first question of law is answered in favour of the plaintiff.

11. On the second question of law, I find that the Courts below have on the basis of evidence concluded that the Will dated 19.04.1926 executed by Thirunanasampatha Mudaliar in favour of his daughter Balammal @ Balagujammal, has been accepted and a probate has also been granted to the said Will by a Court of Competent jurisdiction. This Court in SA No.191 of 2003 (judgment marked as Ex.D1) has concluded that the Will dated 19.04.1926 is true and valid. Therefore, the title claimed by G.M.Nataraja Chettiar has been accepted by the Courts below. A Court dealing with a suit for permanent injunction is not totally precluded from going into the question of title, the Court can always look into prima facie title and conclude on the question of title. Hence the second question of law is also answered against the appellant.

12. In view of the answers to the questions of law, the Second Appeal fails and is accordingly dismissed. However, there will be no order as to costs in this appeal.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge, Ranipettai.
2. The District Munsif, Arcot.

+1cc to Mr.R.Sankarappan, Advocate, SR.No.93626.

+1cc to Mr.K.V.Ananthakrishnan, Advocate, SR.No.94473.

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VD(CO)

CSR: 12.02.2020

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