

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.275 of 2014

Mari

..Appellant/
First Respondent/Plaintiff

Vs.

1.Mannangatti
2.Periyammal

.. Respondents/Appellants/
Defendants 1 & 2

3.Munusamy
4.Seenu

..Respondents/Respondents 2 & 3/
Defendants 3 & 4

Prayer: Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree dated 30.10.2013 made in A.S.No.80 of 2012 on the file of the Court of the Sub-Ordinate Judge, Kallakurichi, reversing the judgment and decree dated 03.03.2011 made in O.S.No. 605 of 2007 on the file of the Second Additional District Munsif Court, Kallakurichi.

For Appellant : Mr.R.Murugesan
For Respondents : Mr.N.Ramesh

J U D G M E N T

The plaintiff in O.S.No.605 of 2007, whose suit for declaration and recovery of possession was decreed by the Trial Court upon its reversal by the lower Appellate Court has come up with this second appeal.

2. The suit was laid by the plaintiff claiming that the suit properties were allotted to him at a partition that took place about 30 years prior to the institution of the suit and that he has been in possession of the property. The defendants, who are the brother, brother's wife and children of the plaintiff interfered with his possession claiming that they had filed a suit for injunction in O.S.No.502 of 2000. The said suit came to be dismissed on the finding that though the suit properties were assigned to the first defendant in the year 1978 at a subsequent partition in the family, the suit properties namely an extent of 26 cents in Survey No.10/9B and at 24 cents in

Survey No. 10/6A and 1 cent in Survey No.12/8 with 1/6th share in the Well were allotted to the plaintiff in the present suit namely, O.S.No.605 of 2007, who was the second defendant in the earlier suit namely, O.S.No.502 of 2000 by the judgment and decree dated 08.10.2003. The said judgment was challenged by the defendants 1 and 2 herein in A.S.No.145 of 2003 on the file of the Sub-Court, Kallakurichi. The said appeal was dismissed and the judgment and decree of the Trial Court dated 08.10.2003 were affirmed by the Sub-Court, Kallakurichi on 25.11.2005. There was no further appeal and the judgment of the Sub-Court has become final. Claiming that the defendants have trespassed into the property, the plaintiff has now filed the present suit for declaration of title, recovery of possession and for mense profits.

3. The suit was resisted by the defendants contending that the plaintiff has suppressed the findings of the Trial Court in O.S.No. 502 of 2000. It was claimed that the other brothers of the plaintiff and the first defendant who were parties in O.S.No. 502 of 2000 are necessary to the present suit. It was claimed that the suit is not maintainable. On the above contentions, the defendants sought for dismissal of the suit.

4. At trial, the plaintiff was examined as P.W.1 and Exs.A1 to A3 were filed. The first defendant examined as D.W.1 and one Mari examined as D.W.2. No documents were produced on the side of the defendants. The Trial Court, upon consideration of the evidence on record took into account the specific findings recorded by the Trial Court in O.S.No.502 of 2000 to the effect that the suit properties were allotted to the plaintiff at a partition and pursuant to the same the revenue records were also altered and Patta was also issued to the present plaintiff, who figured as second defendant in the suit. On the said findings, the Trial Court concluded that since the plaintiffs title have been upheld by the Court in O.S.No.502 of 2000, the defendants cannot re-agitate the said question in the present suit which was filed by the plaintiff seeking declaration, title and recovery of possession. Upon the above conclusion, the learned Trial Judge granted a decree as prayed for. Aggrieved, the defendants 1 and 2 filed an appeal in A.S.No.80 of 2012.

5. The lower Appellate Court however, reversed the judgment and decree concluding that the earlier suit being one for bare injunction, the findings there in cannot be relied upon by the plaintiff to prove his title. He has to prove his title independent of the findings in O.S.No.502 of 2000. The lower Appellate Court also faulted the plaintiff for not pleading as to whether the partition claimed by him was oral or written. The Trial Court was faulted for relying upon the Patta transfer proceedings as evidence of title. On the said conclusions, the

lower Appellate Court allowed the appeal and dismissed the suit. Aggrieved, the plaintiff is on second appeal. The following questions of law were framed at the time of admission:-

"i) Whether the Lower Appellate Court was right in dismissing the suit on the ground that the original assignment was in favour of the defendants 1 and 2 and there is no clear evidence of a partition, more so, when a finding has been rendered in O.S.No.502 of 2000 to the effect that the Patta was transferred in the name of the plaintiff in RTR No.17 of 1992 pursuant to a partition?

ii) Whether the Lower Appellate Court was right in dismissing the suit in the light of categorical finding rendered in the earlier suit in O.S.No.502 of 2000 recognizing the title of the plaintiff based on the transfer of Patta effected in the year 1992?"

6. I have heard Mr.R.Murugesan, learned counsel appearing for the appellant and Mr.N.Ramesh, learned counsel appearing for the respondents.

