



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.06.2019
CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

WEB COPY

S.A.(MD)No.110 of 2019

V.R.Narendra Raj

... Appellant

Vs.

1.R.Komala Ramakrishnan

2.A.Ramesh

3.A.Madhu

4.A.V.Hari

5.M.Jayasri

6.R.Renuka

7.The State of Tamil Nadu,
represented by its District Collector,
Tiruchirapalli.

8.The Tahsildar,
Contonement, Tiruchirapalli.

... Respondents

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree of the II Additional District Judge, Tiruchirapalli, dated 23.12.2016, made in A.S.No.50 of 2014, which was passed allowing the appeal filed by the respondents 1 to 6 by reversing the judgment and decree of the I Additional Subordinate Judge, Tiruchirapalli, dated 07.04.2014 made in O.S.No.158 of 2008.

For Appellant
For R1 to R6

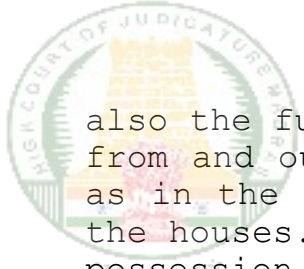
:Mr.K.S.Vamsidhar
:Mr.Shangar Murali

JUDGMENT

This second appeal is preferred by the plaintiff in the suit in O.S.No.158 of 2008 on the file of the I Additional Subordinate Court, Trichy.

2.The appellant herein, as plaintiff, filed the suit in O.S.No.158 of 2008 for permanent injunction restraining the defendants and their men from interfering with the peaceful possession and enjoyment of the suit property by the appellant. The suit property is a land and building bearing several door numbers in T.S.No.2081 in Sengulam Village, Trichy District.

3.The case of the plaintiff is that the property originally belonged to one Veerasamy Naidu and that the said Veerasamy Naidu executed a Will, dated 13.10.1983 in favour of the appellant. It is



also the further case of the appellant that the said Veerasamy Naidu from and out his own earnings, constructed several houses, as early as in the year 1985 and that he was in possession and enjoyment of the houses. In the suit, the appellant also indicated that he was in possession and that before him, the said Veerasamy Naidu was in possession. It is now admitted before this Court that the property was originally purchased in the name of Sundararaja Naidu, who is the brother's son of Veerasamy Naidu.

4.The suit was resisted by the contesting defendants. The contesting defendants in the suit are the legal heirs of Sundararaja Naidu. The defendants denied the title and stated that the brother's son of Veerasamy Naidu, by name Sundararaja Naidu, purchased Item No.1 of the suit property by Court auction on 07.04.1943. It is further stated that other items of suit property were purchased by Rangasamy Naidu along with Chellammal and Rukmani Ammal, who are wives of Rangasamy Naidu and his son Sundararaja Naidu. The Will alleged to have been executed by Veerasamy Naidu was also disputed by the defendants in the written statement.

5.Though the trial Court decreed the suit for bare injunction on the ground that the plaintiff/appellant has established his possession, the lower Appellate Court, on appeal preferred by the defendants, reversed the findings of the trial Court, by holding that the suit for bare injunction is not maintainable without the prayer for declaration of title, following the judgment of Honourable Supreme Court in the case of **Anathula Sudhakar vs P.Bhuchi Reddy and others**, reported in **(2008) 4 SCC 594**, wherein, it has been held that in a suit for injunction, if the matter involves complicated question of fact and law relating to title, the Court should relegate the parties to the remedy by way of comprehensive suit for declaration of title.

6.Since the defendants have disputed the Will as well as the title of the testator, who executed the Will, the appellate Court further held that there is cloud over the title to the suit property and it involves complicated question of law and facts. Following the judgment of Honourable Supreme Court, it is further held that the validity of the Will and the title of Veerasamy Naidu cannot be decided in a suit for permanent injunction.

