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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Reserved on</i>	<i>Pronounced on</i>
03.04.2019	11.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE **R. PONGIAPPAN**

S.A. (MD) No.719 of 2011

Ramanathan

... Appellant / 1st defendant

versus

1. Guruvammal
2. Kannan
3. Manickam
4. Indira
5. Saraswathi
6. Backiyam

... Respondents 1 to 6 /
Plaintiffs

7. Vijayakumari
8. Jeyakumari
9. Nagalakshmi

... Respondents 7 to 9 /
Defendants 2 to 4

Second Appeal filed under Section 100 of C.P.C. against the Judgment and Decree dated 26.02.2010 made in A.S.No.35 of 2009 on the file of the Sub-Court, Ramanathapuram, confirming the Judgment and Decree dated 30.06.2009 made in O.S.No.26 of 2005 on the file of the District Munsif cum Judicial Magistrate, Thiruvadanai.

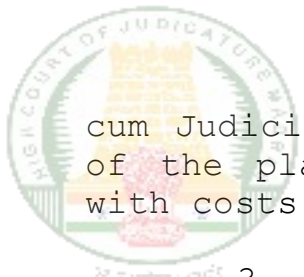
For Appellant : Mr.C.Vakeeswaran

For Respondents : Mr.M.Thirunavukkarasu for R1 to R6
Mr.S.Gokulraj for R7 to R9

JUDGMENT

Aggrieved over the concurrent findings made in O.S.No.26 of 2005 on the file of the District Munsif cum Judicial Magistrate, Thiruvadanai and in A.S.No.35 of 2009 on the file of the Sub Court, Ramanathapuram, the appellant, who is the first defendant in the suit, filed this appeal.

2. Before the trial Court, the respondents 1 to 6/plaintiffs filed a suit in O.S.No.26 of 2005 against the appellant as well as against the respondents 7 to 9 in this appeal, seeking the relief of permanent injunction, restraining the appellant and respondents 7 to 9 from interfering with the peaceful possession and enjoyment of the suit property. By Judgment and Decree dated 30.06.2009, the learned District Munsif



cum Judicial Magistrate, Thiruvadanai, decreed the suit in favour of the plaintiffs and granted an order of permanent injunction with costs.

3. Aggrieved over the same, the appellant herein filed an appeal in A.S.No.35 of 2009, before the Sub Court, Ramanathapuram. By Judgment and Decree dated 26.02.2010, the learned Subordinate Judge, Ramanathapuram, dismissed the appeal, after confirming the findings arrived at by the learned District Munsif cum Judicial Magistrate, Thiruvadanai.

4. Feeling aggrieved over the same, the appellant filed this second appeal.

5. For the sake of convenience, the parties are referred to as described before the Trial Court.

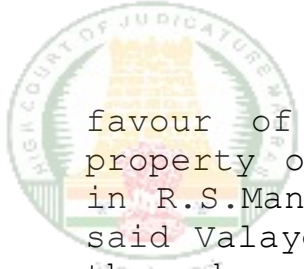
6. The averments made in the plaint, in short, read as follows:

(i) Earlier, the suit schedule property belonged to the mother of the plaintiffs, namely, Palaniammal and patta has been issued in favour of the said Palaniammal. After the demise of the said Palaniammal on 23.12.2003, the plaintiffs by succession are enjoying the suit property, after changing their names in the patta. Before the death of the said Palaniammal, the father of the plaintiffs, namely, Ragappan, died on 18.08.1989 itself.

(ii) Before the suit, in respect of the suit schedule property, the deceased Palaniammal filed a suit in O.S.No.263 of 1983 before the District Munsif Court, Manamadurai as against one Velu, S/o.Vairavaonar, who is the vendor of the 1st defendant, and others. The said suit was ended in her favour and thereafter, without any interference, she was enjoying the suit schedule property. The first defendant is not having any right and title over the suit schedule property. The title has been decided in O.S.No.263 of 1983 itself. Now only the plaintiffs knew that the first defendant alienated the suit property in favour of 2nd to 4th defendants, without having any right. Since the defendants are interfering with the peaceful possession and enjoyment of the suit schedule property, the suit has been filed.