7. Mr.R.Murugesan, learned counsel appearing for the appellant would contend that the earlier suit was one for injunction, the Trial Court had gone into question of title in view of the pleadings in the suit to the effect that the plaintiffs therein are the absolute owners by virtue of the assignment made by the government in the year 1978 and therefore once the Trial Court had gone into the question of title though it was a suit for injunction and has decided the question of title in one way or the other, the said findings would operate as res-judicata in the subsequent proceedings and it is not open to the defendants 1 and 2, who were the plaintiffs in O.S.No.500 of 2000 to deny the title of the plaintiff in the present suit. The judgment in O.S.No.502 of 2000 has been produced as Ex.A1. A perusal of the judgment shows that the plaintiffs therein (Defendants 1 and 2) had based their claim for injunction on the assignment made by the government on 13.06.1978. Therefore, the very suit filed for injunction was based on title and not based on mere possession alone. The defendants 1, 3 and 4, the other brothers of the plaintiffs and the first defendant herein remained ex-parte. The plaintiff/appellant herein as second defendant in the said suit alone contested the suit contending that the suit property was allotted to him at a partition and pursuant to the same, upon his application, the revenue records were also mutated and Patta was issued to him on 16.04.1992 in RTR No.17/1992. This defence of the defendant was upheld the Trial Court and the Trial Court specifically concluded that by virtue of the partition, the plaintiff herein/second defendant

in the said suit namely, O.S.No.502 of 2000 has got title to the suit property and hence the plaintiffs in O.S.No.502 of 2000, the respondents 1 and 2 herein cannot claim an injunction based on title. The said judgment of the Trial Court was also confirmed on appeal in A.S.No.145 of 2003. The lower Appellate Court has dismissed the suit in O.S.No.605 of 2007 solely on the ground that the earlier suit being one for injunction, the findings therein cannot operate as res-judicata in the subsequent suit against the defendants 1 and 2. The question as to whether the decision on title in a suit for injunction would operate as res-judicata and the subsequent suit has been the subject matter of decisions of this Court and the Hon'ble Supreme Court in several cases. In Anathula Sudhakar Vs. P.Buchi Reddy reported in 2008(4) SCC 594. The Hon'ble Supreme Court summarised the legal position regarding suits for prohibitory injunction relating to immovable property as follows:-

"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 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."

8. A perusal of the above particularly, clause D would show that when there are necessary pleadings regarding title and the evidence is placed before it the Court in a suit for injunction, can decide the question of title also. When the very suit for injunction is based on title and the title is denied in the written statement, the Court dealing with the suit for permanent injunction has to certainly go into the question of title to decide as to whether the plaintiff would be entitled to relief of injunction or not. If the Court carries out the said exercise, the findings of the Court would be certainly be binding on the parties in subsequent proceedings. In 2005, this position of law was reiterated by the Hon'ble Supreme Court in Annaimuthu Thevar Vs. Alagammal reported in 2005 (6) SCC Page 202. The Hon'ble Supreme Court also noticed the effect of findings in a suit for permanent injunction in Sajjadanashin Sayed Md. Vs. Musa Dadabhai Ummer reported in 2000 (3) SCC Page 350 has observed as follows:-

"Where title to property is the basis of the right of possession, a decision on the question of possession is res-judicata on the question of title to the extent that adjudication of title was essential to the judgment; but where the question of the right to possession was the only issue actually or necessarily involved, the judgment is not conclusive on the question of ownership or title."

9. As already adverted to the plaintiffs in the earlier suit namely, O.S.No. 502 of 2000 had based their claim for injunction on their title and the Trial Court while deciding the suit for injunction had examined the title of the plaintiffs and had concluded that the plaintiffs have not established their title. On the other hand, the second defendant, who is the appellant herein had proved that there was a partition in the family and the suit property was allotted to him at the said partition by producing positive evidence. This being so, I do not think the lower Appellate Court was right in concluding that the findings in O.S.No.502 of 2000 would not operate as res-judicata in the present suit. Even assuming that the findings would not operate as res-judicata since the question of title was not directly involved, it would definitely operate as against the defendants in the present suit from setting up title contrary to the findings in the earlier suit. Therefore, the question of law No.1 is answered in favour of the appellants to the effect the findings in O.S.No. 502 of 2000 with reference to the partition and allotment of the suit properties to the plaintiff in O.S.No. 605 of 2007 would definitely operate as res-judicata or at least estop the defendants from setting up title in themselves.

10. Question of Law No.2 is also answered in favour of the appellant to the effect that the lower Appellate Court was got right in dismissing the suit for declaration of title and recovery of possession ignoring the findings in O.S.No.502 of 2000 regarding title of the appellant. In view of the same, the appeal succeeds and the same is allowed. The judgment and decree of the lower Appellate Court are set aside and that of the Trial Court are restored. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

kkn

To:-

1. The Sub-Court, Kallakurichi.
2. The II-nd Additional District Munsif Court, Kallakurichi.

+1cc to Mr.K.Shanmugam, Advocate, S.R.No.92190

+1cc to Mr.N.Ramesh, Advocate, S.R.No.91903

S.A.No. 275 of 2014

VSNII(CO)
CS/13/10/2020