

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2020

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.995 of 2004
and
C.M.P.No.7322 of 2004

A.K.Sudhevan

... Appellant/1st Defendant

versus

1.P.S.Duraiaraj (Deceased)

2.Hariram Naidu (Died)

3.H.P.Balakrishnan

4.Rajammal

5.Leela Ramakrishnan

6.Krishnaveni

7.Kamala

8.Devaki

9.Jamuna Rani

10.D.Moorthy

11.D.Sridharan

12.D.Dayalan

13.H.Vasantha Kumar

14. H.Vijaya Kumar

... Respondents / Plaintiff

(Respondents 4 to 12 brought
on record as legal representatives
of the deceased 1st respondent vide
order of Court dated 18.12.2018
made in C.M.P.No.2810 of 2006
in S.A.No.995 of 2004)

(Respondents 13 and 14 brought
on record as legal representatives
of the deceased 2nd respondent
viz., Hariram Naidu vide order
of Court dated 17.12.2019
made in C.M.P.No.22424, 22428
and 22432 of 2019 in S.A.No.995 of 2004).

Prayer: Second Appeal is filed under Section 100 of code of Civil Procedure against the judgment and decree dated 13.11.2003 in A.S.No.46 of 2003 on the file of the learned District Judge of Nilgiris at Uthagamandalam, confirming the judgment and decree dated 27.06.2003 in O.S.No.229 of 1995 on the file of the

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learned District Munsif, Coonoor.

For Appellant : Mrs.A.L.Ganthimathi

For Respondents: R1 - Died steps taken
Mr.S.K.Raghunathan [R4 to R12]
R13 and R14 - Not ready in notice.

JUDGMENT

The plaintiff has laid a suit for bare injunction and was successful both before the trial Court and the First Appellate Court. The unsuccessful 1st defendant is before this Court with the present appeal.

2. The case of the plaintiff can be summarised:

Under Exts.A1 to A6, all of which are sale deeds that are dated between 01.12.1969 and 04.07.1981, the plaintiff has purchased 5.88 acres in Sy.No.686/3. Out of this, he sold 1.68 acres under Ext.A8, sale deed dated 11.02.1985 to the 3rd defendant and his brother Nagaraj. The balance area left with him was 3.80 acres. It was further pleaded in the plaint that the plaintiff had moved the Tahsildar for sub-dividing the survey-field and the Tahsildar proceeded and sub-divided the plot left with the plaintiff into Sy.No.686/3A(with an extent of 2.10 acres), Sy.No.686/3C (with an extent of 1.36 acres) and Sy.No.686/3E (with an extent of 0.345 acres). As the plaintiff faced some obstruction from the defendants to his peaceful possession, he laid the suit.

3. The suit was not contested by defendants 2 and 3, and only the present appellant/1st defendant offered a contest. In his written statement, the 1st defendant has denied the plaintiff's case and asserted that he was in possession of 0.345 acres, in Sy.No.686/3E.

4.1 Before the trial Court, the plaintiff has examined himself as PW1 and produced as many as 17 documents, which includes a copy of the sale deed which he executed in favour of the 3rd defendant and his brother, and the copy of joint chitta and kist receipts. The Appellant/1st defendant examined himself as D.W.1, however, did not produce any documentary evidence.

4.2 On appreciating the evidence of the plaintiff and the pleadings and oral testimony of the 1st defendant, the trial Court decreed the suit, which findings, later came to be confirmed by the First Appellate Court in A.S.No.46 of 2003. Challenging the same, the first defendant has filed the present appeal.

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5. This second appeal was admitted on the following substantial questions of law:

"1. Whether the Courts below are correct in granting a decree for injunction when the title has been disputed and no declaration has been asked for?

2. Whether the Courts below are correct in relying on Ex.A9 an order of subdivision without notice to the other pattadars as a document to prove possession?

3. Whether the Courts below are correct in granting a decree not on the strength of the plaintiff's case but on the weakness of the case of the defendant?"

6. The only point the learned counsel for the appellant argued, rather strenuously was that, inasmuch as this appellant/first defendant denied and disputed the title of the plaintiff, the plaintiff ought to have filed a suit for declaration of title and hence a mere suit for injunction cannot be maintained.

7.1 This Court is not impressed by this argument. In terms of Section 34 of the Specific Relief Act, a suit for declaration is required to be filed only in situations where a clear cloud is created on the title of the plaintiff. In all such situations, when the defendant takes a plea disputing the plaintiff's title, the Court has to ascertain whether there are facts available on record to indicate that the contention of the defendant, challenging the title of the plaintiff is substantial. Otherwise, it would be an easy passport for anybody to just make a sentence in the written statement impugning the title of the plaintiff. It is only when the defendant produces such materials, the Court can infer if a cloud is cast on the title of the plaintiff, and require the plaintiff to go for a suit for declaration. See the judgement of this Court in Arulmigu Velukkai Sri Azhagiya Singaperumal Devasthanam, represented by its Trustees Vs G.K.Kannan (deceased) and others [S.A.No: 1671 & 1672 of 2002]

7.2 So far as the present case is concerned, the 1st defendant has come with a weak defense sans any material to support it. It will be cruel for the Court to insist the plaintiff to go for an elaborate suit for declaration.

8. In conclusion, this Court does not find any merit in this appeal and accordingly, this second appeal is dismissed and the judgment and decree dated 13.11.2003 made in A.S.No.46 of 2003

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on the file of the learned District Judge of Nilgiris at Uthagamandalam, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The District Judge of Nilgiris,
Uthagamandalam.
2. The District Munsif,
Coonoor.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mrs.A.L.Ganthimathi, Advocate SR.20003
+1cc to Mr.S.K.Rakhunathan, Advocate SR.20759

S.A.No.995 of 2004
and
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