7. The averments made in the written statement filed by the first defendant reads as follows:

The mother of the plaintiffs, namely, Palaniammal, was not having any right and title over the suit schedule property. It is not correct to state that there was a decree in favour of the the deceased Palaniammal in O.S.No.263 of 1983 and so that, the possession was given to the said Palaniammal through E.P.No.1 of 1986. From 1983 onwards, the suit property was in possession and enjoyment of the first defendant. The first defendant is having the right to sell a portion of the suit schedule property in



favour of defendants 2nd to 4th. In fact, the suit schedule property originally belonged to one Mu.Valayee, who was residing in R.S.Mangalam and patta had also been issued in favour of the said Valayee. She adopted one Velu as her son and on 20.03.1967, through a settlement deed, she handed over the suit schedule property in favour of the said Velu. The said Velu, in the year 1983, executed a sale deed in favour of the first defendant and handed over the possession of the suit property to the first defendant. Ever since from the date of purchase, the first defendant alone is in the possession and enjoyment of the suit property. Already, the first defendant filed a suit in O.S.No.221 of 1989 before the District Munsif, Ramanathapuram as against one Segammal and got a decree of permanent injunction. It is claimed by the first defendant that till now, the kist was paid by him. Therefore, the suit is liable for dismissal.

8. Based on the above pleadings, the learned District Munsif cum Judicial Magistrate, Thiruvadanai, framed necessary issues and tried the suit.

9. Before the Trial Court, the first plaintiff Guruvammal examined herself as P.W.1 and marked six documents as Exs.A1 to A6. On the side of the defendants, four witnesses were examined as D.W.1 to D.W.4 and marked 14 documents as Exs.B1 to B14.

10. Having considered all the materials placed on record, the learned District Munsif Court, Thiruvadanai, came to a conclusion in favour of the plaintiffs and decreed the suit as prayed for.

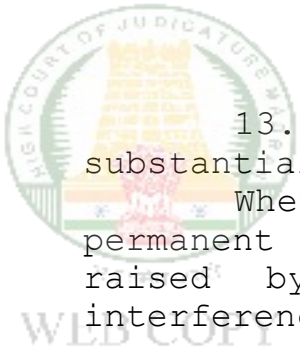
11. In the appeal, the learned Subordinate Judge, Ramanathapuram, confirmed the findings and dismissed the appeal. Hence, the first defendant is before this Court with this second appeal.

12. At the time of admitting this appeal, this Court formulated the following substantial questions of law:

(a) Whether the Courts below are right in granting the relief of permanent injunction to 1st to 6th respondents herein, when the appellant herein has already got a decree for declaration and injunction in respect of the suit property in O.S.No.221 of 1989?

(b) Whether the Compromise decree in O.S.No.263 of 1983 is valid in respect of the suit property in Survey No.220/1, when the suit property is not the scheduled property in O.S.No.263 of 1983 and the compromise was entered between the plaintiff and the first defendant and not on the 3rd defendant warrants interference?

(c) Whether the Courts below are right in holding that the plaintiffs have proved the possession and enjoyment over the suit property on the basis of the compromise decree made in O.S.No.263 of 1983 warrants interference?



13. During the time of enquiry, the following additional substantial questions of law is framed:

Whether the Court below is right in decreeing the suit for permanent injunction when the title is in dispute and the same was raised by the plaintiff itself in the plaint, warrants interference?

14. Before the Trial Court, the plaintiff filed the suit for the relief of permanent injunction.

15. In respect of identifying the suit schedule property, the description of property was mentioned in the plaint, which reads as follows:

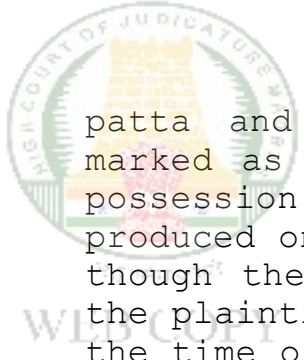
சொத்து விபரம்

இராமநாதபுரம் மாவட்டம், ஸ்ரீரீடி, திருவாடானை வட்டம், ஆர்.எஸ்.மங்கலம் சப்டி, ஆர்.எஸ்.மங்கலம் குடும்ப, கீழக்கோட்டையில் பட்டா எண் 201, சர்வே எண் 220/1 நஞ்சை விஸ்தீரணம் 0.40.5 யேர்ஸ்.

16. So far as the title of the suit property is concerned, it is the specific case of the plaintiffs that one Palaniammal, who is the mother of the plaintiffs, was the owner of the suit schedule property. After the demise of the said Palaniammal on 23.12.2003, the plaintiffs obtained the suit schedule property by succession and thereafter, patta has been changed in their names. It is the further case of the plaintiffs that before the death of Palaniammal, she filed a suit in O.S.No.263 of 1983 before the District Munsif Court, Manamadurai, by adding one Velu, S/o.Vairavaonar, as one of the defendants, who is nothing, but the vendor of the 1st defendant. In the said suit, a decree was granted in favour of Palaniammal and thereafter, based on the order passed in Execution Petition No.1/1986, the said Palaniammal was put into possession of the suit schedule property.