7.It is also pertinent to mention that the defendants in the suit also filed a suit in O.S.No.437 of 2010 on the file of the I Additional Subordinate Court, Trichy for permanent injunction. The said suit was also disposed of along with the suit filed by the appellant in O.S.No.158 of 2007. It is also admitted by the defendants that the suit filed in O.S.No.437 of 2010 was also dismissed. Aggrieved by the same, the defendants preferred an appeal in A.S.No.51 of 2014 on the file of the II Additional District Court, Trichy. Both the appeals in A.S.Nos.50 and 51 of 2014, were disposed of by a common judgment, dated 23.12.2016. Relying upon the judgment of Honourable Supreme Court in Anathula Sudhakar's case,

the lower appellate Court held that the suit for bare injunction is not maintainable and further held in the following lines:

"The learned Counsel for the appellants would argue that the appellants have patta in their name for the suit property and D.W.1 to D.W.4 has categorically stated about the possession of the suit property, which is in possession of the appellants. On the contrary, the learned Counsel for the respondent would argue that the respondents has filed Ex-A15 to Ex-A327 and the above mentioned documents, which are receipts for payment of property tax and the tenement agreement with the respondent will clearly prove that the respondent is in possession of the suit property. In this case, it is an admitted fact that there is exchange of legal notice between the parties in the year of 1987 itself and both the parties are rival claimants and further this Court is of the view that mere filing of rental receipts, patta by both the parties are not sufficient to establish the fact of uninterrupted lawful, physical possession on both the parties. Since there is a strong cloud over the title of the suit property and both the parties in the suit properties are rival claimants, this Court holds that the respondent did not prove the lawful uninterrupted, physical possession of the suit property from the year of 1943 for the entire suit schedule properties, which consists of many tenants and survey numbers. For the above stated reason, the judgment and decree passed by the Lower Court in O.S.No.158 of 2008 is hereby is set aside."

8.Thus, both the suits filed by the appellants as well as the respondents in O.S.No.158 of 2008 and O.S.No.437 of 2010, respectively, were dismissed. Aggrieved by the judgment and decree of the lower appellate Court in A.S.No.50 of 2014, the above second appeal has been filed.

9.In the memorandum of grounds, the appellant has raised the following substantial questions of law:

"a)Whether the plaintiff, who sues for a permanent injunction based on his possession, has to seek declaration of title also?

b)Whether in a suit for permanent injunction, where the plaintiff's possession is admitted, the plaintiff is not entitled to permanent injunction?

c)Whether a person in long, continuous and admitted possession is not entitled to permanent injunction?

d)Whether patta, property tax receipts, electricity receipts, collection of rent, lease deeds, etc., are proof of possession?"

10.The contesting respondents herein earlier filed an appeal in S.A.(MD)No.346 of 2018, as against the judgment and decree in A.S.No.51 of 2014 on the file of the II Additional District Court, Trichy. This Court reiterating the principles expressed by Honourable Supreme Court in **Anathula Sudhakar vs P.Bhuchi Reddy and others**, reported in **(2008) 4 SCC 594**, and dismissed the second appeal filed by the contesting respondents. The relevant portion of the said judgment reads as follows:



"15. The Hon'ble Supreme Court, as one of its guidelines in *Anathula Sudhakar Vs. P.Buchiruddi* judgment has observed the following:-

"(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 the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case. "

16. The facts of this case is not that some third party or meddlers making vexatious or wrongful claim. It is a dispute among the siblings. In such case, when parties have pleaded possession through title documents and already dispute between them regarding title, issue of patta, collection of rents have cropped up, it cannot be presumed that the appellants have clear title and sufficient to seek for prohibitory injunction alone.

17. In the said circumstances, this Court finds no question of law involved in the Second Appeal. Hence, Second Appeal is dismissed. The apprehensions raised by the learned counsel for the appellants that by dismissal of this Second Appeal, the respondents herein will take advantage and try to dispose of the appellants herein, is unfound, since the first Appellate Court has also set aside the injunction decree passed in favour of the respondent by the trial Court in O.S.No.158 of 2008 by allowing A.S.No.50 of 2014."

11.The learned Counsel for the appellant strenuously contended that the trial Court in the present case has upheld the uninterrupted possession of the appellant and that therefore, the judgment of lower appellate Court dismissing the suit in *toto* cannot be sustained. The learned Counsel for the appellant raised a question of law that a plaintiff is entitled to seek permanent injunction based on his persistent possessory title without seeking a declaration of title. He also raised another question of law by reiterating the position that a plaintiff, who proves his uninterrupted position, is entitled to file a suit for permanent injunction without seeking declaration of title and that the Court cannot dismiss the suit for injunction, merely because he has not sought for declaration of title. In other words, it is submitted that the lower appellate Court ought to have held that the appellant is in possession and that the suit for bare injunction cannot be dismissed. Stating that, the findings of the trial Court regarding his possession is not reversed, the learned Counsel further relied



upon several documents that have been filed on behalf of the appellant before the trial Court and submitted that the lower appellate Court has failed to consider all those documents.

12. As against the arguments of the learned Counsel for the appellant, the learned Counsel for the contesting respondents submitted that the appellant has admitted the title of the contesting respondents and that the Court ought to have framed an issue regarding the title and held that the plaintiff/appellant is not entitled for declaration of title, inasmuch as the title of Sundararaja Naidu and Rangasamy Naidu is established by various documents.

13. This Court considered the rival submissions of learned Counsels on either sides.

14. The Honourable Supreme Court in the case of **Anathula Sudhakar vs P. Bhuchi Reddy and others**, reported in (2008) 4 SCC 594, has observed that the Court has to use its discretion carefully to identify the cases, wherein, it will enquire into title and cases, where, it will refer the plaintiff to a more comprehensive suit, depending upon the facts of the case. The Honourable Supreme Court has ultimately summarized the position with regard to suits for prohibitory injunction relating to movable property, as follows:

17. 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



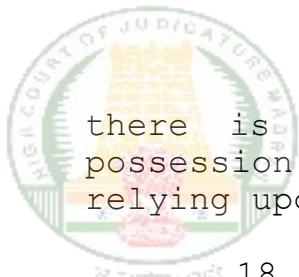
the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

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."

15. This Court has earlier expressed its view that the suits filed by both appellant as well as the contesting respondents for bare injunction is not maintainable following the principles reiterated in the above cited judgment.

16. There is no reason to take a different view in this appeal inasmuch as the facts are identical and both sides have filed the suits are also for permanent injunction without seeking a relief regarding declaration of their title. As stated earlier, the pleadings in this case would certainly lead to the conclusion that the issue of title is not simple in this case. The appellant claims title on the basis of a Will alleged to have been executed by Veerasamy Naidu. Apart from proving the Will, the appellant has to establish that the said Veerasamy Naidu had title at the time of executing the Will. The contesting respondents have produced several documents to show that the property was originally acquired by the brother's son of Veerasamy Naidu, by name, Sundaraja Naidu. The appellant has produced several documents to prove that he was in possession by letting out the property to various tenants. The respondents have also produced some documents to show that they have taken possession from those tenants, who were inducted as tenants. The respondents have also produced before this Court several revenue documents to show that patta had been changed in the name of defendants.

17. Assuming that the property was purchased by Veerasamy Naidu benami in the name of either Sundararaja Naidu or Rangasamy Naidu, it can be established only by proper plea and evidence. Even if there is prohibition to raise plea and prove benami transaction, it is open to the appellant to establish his possessory title, as against anyone, who is never in possession of the property. As rightly held by the lower appellate Court, this is a case, where, both parties have filed suit for injunction without seeking declaration of their title. The title in this case is in dispute and



there is a cloud. Unless, the parties establish their lawful possession for more than statutory period, there is no scope for relying upon mere enjoyment for certain period.

18. The lower appellate Court has rightly dismissed the suit for want of declaratory relief. Since the suit filed by both appellant as well as the respondents, were dismissed and this Court also concurred with the judgment in the suit filed by the respondent, a different view will be unethical. It is open to the parties to work out their remedy by filing appropriate suits. Accordingly, the second appeal is dismissed and the judgment and decree of the II Additional District Judge, Tiruchirapalli, dated 23.12.2016, made in A.S.No.50 of 2014, allowing the appeal filed by the respondents 1 to 6 by reversing the judgment and decree of the I Additional Subordinate Judge, Tiruchirapalli, dated 07.04.2014 made in O.S.No.158 of 2008, is confirmed. However, liberty is given to the both the parties to file a comprehensive suit for declaration and injunction based on their title. No costs.

Sd/-

Assistant Registrar(CS-III)

/TRUE COPY/

Sub Assistant Registrar

To

1. The II Additional District Judge, Tiruchirapalli.

2. The I Additional Subordinate Judge, Tiruchirapalli,

3. The District Collector,
Tiruchirapalli.

4. The Tahsildar,
Contonement, Tiruchirapalli.

5. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.S.SANKAR MURALI, Advocate (SR-71159[F] dated 25/06/2019)

+1 CC to M/s.K.S.VAMSIDHAR, Advocate (SR-71425[F] dated 26/06/2019)

S.A. (MD) No.110 of 2019
24.06.2019