17. In order to prove the said contention, on the side of the plaintiffs, a copy of the delivery warrant issued in E.P.No.1 of 1986 was marked as Ex.A1. As per the said order, the possession of Survey No.220/1 was handed over to Palaniammal. It is significant to note that the plaintiffs, in support of their case, marked a copy of the Judgment made in O.S.No.130 of 1967 on the file of the District Munsif, Ramanathapuram as Ex.A5. Further, a certified copy of the suit register of O.S.No.62 of 1995 pertaining to the Court of District Munsif, Thiruvadanai was marked as Ex.A6.

18. Now, on going through Ex.A5, it was claimed by Late Palaniammal as one Valayee is her mother. Further, on going through Ex.A6, it appears that the said suit pertains to Survey No.155/2, measuring to an extent of 0.26.5 hectare alone. So, these documents are no way helpful to prove the title and possession of the plaintiffs. On the side of the plaintiffs, Apart from Ex.A1, a copy of patta transfer order, a copy of the



patta and kist receipts pertaining to the suit property were marked as Exs.A2 to A4. Even though those documents proved the possession of the plaintiffs, no specific title document has been produced on the side of the plaintiffs to accept their case. Even though there was no evidence on the side of the plaintiffs that the plaintiffs are the legal heirs of the deceased Palaniammal, at the time of giving evidence as D.W.1, the first defendant admitted that the deceased Palaniammal is the mother of the first plaintiff. Hence, automatically by succession, the first plaintiff is put into the possession of the suit schedule property.

19. It is the specific case of the appellant that through a decree passed in O.S.No.221 of 1989, he obtained a decree of declaration and injunction in respect to the suit schedule property. In this regard, before the trial Court, a copy of the decree passed in O.S.No.221 of 1989 was marked as Ex.B13. The contents of the said decree proves that the first defendant filed a suit against one Segammal and five others in O.S.No.221 of 1989 for the relief of declaration and injunction. Further, the said suit was in respect of Survey No.220/1, which is the suit schedule property in this appeal. More than that the said suit was disposed of on 26.9.1990.

20. On the other hand, the mother of the first plaintiff Palaniammal filed a Execution Petition and entered into the possession of the said property in the year 1986 itself. Therefore, the decree passed by the District Munsif, Ramanathapuram, in favour of the first defendant, could not nullify the decree passed in favour of 1st to 6th respondents herein.

21. Secondly, now, on going through Ex.A1, which was the copy of Execution Petition, it reveals that E.P.No.1 of 1986 was filed based on the strength of the decree passed in O.S.No.263/1983 and it categorically proves that the said decree was passed as an ex parte decree.

22. However, it is to be decided as to whether the decree passed by the competent Court was an ex parte decree or merit based decree until the same was set aside and whether the said decree was in force only through the settled preposition?

23. In this regard, the learned counsel appearing for the appellant relied upon the Judgment of this Court reported in **2000 3 MLJ 609 (Navu Gounder vs. Govindasamy Gounder and another)**, wherein it has been held as follows:

"....prior to the amendment made in 1976, the ex parte decree can be passed only in regard to the matters within the scope of the suit. But, after the



amendment of CPC, a consent compromise decree can be passed even though it comprehends matters falling outside the subject matter of the suit."

24. By relying upon the said decision, the learned counsel for the appellant contended that the Courts below without knowing that aspect decreed the suit in favour of the plaintiffs, which is not well within the correct proposition and accordingly, the appeal is having merits.

25. In this regard, for settling the said contention, it is necessary for this Court to look into the crux of the Judgment rendered by the Courts below.

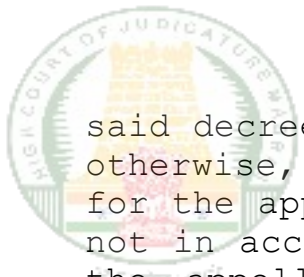
26. Before the trial Court, on either side, a copy of the decree passed in O.S.No.263 of 1983 was not marked as Exhibit. Further, it was contended by the first defendant that the decree granted in favour of Palaniammal was an ex parte decree. In this aspect, since a copy of the decree is very well available with the Court, the first defendant, without taking any steps to get the said order copy from the competent Court, approached this Court by saying that the decree passed in O.S.No.263 of 1983 is not a valid one. So, the said contention raised by the appellant is no way helpful to decide the issue in favour of the appellant.

27. More than that, D.W.1 has specifically stated that before passing a decree in O.S.No.263 of 1983, he sold out the property in favour of the defendants 2 to 4. The said categorical evidence given by D.W.1 establishes that he sold out the property to defendants 2 to 4 while the suit filed by the said Palaniammal was in subsistence. So, the said sale made by the first defendant is against the proposition of Section 52 of Transfer of Property Act.

28. But, the contention raised by the first defendant is that the compromise decree passed in O.S.No.263 of 1983 is subject to the provision of Order 23 Rule 3 C.P.C. or not.

29. When such a specific plea is taken by the first defendant that the decree passed in O.S.No.263 of 2003 is not a valid one, it is the duty of the first defendant to produce the relevant document to show that the decree passed in O.S.No.263 of 1983 is not in accordance with law. In otherwise, the copy of the order passed by the District Munsif, Ramanathapuram in E.P.No.1/1986 is in accordance with the decree passed in the said suit. Therefore, we cannot come to the conclusion that the said decree is against the principles of law.

<https://hcservices.ecourts.gov.in/hcservices/> is a settled proposition that until the decree passed by the competent court is set aside, the same is in force. Further, the execution proceedings filed by a person based on the



said decree is only within the scope restricted in the decree. In otherwise, the arguments advanced by the learned counsel appearing for the appellant, that the decree passed in O.S.No.263 of 1983 is not in accordance with law, is not correct. It is best known to the appellant that without producing the copy of the decree, mentioning that the said decree is a compromise decree, which cannot be accepted.

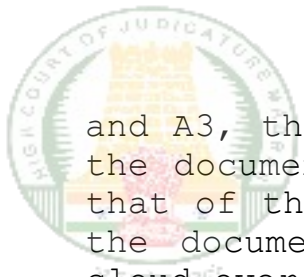
31. The next contention raised by the learned counsel appearing for the appellant is that since the title of the plaintiffs itself is questioned by the defendants, the prayer for the declaration of title is necessary.

32. In this case, in the written statement itself, the first defendant denied the title of the plaintiffs, even after knowing the said fact that the plaintiffs have not taken any steps to amend the plaint for the relief of declaration. In this aspect, the Courts below, without appreciating the evidence given by D.W.1 to D.W.4, passed the decree in favour of the plaintiffs.

33. It is true that if the cloud is indicated by the defendant over the suit schedule property, it is the duty for the plaintiff to ask the relief of declaration and he has to prove his clear title.

34. In this case, it is true that even after disputing the title of Palaniammal, the plaintiffs have not come forward to amend the plaint as contended by the defendants. In this regard, the Courts below specifically stated that since the sale was made by the first defendant at the time of pending the suit filed by Palaniammal, all the sales effected by the first defendant is having nullity and accordingly, the sale made by the first defendant does not affect the case of the plaintiffs. It is true that before the Trial court, on the side of the defendants, a copy of the patta pertaining to the survey number 221/1, a copy of the adangal, a copy of the chitta and other documents relating to patta No.2435, were marked as Ex.B3 to B12. Even though Ex.B2 establishes that on 20.03.1967, one Vairavakonar executed a settlement deed in favour of Velayee, who is the mother of the plaintiffs' Palaniammal, having the relationship with Velayee as mother, the said Palaniammal, who is the daughter of Velayee, filed a suit before the District Munsif Court, Ramanathapuram in O.S.No.130 of 1967 and obtained a decree to the property of Velayee. The said suit has been filed against one Velayee Ammal. So, the documents produced on the side of the plaintiffs are all in respect to the possession, but are not with respect to the title having by Palaniammal.

<https://hcservices.ecourts.gov.in/hcservices> 35. Further, it is clearly proved on the side of the plaintiffs that through Ex.A1, in the year 1986, the deceased Palaniammal was put into possession and thereafter, through Exs.A2



and A3, the name of the plaintiffs are entered in the patta. So, the documents relied by the plaintiffs are having value more than that of the documents relied on by the defendants. In otherwise, the documents relied on by the defendants did not indicate any cloud over the suit schedule property.

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36. In the said circumstances, we cannot hold that the defendants raised a cloud over the suit property and thereby, the plaintiffs are not entitled to the relief of injunction normally. Since this appeal is filed under Section 100 of C.P.C, it is not necessary for this Court to look into the entire facts of this case for disposing of the appeal. Therefore, substantial question of law arised in this appeal and additional substantial question of law are answered in favour of the plaintiffs.

37. In the result, the Second Appeal is dismissed, confirming the Judgment and Decree dated 26.02.2010 made in A.S.No.35 of 2009 on the file of the Sub-Court, Ramanathapuram. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The Subordinate Judge,
Ramanathapuram.
2. The District Munsif cum Judicial Magistrate,
Thiruvadanai.

Copy To:

The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

- + 1 CC Mr.C.Vakeeswaran, Advocate in SR.No.67838
- + 1 CC Mr.M.Thirunavukkarasu, Advocate in SR.No.67762

Judgment made in
S.A. (MD) No.719 of 2011

11.06.2019